

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session  
May 9, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:40 p.m. on Tuesday, May 9, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Tick Segerblom, Chair  
Senator Nicole J. Cannizzaro, Vice Chair  
Senator Moises Denis  
Senator Aaron D. Ford  
Senator Don Gustavson  
Senator Michael Roberson  
Senator Becky Harris

**GUEST LEGISLATORS PRESENT:**

Assemblyman William McCurdy II, Assembly District No. 6  
Assemblyman James Ohrenschall, Assembly District No. 12  
Assemblyman Tyrone Thompson, Assembly District No. 17  
Assemblyman Steve Yeager, Assembly District No. 9

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Connie Westadt, Committee Secretary

**OTHERS PRESENT:**

John T. Jones, Jr., Nevada District Attorneys Association  
Bart Pace, Office of the District Attorney, Clark County  
Wendy Stolyarov, Libertarian Party of Nevada

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Alanna Bondy, American Civil Liberties Union of Nevada  
Mike Dyer, Nevada Catholic Conference  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Lori Dunn, Las Vegas Metropolitan Police Department  
Kerri Kramer, The Cupcake Girls  
Eric Spratley, Washoe County Sheriff's Office  
Marlene Lockard, Nevada Women's Lobby  
Jim Hoffman, Nevada Attorneys for Criminal Justice  
Dana Hlavec, Municipal Court Administrator, City of Las Vegas  
Ed Poleski, Assistant City Attorney, Criminal Division, City Attorney's Office,  
City of Las Vegas  
David Cherry, City of Henderson  
Keith Lee, Nevada Judges of Limited Jurisdiction

CHAIR SEGERBLOM:

I will open the hearing on Assembly Bill (A.B.) 259.

**ASSEMBLY BILL 259 (1st Reprint)**: Revises provisions relating to certain criminal convictions and sentences. (BDR 14-657)

ASSEMBLYMAN WILLIAM MCCURDY II (Assembly District No. 6):

Assembly Bill 259 addresses convictions and sentences related to marijuana offenses. Section 1.2 of A.B. 259 will allow a person who is convicted of a misdemeanor for the possession of one ounce or less of marijuana or a violation of any other provision of law concerning an offense involving marijuana on or after January 1 to petition the court to vacate the judgment and seal all documents relating to the case. The bill also requires the person to notify the prosecuting attorney who prosecuted the petitioner for the crime, and the prosecuting attorney must be allowed to testify and present evidence before the court decides whether to grant the petition.

Existing law prohibits a person from knowingly or intentionally possessing a controlled substance and sets forth the penalties for violating such law. Section 2 of A.B. 259 provides that, if a person is convicted of knowingly or intentionally possessing a controlled substance and the penalty for such possession requires the person serve a minimum term of imprisonment, the court is authorized to depart from the prescribed minimum term of imprisonment in certain specified circumstances.

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After the passage of Ballot Question No. 2 in 2016, it is legal for persons 21 years of age and older to possess up to one ounce of marijuana or up to one-eighth of an ounce of cannabis concentrate, but it is not legal to smoke in public or buy or sell recreational marijuana. Ballot Question No. 2 was approved by 54.4 percent of Nevada voters and the Department of Taxation is creating regulations for licensed marijuana establishments to sell recreational marijuana.

We are all familiar with the war on drugs, mandatory minimum sentencing and their effect on the prison population 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. It is time for us to take a hard look at what we are doing in our State. Assembly Bill 259 lays legislative groundwork for these changing times. Nevadans have voted and our laws must respect those results. Now is the time to reform our criminal justice system.

CHAIR SEGERBLOM:

I assume that many people entered pleas to marijuana possession or attempted possession. Does A.B. 259 cover that?

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Yes. This bill is different from the original version. We moved the process of vacating criminal convictions from *Nevada Revised Statutes* (NRS) 176 to the record sealing section of NRS 179. Section 1.2, subsection 3, paragraph (a) provides that a court shall grant a petition if the conviction is for possession of one ounce or less of marijuana. Section 1.2, subsection 3, paragraph (b) provides that, if the conviction is for some other misdemeanor conviction concerning an offense involving marijuana, the court may grant the petition. In this instance, the petitioner must notify the office of the prosecuting attorney who prosecuted the crime. The prosecuting attorney must be allowed to testify and present evidence.

CHAIR SEGERBLOM:

Is there a filing fee? I am envisioning dispensaries hiring attorneys and holding workshops to walk people through this process.

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ASSEMBLYMAN YEAGER:

There is a filing fee. It is the same as a petition to seal records. Those fees are often waived for those who cannot afford to pay. Even if a person has an attorney, the attorney can help with the process pro bono. There is a form to file for a waiver of the fee if the person is indigent. I do not know what the filing fee is.

CHAIR SEGERBLOM:

Can you get into court prior to paying the fee? Do you file the petition and the fee waiver form together?

ASSEMBLYMAN YEAGER:

Yes.

CHAIR SEGERBLOM:

This bill is so vital. Thank you for doing this.

ASSEMBLYMAN YEAGER:

The District Attorneys Association has proposed an amendment ([Exhibit C](#)) that clarifies some language. We request one significant change that was not made by the Assembly. Section 2, subsection 3 sets forth the statutory scheme for punishing a person who is in possession of gamma-hydroxybutyrate or GHB, commonly known as the date-rape drug. It was our intention to leave that a Category B felony and not permit discretion to lower the sentence because possession of that drug is not for personal use. We request that the language of the current law be restored.

CHAIR SEGERBLOM:

Are you proposing we accept the district attorney's amendment and restore the language regarding GHB?

ASSEMBLYMAN YEAGER:

Yes.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

We support [A.B. 259](#) and appreciate Assemblyman Yeager working with us on [Exhibit C](#). The scheme proposed in [A.B. 259](#) allows defendants to have not only their convictions vacated but also to have their records sealed. Vacating a

conviction effectively makes it go away. The record would reflect no adjudication of the crime.

CHAIR SEGERBLOM:

If a person is asked on a form whether he or she has ever been convicted of a crime, can the person answer no?

MR. JONES:

Yes. The most important part is the sealing. When a case is sealed, it is legally deemed not to have occurred. That is why vacating and sealing are important to do together. If the record is sealed, a person can say under all circumstances that the crime never occurred.

BART PACE (Office of the District Attorney, Clark County):

I do not know what the filing fees are. They range from \$200 to \$300. We recommended this bill amend the record sealing statute to provide a process to clean up all records.

WENDY STOLYAROV (Libertarian Party of Nevada):

The Libertarian Party of Nevada believes that the recreational use of marijuana should never have been illegal. The people of Nevada have spoken loudly in agreement. When the private recreational use of marijuana became legal on January 1, any Nevadan convicted of now-legal offenses is entitled to have the judgment vacated and the record sealed. The State must not continue punishing those who have committed no crime under existing law. Convicting individuals in the past of acts that are now legal is a violation of individual rights, the principle of justice and rule of law. Vacating and sealing these convictions is the least the State can do to make up for their suffering. We also strongly endorse the provisions reducing mandatory minimums, as one-size-fits-all solutions are rarely good for individuals or societies. We support A.B. 259.

ALANNA BONDY (American Civil Liberties Union of Nevada):

We support A.B. 259. Assembly Bill 259 allows citizens to be relieved from the lasting consequences of a criminal conviction based on behavior the State has decided is no longer a punishable offense. In the Assembly, some were concerned the bill would result in the courts being flooded with requests to vacate judgments. I filed a public records request with the state of Washington in Spokane, which enacted this same policy. The ordinance was enacted

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September 1, 2015. At that time, there were 1,817 people eligible to have their convictions vacated. As of December 31, 2016, only 29 people have applied.

MIKE DYER (Nevada Catholic Conference):  
We support A.B. 259.

MR. PACE:

The district court filing fee for a petition is \$270. The justice court filing fee is \$90. The municipal court filing fee is \$50.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We support the concept and the intent of A.B. 259. We realize that things that were illegal prior the passage of Ballot Question No. 2 are now legal, and we understand people who were convicted wanting to get their convictions vacated and sealed. We opposed A.B. 259 in the Assembly. Most of the policy concerns we had have been removed with the exception of the GHB issue. That has now been resolved as well.

My primary concern with A.B. 259 is with the impact it could have on the Las Vegas Metropolitan Police Department (LVMPD) records section. There are a number of bills pending this Session that deal with sealing records. Assembly Bill 259 addresses both vacating and sealing. It could have an impact on our records section. The fees associated with the petition described in A.B. 259 have been discussed. The Las Vegas Metropolitan Police Department does not collect any fees, and yet we are the agency that performs the function. Providing a portion of the fees to the LVMPD would help with the impact of this bill.

CHAIR SEGERBLOM:

Maybe you could propose an amendment that gives all the money to the LVMPD.

LORI DUNN (Las Vegas Metropolitan Police Department)

The largest number of arrests and citations issued by the LVMPD are misdemeanors. We will experience a high number of petitions for sealing. The number is especially high when a law day is held to assist people with the filing of the petitions.

CHAIR SEGERBLOM:

I appreciate what you do. If you can find a way for us to help you, we would like to do so because this is important.

ASSEMBLYMAN MCCURDY:

This bill will help many individuals who have made mistakes in their past. We are a State that believes in second chances. I am open to working with anyone on language to improve this bill.

ASSEMBLYMAN YEAGER:

Because we are talking about misdemeanor convictions, most of the people to whom A.B. 259 is applicable are already eligible to file petitions to seal their records. I do not anticipate a huge caseload increase. In addition to the sealing, we are allowing the vacation of the judgment, which is something the court does. The sealing is separate and apart. Because this is limited to misdemeanors, the waiting period is already short. Most misdemeanants can already file for sealing. They just cannot get their convictions vacated.

CHAIR SEGERBLOM:

As pointed out, when we have a law day or weekend, the caseload probably does increase. I will close the hearing on A.B. 259 and open the hearing on A.B. 243.

**ASSEMBLY BILL 243 (1st Reprint)**: Revises provisions relating to criminal convictions of victims of sex trafficking and involuntary servitude. (BDR 14-444)

ASSEMBLYMAN YEAGER:

Assembly Bill 243 moves the procedure to vacate a conviction from NRS 176 to the record sealing section of NRS 179. These are convictions suffered by those who have been victims of sex trafficking. The petitioner already has the ability to file a petition to vacate a judgment. We are simply moving the filing requirements to NRS 179 so that the petition to vacate can be combined with the petition for record sealing. The other important change contained in A.B. 243 is allowing the filing of one petition to seal all records in district court for multiple convictions issued by more than one court. The petitioner can have the conviction vacated and the record sealed ensuring that he or she will be protected in the event of a background check.

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CHAIR SEGERBLOM:

Is this the bill that allows a petitioner go to a single court, or is there another bill that does this as well?

ASSEMBLYMAN YEAGER:

There is a record sealing bill, A.B. 327, in the Assembly sponsored by Assemblyman William McCurdy II, Assembly District No. 6. That bill includes a superseal provision that permits a person with multiple charges in multiple jurisdictions to go to district court to petition for the sealing of all of his or her convictions.

**ASSEMBLY BILL 327**: Revises provisions relating to records of criminal history.  
(BDR 14-658)

CHAIR SEGERBLOM:

Does A.B. 243 only address victims of sex trafficking?

ASSEMBLYMAN YEAGER:

Assembly Bill 243 only covers the vacating and sealing of records related to convictions stemming from being a victim of sex trafficking.

KERRI KRAMER (The Cupcake Girls):

I worked with Assemblyman Elliot T. Anderson, Assembly District No. 15, on A.B. No. 108 of the 78th Session in 2015, which allowed for the vacation of trespass and solicitation crimes for victims of sex trafficking. What I learned from attorneys who were working with these victims is that A.B. No. 108 of the 78th Session is cumbersome because the victim has to go to each court of conviction in order to petition for vacation. That is expensive. Most survivors no longer live here. Part of their evidentiary burden is to show the court that they are no longer being trafficked and that they have sought help to get out of that life. Assembly Bill 243 helps these survivors consolidate their convictions into one petition, whether before the justice court or the district court, to vacate and seal all records. These people were forced into this life. There are a couple of amendments. We worked with the district attorneys, the public defenders and the courts. We previously added notice to all agencies. We have also added concurrent jurisdiction.

MR. JONES:

We support A.B. 243. The Nevada District Attorneys Association has proposed an amendment ([Exhibit D](#)). The amendment cleans up some language. One of the benefits of moving this process to the sealing provisions in NRS 179 is that, when a court vacates a judgment, it does not necessarily seal the record. A victim might think that his or her case has gone away, but a background check would show all of the victim's arrests. Putting this process in NRS 179 makes it completely go away. An employer will not see this history. It accomplishes the goal of making the history go away.

SENATOR HARRIS:

Helping these girls repair their lives is a productive and positive thing to do. What is the scope of crimes covered by this bill other than prostitution? Is shoplifting covered?

MR. JONES:

We expanded the list of crimes last Session. Prior to the Seventy-eighth Session, the only crime covered was engaging in prostitution. The list was expanded to include trespassing and loitering for the purpose of prostitution. There is a specific list of crimes in section 1.2, subsection 2.

SENATOR HARRIS:

Will a judge have discretion to look at the totality of the circumstances and expand the scope to crimes that are not on the list but had their foundation in sex trafficking or prostitution? Will the judge have some leniency?

MR. JONES:

Pursuant to the provisions of A.B. 243, the answer is no. The petition is limited to those crimes listed in section 1.2, subsection 2.

MR. PACE:

Assembly Bill 243 allows for the setting aside of convictions for crimes listed in section 1.2, subsection 2. However, if information about other crimes comes out during the record sealing process and the judge has discretion, it can be exercised and leniency afforded regarding the totality of the crimes.

MR. JONES:

Sealing allows a person to legally say the crime did not occur. There are only a small number of agencies that can look at sealed records.

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SENATOR HARRIS:

My concern is that the crime of prostitution and the victim of sex trafficking cannot be looked at in isolation. Other circumstances are born from that, and I would prefer not to limit the scope of crimes. If we are going to set these girls up for success, there needs to be discretion regarding the totality of the circumstances in which they were placed.

MR. JONES:

There are certain crimes that are committed by victims of sex trafficking, such as robbery, that we would be concerned about sealing because of their violent nature. We are willing to discuss this further.

SENATOR HARRIS:

I did not mean to exclude young men from this discussion.

MR. CALLAWAY:

We support A.B. 243. The Las Vegas Metropolitan Police Department knows there is a problem with human sex trafficking. One of the important steps in helping these victims get away from their pimps is a clean record and a job. Again, we are concerned about the potential for the impact on the LVMPD records section. We did not put a fiscal note on this bill. We must balance the benefits of helping victims turn their lives around with the impact on the LVMPD records section.

ERIC SPRATLEY (Washoe County Sheriff's Office):

We support A.B. 243.

MARLENE LOCKARD (Nevada Women's Lobby):

We support A.B. 243.

MR. DYER:

We support A.B. 243.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

We support A.B. 243. We would support the amendment Senator Harris discussed. Section 1.2, subsection 4, paragraph (c) provides that one of the requirements for granting the petition is that the petitioner file the petition with due diligence after the petitioner has ceased being a victim of trafficking or

involuntary servitude or has sought services for victims of such trafficking or involuntary servitude. We have a concern about the meaning of “due diligence.”

ASSEMBLYMAN YEAGER:

If A.B. 327 is passed, there will be a one-year wait time for sealing misdemeanors records. If there are companion convictions that would not otherwise be eligible for vacation, such as drug convictions, petty larceny, shoplifting, etc., the person will be able to include those crimes in the petition for sealing. Sealing is not the same as vacating, but we are working on streamlining the record sealing process and shortening the waiting period. That might provide some relief.

SENATOR HARRIS:

If a record is sealed but not vacated, does a person have to check the felony box on an employment application?

ASSEMBLYMAN YEAGER:

In the context of sealing records, it is as if a person had never been convicted. A person can check the “no” box and not be committing perjury with limited exceptions, such as information provided to the Nevada Gaming Control Board.

SENATOR HARRIS:

Sealing permits a person to move forward with respect to education and employment opportunities.

ASSEMBLYMAN YEAGER:

Yes.

CHAIR SEGERBLOM:

I will close the hearing on A.B. 243 and open the hearing on A.B. 470.

**ASSEMBLY BILL 470 (1st Reprint)**: Creates a preprosecution diversion program for defendants charged with certain misdemeanor offenses. (BDR 14-1062)

ASSEMBLYMAN YEAGER:

I have submitted a conceptual amendment to A.B. 470 ([Exhibit E](#)). Assembly Bill 470 creates a preprosecution program. The philosophy behind this bill is that, for certain offenses, a defendant may participate in a program that

would result in the case being dismissed and the record sealed upon successful completion. Failure would result in the case being reinstated. [Exhibit E](#) makes it clear that it is up to the justice court or municipal court whether to establish this program. There is no mandate. In addition, if the court decides to establish such a program, it will decide how a petitioner makes application to the program. The judge will make the determination of whether to accept the person into the program. Before granting the petition, the judge will hear from the prosecuting attorney and defense attorney. If the court does not accept a defendant into the program, there is no appeal. The decision is 100 percent discretionary.

If the court grants the petition for diversion, the court will craft the terms of the diversion program. The court will receive input from the prosecutor and the defense attorney. The bill lists some items that may be included in the diversion program, such as community service, drug treatment, etc. If there is an existing specialty program, such as a veterans' court, and if that court has room for the defendant, that could be part of the diversion program.

The bill requires the defendant appear before the court every 90 days for status checks. There is some concern about how the court will remain informed. This program is similar to existing programs in justice court and city court. There are no formal probation officers. The defendant returns to court with proof of compliance. The bill provides that the term of the diversion cannot be longer than 18 months. That is the time frame for completion of the program. My hope is that if this bill passes, there will be a justice court or municipal court in this State that will want to offer this program and give defendants an opportunity to participate.

CHAIR SEGERBLOM:

Would one justice of the peace handle these cases, or would it be every justice of the peace?

ASSEMBLYMAN YEAGER:

I anticipate that each justice of the peace and each municipal court judge will make his or her own determination about whether to establish such a program. I anticipate that if a particular judge establishes a program, he or she will oversee the program terms and status checks. Of course, there will be an option for the transfer of jurisdiction from one court to another. Las Vegas Justice Court has 14 judges. They could decide collectively to offer such a program, but the intent of the bill is that each judge will make his or her own decision.

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SENATOR HARRIS:

What are the consequences of failure?

ASSEMBLYMAN YEAGER:

The consequence is losing the opportunity to have the charge dismissed and the record sealed. The defendant goes back to square one. In most diversion programs, the defendant pleads guilty to something, and the court holds that plea over the defendant's head. It is all or nothing. The defendant completes the program or is adjudicated guilty. This preprosecution diversion program seeks to give first-time, nonviolent offenders a chance to be diverted out of the justice system. The only sanction is revocation of the diversion program. Getting in trouble again would trigger a new case, prosecution and likely incarceration.

SENATOR HARRIS:

If the offender violates the diversion program in the first instance, goes to jail, completes a sentence, gets out and reoffends, does that preclude future participation in the program?

ASSEMBLYMAN YEAGER:

Yes. Section 2, subsection 2, paragraph (b), subparagraph (2) provides that a person is not eligible to participate in this diversion program if previously ordered to complete a preprosecution diversion program. It is a one-time deal.

CHAIR SEGERBLOM:

Can you ever participate again?

ASSEMBLYMAN YEAGER:

You could not participate in this preprosecution program.

SENATOR HARRIS:

Assembly Bill 470 precludes an offender from participating in a preprosecution diversion program. Could the offender participate in other diversion programs?

ASSEMBLYMAN YEAGER:

The preclusion would only be from the A.B. 470 preprosecution diversion program. The difficulty is the use of the word "diversion." Typically, in the criminal justice system "diversion" is not "diversion." It is a sanction associated with a plea. The gambling court, the drug court or the mental health court are typically associated with probation after conviction. There is an opportunity in

statute to get diversion, but it is hard to achieve and requires a defendant to plead guilty to all charges. Nevada has never had the type of program envisioned by A.B. 470. My hope is that by starting small and making the program discretionary, we can see if it works and perhaps build upon it in the future.

DANA HLAVEC (Municipal Court Administrator, City of Las Vegas):

We appreciate Assemblyman Yeager making this program discretionary. The municipal court in Las Vegas, which represents a significant portion of the limited-jurisdiction courts in the State, has two problems with A.B. 470. The first is in section 2, subsection 4, which provides that if a defendant is ordered to complete a preprosecution diversion program, the defendant must be immediately released from custody on his or her own recognizance. This ignores the fact that one of the terms of a program might be an inpatient treatment program, which would require the person to consent to going from custodial status to an inpatient program with no opportunity for release on his or her own recognizance.

The second problem is in section 5, subsection 2, which significantly changes the process for sealing records. A defendant files a motion to seal records. The court hears the motion after the prosecutor has had an opportunity to review the motion. If the court orders the records sealed, the court sends the order to LVMPD to seal and enter in the national computer database, thereby eliminating the record. The court does not send the order to each agency as required by section 5, subsection 2. With these two exceptions and the proposed amendment, A.B. 470 is acceptable.

ED POLESKI (Assistant City Attorney, Criminal Division, City Attorney's Office, City of Las Vegas):

We agree with the change to make the diversion program proposed in A.B. 470 discretionary. We have a couple of concerns. The bill contains exemptions for DUIs and crimes of violence. We are seeing an increase in the misdemeanor crime of vehicular manslaughter, whereby ordinary negligence causes the death of another person. We ask that this be added as an exemption to this program. We remind the Committee that these are our cases as prosecutors. We are the plaintiff. We prefer that any type of diversion program be done with the consent of the prosecutor, not just with the input of the prosecutor.

MR. CALLAWAY:

We did not oppose this bill originally in the Assembly Committee on Judiciary until after it was brought to our attention by the LVMPD records section that section 5 states that the court must order the record sealed if the program is completed. This has a potentially large impact on the LVMPD resources. The Las Vegas Metropolitan Police Department has about 3,500 misdemeanor bookings each month at the Clark County Detention Center. We write about 15,000 citations each month for traffic offenses. It is not clear whether A.B. 470 includes traffic offenses, but I read it to do so. If that is true, anyone who gets a speeding ticket would be potentially eligible for this diversion program and could have that speeding ticket record sealed. That could have a significant impact on our resources. Would it be possible to make a conceptual amendment to the record sealing statute that a law enforcement agency may collect a fee not to exceed the cost of sealing a record? If the Committee would help with that fiscal impact, then LVMPD could support A.B. 470.

CHAIR SEGERBLOM:

I like the idea of coming up with a funding source because I do not like putting the entire burden on the LVMPD.

DAVID CHERRY (City of Henderson):

We intended to oppose this bill, but our concerns have been resolved with Exhibit E. With the proposed amendment, we are neutral on A.B. 470. The Henderson City Attorney did want to note that if an offender failed to complete the program at the end of the 18 months, the City could be at a disadvantage if then required to litigate the case due to witnesses being unavailable, aging evidence, etc.

MR. JONES:

The Nevada District Attorneys Association is neutral on A.B. 470. Our issue is the one just highlighted by the City of Henderson. Criminal cases are not fine wine; they do not get better with age, especially in a transient town like Las Vegas. Witnesses move. Assembly Bill 470 is like a pilot project. It will give us a better idea how this would work going forward.

CHAIR SEGERBLOM:

It is discretionary to the individual judge.

MR. JONES:

That is correct. The prosecutor has the ability to be heard at the time the judge makes the decision. If there is an older witness or one leaving the jurisdiction, that can be brought to the judge's attention.

KEITH LEE (Nevada Judges of Limited Jurisdiction)

We are the justices of the peace and municipal court judges that A.B. 470 directly affects. We appreciate that A.B. 470 is now completely discretionary. Had the program been mandatory, it would have burdensome, particularly in the rural counties.

ASSEMBLYMAN YEAGER:

Some concerns voiced today, I knew about. Some are new. I am willing to work with those concerned about A.B. 470. I am amenable to taking out mandatory release, to excluding vehicular manslaughter and minor traffic citations and making the petitioner provide the order to seal the records to other agencies. Regarding the 18-month time frame argument, there is already a delay between citation and appearing in court. Possibly the time could be shortened to avoid the delay problem. I am not agreeable to a prosecutorial veto or override given how narrowly the bill is drafted. It is fair to have the judge make the decision. I am sympathetic to Mr. Callaway's concerns regarding the cost of the sealing process. I am not willing to import a fee into this bill. Importing a fee and obtaining a two-thirds vote is perilous.

CHAIR SEGERBLOM:

With respect to the LVMPD, maybe we could look at some funding mechanisms or bonus. I will close the hearing on A.B. 470 and open the hearing on A.B. 316.

**[ASSEMBLY BILL 316 \(1st Reprint\)](#)**: Revises provisions relating to offenders.  
(BDR 16-961)

ASSEMBLYMAN TYRONE THOMPSON (Assembly District No. 17):

Assembly Bill 316 suggests the Director of the Department of Corrections provide an offender with reentry programs relating to employment three months prior to release. It also provides access to mediation services to an offender and his or her family and encourages the Director to work closely with the Nevada Community Re-Entry Task Force for alignment purposes.

Individuals who have served their time in prison face overwhelming obstacles upon reentry into society. In Nevada, we release thousands of people every year. They are given under \$50. Many times, they have no identification. They are told, "Good luck." Director Dzurenda has a vision that looks to reentry in line with the Department's mission statement of successful reintegration into our communities and ensuring people do not come back to the prison system. This is a perfect time for this bill.

Having mediation services available is important. Many times when a person offends, he or she does not have closure with the family. The offender goes immediately away to prison. Mediation provides an opportunity to have a discussion with family members. With the opportunity for a resolution, most likely the offender will have housing, a support system and a diminished likelihood of recidivism. I am proud to have been appointed to the Nevada Community Re-Entry Task Force to make sure we align statewide reentry strategies and their implementation. There are many good State programs. This is an opportunity for us to align as opposed to separate in silos.

CHAIR SEGERBLOM:

I know you are familiar with HOPE for Prisoners.

ASSEMBLYMAN THOMPSON:

Yes. Assembly Bill 316 talks about evidence-based programs. Evidence-based programs are programs data has proven make a change. We have also included "promising practice reentry programs." These programs have strong quantitative and qualitative data showing positive outcomes but do not have sufficient research or replication to support recognition as an evidence-based program. Now is the time to put sustainable programs in place, such as HOPE for Prisoners, Ridge House and Foundation for an Independent Tomorrow.

MR. CALLAWAY:

We support A.B. 316.

MR. JONES:

We support A.B. 316.

CHAIR SEGERBLOM:

I will close the hearing on A.B. 316 and open the hearing on A.B. 377.

**ASSEMBLY BILL 377 (1st Reprint)**: Revises provisions relating to the competency of a defendant in a criminal case. (BDR 14-1074)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

Assembly Bill 377 deals with criminal procedure and competency. Imagine if we had a loved one who was going through a mental health crisis and was arrested. We would all want our loved one to get psychological treatment before facing charges. In the 1960s, the United States Supreme Court issued *Dusky v. U.S.*, 362 U.S. 402 (1960), which decided that if a defendant is not able to rationally understand the proceedings against him or her and assist counsel in the defense, the proceedings must cease until the defendant's competence is restored. Assembly Bill 377 builds upon existing law in the Nevada statutes and provides in section 1 that, when there is a question of competency, the proceedings must stop and, in most cases, an indictment may not be sought from a grand jury, except upon leave of the chief judge of the district court.

Section 2 of the bill addresses when the defendant is found incompetent and competency is not expected to be regained. In that case, A.B. 377 provides that the prosecutor may seek to go to the grand jury when the State has a good faith belief, based on articulable facts, that the defendant has attained competency, there is a compelling interest in bringing charges again and the statute of limitations has not expired. There is an amendment proposed by the Nevada District Attorneys Association (Exhibit F). I believe can find consensus, and I am willing to do so.

CHAIR SEGERBLOM:

Why is competence determined prior to indictment?

ASSEMBLYMAN OHRENSCHALL:

When a defendant's competency is in question and defense counsel brings concerns with respect to the defendant's ability to understand the proceedings and assist in his or her defense to the court's attention, there must be an examination as required by NRS 178. If competency is not restorable, the law permits involuntary commitment for a period of up to ten years.

CHAIR SEGERBLOM:

You are proposing to never have a trial. Correct?

ASSEMBLYMAN YEAGER:

Section 1 of A.B. 377 addresses indictments. Every case starts in justice court, no matter what the charge is. If the charge is, for example, murder and defense counsel believes the defendant might not be competent, defense counsel initiates competency proceedings. Everything in the justice court is put on hold while doctors evaluate the defendant. While that process is going on, the district attorney can try to move the case to district court in a separate grand jury proceeding. The defendant has the option to participate in the grand jury proceeding. Defendants do not often avail themselves of that option; however, it is the defendant's decision whether to participate. The situation A.B. 377 seeks to avoid is a grand jury proceeding during the period the defendant's competency is being evaluated.

CHAIR SEGERBLOM:

Criminal charges would be filed, but there would not be an indictment.

ASSEMBLYMAN YEAGER:

Yes. The competency of the defendant will not be analyzed until the criminal complaint has been filed. The charging document is there. The statute of limitations is not an issue. It simply is a matter of proceeding once competency has been challenged.

ASSEMBLYMAN OHRENSCHALL:

Assembly Bill 377 will also lead to conservation of judicial and prosecutorial resources.

MR. JONES:

The Nevada District Attorneys Association has submitted a proposed amendment, [Exhibit F](#), which I have talked to both Assemblyman Ohrenschall and Assemblyman Yeager about. It appears we will be proposing another amendment.

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CHAIR SEGERBLOM:

I will close the hearing on A.B. 377. The hearing is adjourned at 2:46 p.m.

RESPECTFULLY SUBMITTED:

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Connie Westadt,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, 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	6		Attendance Roster
A.B. 259	C	10	John T. Jones, Jr. / Nevada District Attorneys Association	Proposed Amendment
A.B. 243	D	9	John T. Jones, Jr. / Nevada District Attorneys Association	Proposed Amendment
A.B. 470	E	1	Assemblyman Steve Yeager	Proposed Conceptual Amendment
A.B. 377	F	4	John T. Jones, Jr. / Nevada District Attorneys Association	Proposed Amendment