

Only Six?
A Legislative History of Geriatric Parole in Nevada

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In the early summer of 2019, the Nevada Legislature passed A.B. 236, a sweeping omnibus criminal justice bill that was the culmination of years of work on the part of advocates, legislators, policy wonks, and data scientists. A.B. 236 was met with much resistance during the legislative process, and though there were concerns that it had been "watered down," criminal justice reform advocates still touted the eventual passage of A.B. 236 as "significant movement in the right direction."¹ A little over a year later, on July 1, 2020, several of the new provisions of A.B. 236 went into effect. One such provision, geriatric parole, had particular significance for a world in the throes of the COVID-19 pandemic. Recognizing the significance geriatric parole could have for depopulating a prison system during a deadly time—especially for older individuals—the Nevada Sentencing Commission voted unanimously in April 2020 to institute the geriatric parole statute even earlier than July 1, 2020.² Following this action, the Nevada Board of Pardon Commissioners requested a list of people who could be good candidates for early release in light of the pandemic.³

Near the same time as the sentencing commission's unanimous vote, a journalistic analysis revealed that out of the roughly 12,000

¹ April Corbin Girnus, *Criminal Justice Bill Watered Down But Still Significant, Advocates Say*, NEV. CURRENT, June 4, 2019, <https://www.nevadacurrent.com/2019/06/04/criminal-justice-bill-watered-down-but-still-significant-advocates-say/>.

² Michelle Rindels, *Sentencing Commission Recommends Quicker Implementation of New Law Allowing Older, Non-Violent Prisoners Out Early*, NEV. INDEPENDENT, Apr. 29, 2020, <https://thenevadaindependent.com/article/sentencing-commission-recommends-quicker-implementation-of-new-law-allowing-older-non-violent-prisoners-out-early>.

³ Michelle Rindels, *Few Considered Eligible for Early 'Compassionate Release' as COVID-19 Flares Up In Prison*, NEV. INDEP., Nov. 18, 2020, <https://thenevadaindependent.com/article/few-inmates-considered-eligible-for-early-compassionate-release-even-as-covid-19-flares-up-in-prison>.

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people in Nevada's state prison system, only six would be eligible for geriatric parole under the new provision.⁴ As months went on, and pressure continued to mount from advocates and the families of incarcerated individuals, it came to light in November 2020 that only two people out of the total incarcerated population had been deemed eligible for early release due to their susceptibility to COVID-19 and other factors.⁵

The story and development of Nevada's geriatric parole provision illustrates a tension posed by decarceral reforms, between goals of releasing more individuals from incarceration and calls that the reforms will let dangerous people loose, threatening public safety. By examining of the illustrious beginnings of A.B. 236 and then focusing in on how the geriatric parole provision changed throughout iterations of the bill, and identifying why those changes occurred, one can see clearly the hurdles decarceral advocates face when enacting legislative reforms.

I. Reinvestment Beginnings

James W. Hardesty, a Justice for the Nevada Supreme Court, had been interested in Nevada becoming a Justice Reinvestment⁶ state since

⁴ Michelle Rindels, *Sentencing Commission Recommends Quicker Implementation of New Law Allowing Older, Non-Violent Prisoners Out Early*, NEV. INDEPENDENT, Apr. 29, 2020, <https://thenevadaindependent.com/article/sentencing-commission-recommends-quicker-implementation-of-new-law-allowing-older-non-violent-prisoners-out-early>.

⁵ Michelle Rindels, *Few Considered Eligible for Early 'Compassionate Release' as COVID-19 Flares Up In Prison*, NEV. INDEP., Nov. 18, 2020, <https://thenevadaindependent.com/article/few-inmates-considered-eligible-for-early-compassionate-release-even-as-covid-19-flares-up-in-prison>.

⁶ *Justice Reinvestment Initiative*, BUREAU OF JUSTICE ASSISTANCE (Mar. 7, 2012), <https://bja.ojp.gov/program/justice-reinvestment-initiative/overview>. "The Justice Reinvestment Initiative (JRI) is a data-driven process to improve public safety by

2015, when he had served as Chief Justice.⁷ He was able to unite the legislature and the Governor behind the idea, and together with the support of the Crime and Justice Institute,⁸ they wrote a letter submitting Nevada as a candidate state for consideration by the U.S. Department of Justice's Bureau of Justice Assistance and the Pew Charitable Trusts⁹ Justice Reinvestment Initiative. Nevada was not selected.¹⁰ However, in 2017 the Crime and Justice Institute contacted Hardesty, wondering if Nevada would be interested in applying for the Justice Reinvestment Initiative a second time.¹¹ With a second chance, Nevada beat out three other states and was selected.¹²

Hardesty, in addition to serving as a state Supreme Court Justice, also served as the Vice Chairman for the Advisory Commission on the Administration of Justice (ACAJ).¹³ The ACAJ is a commission that was established by statute, comprised of 18 different members including "representatives from corrections, law enforcement, the legislature, the

helping jurisdictions make more effective and efficient use of criminal justice resources to address the complex factors that drive crime and recidivism. [...] JRI is a public-private partnership with the Pew Charitable Trusts." *Id.*

⁷ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 5 (Nev., Mar. 8, 2019) (statement of James W. Hardesty, J. of the Nev. Sup. Ct. and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

⁸ The Crime and Justice Institute is a division of Community Resources for Justice, a nonprofit human services organization. *About*, CRIME AND JUST. INSTITUTE (2021), <https://www.cj institute.org/about/>. "The Crime and Justice Institute has worked with over a dozen states and numerous counties, in many cases in partnership with both the Bureau of Justice Assistance and the Pew Charitable Trusts as a part of the Justice Reinvestment Initiative." *Adult Justice System Reform*, CRIME AND JUST. INSTITUTE (2021), <https://www.cj institute.org/our-work/adult-criminal-justice-reform/>.

⁹ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 5–6 (Nev., Mar. 8, 2019) (statement of James W. Hardesty, J. of the Nev. Sup. Ct. and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5.

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judiciary, the prosecutorial and defense bars, and victim advocates."¹⁴ After Nevada was selected as a Justice Reinvestment state, the ACAJ conducted an extensive review from July through December 2018, during which they examined Nevada's sentencing and corrections data, current state programs, and various policy matters.¹⁵ Throughout this process, the Crime and Justice Institute provided technical assistance to the ACAJ.¹⁶ Furthermore, the ACAJ also received input from an array of stakeholders, including: "prosecutors, defense attorneys, judges, law enforcement agencies, treatment providers, behavioral health experts, and formerly incarcerated individuals."¹⁷ In addition, roundtable discussions were conducted with victims, survivors, and victim advocates from throughout the state.¹⁸

The result of this lengthy process was a report which developed a comprehensive set of 25 policy recommendations that were supported by a majority of the ACAJ members.¹⁹ The report touted that the policies, if signed into law, would "avert 89 percent of the projected prison population growth, and ultimately reduce the projected 2028 prison population by more than 1,000 beds, averting \$640 million in additional prison costs over the next 10 years."²⁰ Among those policies was a recommendation for the implementation of geriatric parole.²¹ In

¹⁴ FINAL REPORT, NEV. ADVISORY COMM'N ON THE ADMIN. OF JUSTICE 7 (2019), <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/13671>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ *Id.* The report suggested that the money saved could then be redirected into implementing policies that would "reduce recidivism and increase public safety." *Id.*

²¹ *Id.* at 29. Specifically, the recommendation instructed Nevada to "implement a specialty parole option for long-term, geriatric inmates."

proffering the geriatric parole policy, the ACAJ relied on reasoning that researchers consistently found age to be one of the most significant predictors of criminality, and that as a person ages their criminal activity decreases.²² In its assessment, the ACAJ recommended that a geriatric parole process be established that would allow incarcerated individuals "who have reached a certain age and have served a minimum period of the sentence to be eligible for a parole hearing irrespective of their parole eligibility date."²³

On January 11, 2019, the ACAJ voted 11–4 to advance²⁴ all 25 of the policy recommendations to legislators.²⁵ The recommendations were supported by advocates throughout the state, including the American Civil Liberties Union of Nevada, whose legal director commented that the data offered "further proof that Nevada needs to make significant changes to the justice system."²⁶

²² *Id.*

²³ *Id.* at 30.

²⁴ The four members of the ACAJ who opposed advancing the recommendations as a whole were the following individuals: the Las Vegas Metropolitan Police Department Director Chuck Calloway, the Douglas County District Attorney Mark Jackson, Henderson Judge Sam Bateman, and Reno Assemblywoman Lisa Krasner. Michael Lyle, *Lawmakers See Pathway To Criminal Justice Overhaul, But Will They Take It?*, NEV. CURRENT, Jan. 14, 2019, <https://www.nevadacurrent.com/2019/01/14/lawmakers-see-pathway-to-criminal-justice-overhaul-but-will-they-take-it/>.

²⁵ Michael Lyle, *Lawmakers See Pathway To Criminal Justice Overhaul, But Will They Take It?*, NEV. CURRENT, Jan. 14, 2019, <https://www.nevadacurrent.com/2019/01/14/lawmakers-see-pathway-to-criminal-justice-overhaul-but-will-they-take-it/>.

²⁶ *Id.*

II. March 8, 2019: A.B. 236 First Presented to Nevada Assembly
Committee on Judiciary

Nevada Assemblyman Steve Yeager and Justice Hardesty first presented A.B. 236 to the Assembly Committee on the Judiciary at a packed hearing.²⁷ Both served as Vice Chairmen for the ACAJ, and each discussed the reasoning behind the specific recommendations. Assemblyman Yeager, in his opening remarks, stated that A.B. 236 was "probably the single most important and transformative criminal justice bill in the history of this [Legislature] building."²⁸ Multiple representatives from across the Nevada criminal justice community offered testimony in support of A.B. 236 when it was first presented, including representatives from Nevada Attorneys for Criminal Justice, the Clark County Public Defender's Office, the Washoe County Public Defender's Office, the American Civil Liberties Union of Nevada, and Americans for Prosperity Nevada.²⁹ Several formerly incarcerated individuals, members of the ACAJ, and private citizens offered testimony of support as well.³⁰ Opposition to A.B. 236, though, was distinct and apparent from the first hearing, too. Formally presenting opposition to A.B. 236 were two district attorneys, one assistant district attorney, and a police director.³¹

²⁷ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. (Nev., Mar. 8, 2019).

²⁸ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 4 (Nev., Mar. 8, 2019) (statement of Steve Yeager, Assemblyman for Dist. No. 9 and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

²⁹ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 25–33 (Nev., Mar. 8, 2019).

³⁰ *Id.*

³¹ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 34 (Nev., Mar. 8, 2019). The four presenters were Chuck Callaway, Police

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To further understand the opposition levied against the geriatric parole provision from the start of the legislative session, it is helpful to understand how the language of the statute initially read. As introduced, the provision allowed for a prisoner to be granted geriatric parole as long as they had not been convicted of first degree murder, did not pose a threat to public safety, and met one of two qualifying age requirements.³² An incarcerated individual could meet the qualifying age requirement either by being 60 years of age or older and serving ten years of the minimum term or minimum aggregate term of imprisonment, or by being 65 years of age or older and serving seven years of the minimum term or minimum aggregate term of imprisonment.³³ As well, under this provision the Parole Board was instructed that they must also consider the incarcerated person's age, behavior while in custody, "level of risk for violence," severity of any illness, disease or infirmity, and any available alternatives for maintaining such geriatric individuals in confinement.³⁴

In his formal opposition statement on March 8, Washoe County District Attorney Christopher Hicks detailed a lengthy list of reasons why the geriatric parole provision as presented would endanger

Director at the Las Vegas Metropolitan Police Department; Mark Jackson, Douglas County District Attorney, Christopher Hicks, Washoe County District Attorney; and Clark County Assistant District Attorney, Christopher Lalli. *Id.* Notably, two of the presenters for the formal opposition were also members of the ACAJ, and they comprised two of the four votes against promoting the recommendations to legislators.

³² A.B. 236, Gen. Assemb., 80th Sess. § 93 (Nev. 2019) (as referred to Comm. on Judiciary, March 1, 2019 and presented to Comm. on Judiciary, March 8, 2019).

³³ A.B. 236, Gen. Assemb., 80th Sess. § 93 (1) (Nev. 2019) (as referred to Comm. on Judiciary, March 1, 2019 and presented to Comm. on Judiciary, March 8, 2019).

³⁴ A.B. 236, Gen. Assemb., 80th Sess. § 93 (3) (Nev. 2019) (as referred to Comm. on Judiciary, March 1, 2019 and presented to Comm. on Judiciary, March 8, 2019).

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communities.³⁵ Hicks emphasized that under the provision as written, "sex offenders, violent criminals, second-degree murders, voluntary manslaughterers, sexual assaulters, and those who have committed every serious crime except first-degree murder, [would] be paroled."³⁶ Hicks then presented the case of a real defendant his office prosecuted, a case where the defendant had been sentenced to life in prison for sexual offenses.³⁷ He described to the Assembly Committee on Judiciary how this particular defendant raped a child for years, from the time she was seven until the time she was eleven.³⁸ Hicks went on to explain that this defendant was convicted by a jury, and sentenced to 12 life sentences with parole eligibility after 271 years.³⁹

Following his discussion of the case, though, Hicks went on to suggest that the defendant, under the proposed geriatric parole provision, would be released after serving less than eight years in prison, because he was 57 years old when he was sentenced.⁴⁰ Throughout their opposition testimony, the various prosecutors described cases with sensitive details, and then applied the proposed provisions with the most liberal interpretations possible, despite the significant discretion built into each provision. It stands to reason that the Nevada Parole Board, in evaluating Hick's case of the man convicted of repeatedly raping a child, would rate the defendant's level of risk for violence as rather high, or decide that he posed a threat to public safety. In his closing remarks at the end of the

³⁵ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 44 (Nev., Mar. 8, 2019) (statement of Christopher Hicks, Washoe Cnty. Dist. Att'y).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

hearing, Justice Hardesty even chose to emphasize the way in which the provisions were written to afford discretion, stating he found the "examples cited by the opposition to be troubling because they reflect a distrust or lack of confidence in the discretion that would be exercised either by the Parole Board or by judges."⁴¹

III. A Culmination of Long Nights in The Wood Shed

During the 80th Session of the Nevada Assembly, A.B. 236 was not formally discussed by the Assembly Committee on the Judiciary for three months after it was first presented. It was finally brought up for amendment and passage on May 14, 2019, when the Committee on Judiciary amended and passed the bill forward to the Nevada Senate.⁴² At the opening of this work session on A.B. 236, Chairman Steve Yeager shared that the reason behind the three month gap was that he heard legitimate concerns from a multitude of parties.⁴³ Yeager described months of meetings running long into the evening in Room 3127, the Assembly judiciary chair's conference room known to Nevada legislators and policy makers as The Wood Shed.⁴⁴ Of these late night meetings in

⁴¹ *Opening Hearing for A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 59 (Nev., Mar. 8, 2019) (statement of James W. Hardesty, J. of the Nev. Sup. Ct. and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

⁴² *Hearing for SB 8, SB 177, SB 382, SB 435, SB 486, and A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 26 (Nev., May 14, 2019).

⁴³ *Hearing for SB 8, SB 177, SB 382, SB 435, SB 486, and A.B. 236 Before the Nev. Assembly Comm. on Judiciary*, 80th Sess. 27 (Nev., May 14, 2019) (statement of Steve Yeager, Assemblyman for Dist. No. 9 and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

⁴⁴ *Conference Committee on SB 376: Hearing Location*, NELIS (2021), <https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Committees/ConferenceCommittees/3>. James DeHaven, *Nevada Bill Would Keep Low-Level Drug Users Out of Prison: 'Punish the Pushers,' Not Users*, RENO GAZZETTE J., May 9, 2019, <https://www.rgj.com/story/news/politics/2019/05/08/crime-bill-back-nevada-legislature->

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his conference room, Yeager was quoted by the press saying, "We invited everyone and their brother who had concerns to come in. It's not perfect, but it's a damn good piece of legislation."⁴⁵ Heavily amended, the version of A.B. 236 presented on May 14 after those long Wood Shed nights included a very different geriatric parole provision.

The geriatric parole provision's language and structure changed drastically over the three month period, and the language passed on May 14 represents a very different model for geriatric parole than first presented. The new structure of the provision changed to stating that the Parole Board may grant geriatric parole to an incarcerated individual if he or she, first, *has not been convicted* of a crime of violence, a crime against a child as defined by specific statute, a sexual offense, vehicular homicide, or a DUI that results in death or substantial bodily injury.⁴⁶ As well, the incarcerated individual cannot be serving a sentence of life imprisonment without the possibility of parole or a death sentence.⁴⁷ Furthermore, the individual must "not pose a significant and articulable risk to public safety," and must be 65 years of age or older and have served eight consecutive years in custody, or at least a majority of the

after-cops-lawyers-peel-back-progressive-reforms/1146591001/. "[A.B. 236] was delivered to the Assembly judiciary chair's conference room known as "the wood shed," where cops, lawyers, and city officials spent two months tussling over a tweaked measure...." *Id.*

⁴⁵ James DeHaven, *Nevada Bill Would Keep Low-Level Drug Users Out of Prison: 'Punish the Pushers,' Not Users*, RENO GAZZETTE J., May 9, 2019, <https://www.rgj.com/story/news/politics/2019/05/08/crime-bill-back-nevada-legislature-after-cops-lawyers-peel-back-progressive-reforms/1146591001/>.

⁴⁶ A.B. 236, Gen. Assemb., 80th Sess. § 93.3 (1) (a) (Nev. 2019) (as amended and passed by Comm. on Judiciary, May 14, 2019).

⁴⁷ A.B. 236, Gen. Assemb., 80th Sess. § 93.3 (1) (b)–(c) (Nev. 2019) (as amended and passed by Comm. on Judiciary, May 14, 2019).

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maximum term or maximum aggregate term, whichever occurs earlier.⁴⁸ Additionally, when determining whether to grant geriatric parole or not, the Parole Board must consider the incarcerated individual's "potential" for violence,⁴⁹ which was a change from the earlier version's language which deployed the phrase "level of risk."

The changes to the geriatric parole provision represent a distinct narrowing of the pool of incarcerated individuals who could actually be eligible. By incorporating a long list of convictions that make one ineligible, the decarceral possibility of the provision was significantly diminished considering the realities of convictions resulting in prison sentences. As well, the age and time served requirements shift from a specific amount of years or the minimum term time served, with tiers based on age,⁵⁰ to the new requirement that an individual be 65 years of age or older and already have served out either eight years or the maximum aggregate term or the majority of the maximum term, marked another departure. At this stage, though, the provision did still include such decarceral language as "whichever occurs earlier" in relation to the time served requirement of eight years or the majority of the maximum term. As A.B. 236 moved from the Assembly Committee on Judiciary to the Senate Committee on Judiciary, the bill, and the geriatric parole provision, would continue to mutate away from its origins.

⁴⁸ A.B. 236, Gen. Assemb., 80th Sess. § 93.3 (1) (d) (Nev. 2019) (as amended and passed by Comm. on Judiciary, May 14, 2019).

⁴⁹ A.B. 236, Gen. Assemb., 80th Sess. § 93.3 (7) (a) (Nev. 2019) (as amended and passed by Comm. on Judiciary, May 14, 2019).

⁵⁰ *See, supra*, Part II. The initial language stated that an incarcerated individual 60 years of age or older, who served ten years of the minimum term or minimum aggregate term of imprisonment, or an individual 65 years of age or older, who served seven years of the minimum term or minimum aggregate term of imprisonment, would meet the age and time served requirements.

IV. District Attorneys Propose More Amendments in the Senate

When A.B. 236 was heard in the Nevada Senate for the first time, on May 31, members of the Nevada District Attorneys Association (NDAA) came to the hearing to oppose it.⁵¹ Washoe County Deputy District Attorney Jennifer Noble, representing the NDAA at the hearing, stated that while all 17 members of the NDAA had "worked hard with other stakeholders on A.B. 236," after it passed the Assembly the NDAA was "surprised that many negotiated elements were missing" from A.B. 236.⁵² During the hearing, the Clark County District Attorney's Office proposed an amendment to A.B. 236 which covered the various elements Noble had described as missing.⁵³ One component of the proposed amendment was a change to the geriatric parole provision, tacking on a restriction preventing individuals defined as habitual criminals⁵⁴ from geriatric parole eligibility.⁵⁵ This additional restriction to geriatric parole eligibility would only serve to further narrow eligibility, yet, it made its way into the final language of the bill as well.

⁵¹ *Hearing for A.B. 236 Before the Nev. Senate Comm. on Judiciary*, 80th Sess. 28 (Nev., May 31, 2019) (statement of Jennifer Noble, Washoe Cnty. Deputy Dist. Att'y).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ A habitual criminal is defined by statute as someone how has been convicted of five or more felonies. NEV. REV. STAT. CH. 207 §10

⁵⁵ *Hearing for A.B. 236 Before the Nev. Senate Comm. on Judiciary*, 80th Sess. 28 (Nev., May 31, 2019) (Exhibit G—Proposed Amendment to A.B. 236, authored by Clark Cnty. Office of the Dist. Att'y).

V. The Malleability of Reform

In his presentation of A.B. 236 to the Nevada Senate Committee on Judiciary, Justice Hardesty reminded the legislators of the findings of the ACAJ, and the report that informed the first 25 policy recommendations that became the initial A.B. 236. Hardesty reviewed how shocked the ACAJ was that the majority of prisoners in Nevada detention facilities were found to be nonviolent offenders convicted of property and drug offenses.⁵⁶ As well, Hardesty described how despite current research on the limited effectiveness of lengthy sentences, Nevada was keeping people in prison for a longer duration of time than had been the norm ten years prior.⁵⁷ He also reminded the senators that Nevada, through the Justice Reinvestment Initiative, had been on the receiving end of over 10,000 hours of staff time devoted to intensive research into Nevada's criminal justice system, which informed the foundations of A.B. 236.⁵⁸ With such auspicious beginnings; the results of the geriatric parole provision's implementation remain staggering.

With amendments, A.B. 236 passed the Nevada Senate on June 3, 2019 and was signed into law by Governor Steve Sisolak. In the final language of the bill which became the new geriatric parole statute, significant departures from the provision as it was initially proposed were evident. Notably, a restriction denying habitual criminals geriatric parole eligibility had been added,⁵⁹ and the time served requirements changed.

⁵⁶ *Hearing for A.B. 236 Before the Nev. Senate Comm. on Judiciary*, 80th Sess. 4 (Nev., May 31, 2019) (statement of James W. Hardesty, J. of the Nev. Sup. Ct. and Vice Chairman for the Advisory Comm'n on the Admin. of Just.).

⁵⁷ *Id.*

⁵⁸ *Id.* at 3.

⁵⁹ NEV. REV. STAT. CH. 213 §12155 (1) (b).

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In the version first presented to the Senate Committee on Judiciary, the time served requirement mandated that an incarcerated individual serve out either eight years, or the maximum aggregate term or the majority of the maximum term—whichever amount of time ended earlier—before they could be eligible for geriatric parole.⁶⁰ However, the final language of the provision was rather different, mandating that an individual serve out the majority of the *maximum term* or *maximum aggregate term* of his or her sentence before becoming eligible for geriatric parole.⁶¹ Shifting away from the recommended time served caps initially proposed by policy makers at the CJI⁶² and altering the time served requirements to mandate serving the majority of a maximum of one's sentence blunted the geriatric parole provision even more.

Nevada's geriatric parole provision's journey, from its start as a policy recommendation set on decarceration, to its end as a statutory provision so laden with restrictions that it was applicable to roughly six people in the entire state's prison system, illustrates how reform measures can become so twisted that they lose all efficacy. In its beginning form, all incarcerated individuals not convicted of first degree murder, who did not pose a threat to public safety, would have been eligible for a geriatric parole hearing if they were 60 years or older and had served a designated portion of their sentence. Yet, as explained, opposition groups sounded

⁶⁰ See, *supra*, Part III.

⁶¹ NEV. REV. STAT. CH. 213 §12155 (1) (e).

⁶² Recall that in the first version of the bill presented to the Assembly, caps for time served were placed at ten years and seven years of the minimum time served, depending upon the age of the incarcerated individual, 60 and 65 years of age respectively. In the first iteration of the bill presented to the Senate, the language changed around age eligibility—only those 65 and older were eligible—but a cap on time served still was a part of the language, mandating that an individual could become eligible after serving eight years of their sentence or the maximum majority of their term, whichever occurred earlier.

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the alarm that such a provision would let dangerous, threatening people—convicted child rapists, even—out into communities. From this point, caveat after caveat was added to the provision.

The final inadequacies of the provision raise the question, if, when the bill's final amendment's were made, anyone thought to determine precisely how many incarcerated individuals might actually be eligible for geriatric parole. Given the resulting surprise a year later, when pressure for the provision's early implementation at the height of the COVID-19 pandemic mounted and revealed the eligibility of roughly six individuals in the whole system, the answer seems likely to be in the negative. Thought was clearly given at the start of the process to who might be let out and the harm they could theoretically cause, but the actual impact of the provision's final form remained sadly uncalculated. In this way, the legislative history of Nevada's geriatric parole provision serves as a cautionary tale of how the brightest, most well-funded and well-resourced reform beginnings can lead to stunning failures.