

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session  
February 14, 2005**

The Committee on Judiciary was called to order at 9:08 a.m., on Monday, February 14, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Bernie Anderson, Chairman  
Mr. William Horne, Vice Chairman  
Ms. Francis Allen  
Mrs. Sharron Angle  
Ms. Barbara Buckley  
Mr. John C. Carpenter  
Mr. Marcus Conklin  
Ms. Susan Gerhardt  
Mr. Brooks Holcomb  
Mr. Garn Mabey  
Mr. Mark Manendo  
Mr. Harry Mortenson  
Ms. Genie Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

Mr. John Ocegüera (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Allison Combs, Committee Policy Analyst  
René Yeckley, Committee Counsel

Judy Maddock, Committee Attaché

**OTHERS PRESENT:**

Carlos Brandenburg, Administrator, Division of Mental Health and Developmental Services, Nevada Department of Human Resources  
Julie Slabaugh, Deputy Attorney General, Human Resources Division, Office of the Attorney General, Nevada Department of Justice,  
Judy Phoenix, Co-chair, Legislative Committee, Nevada State Psychological Association  
Ron Titus, Court Administrator, Administrative Office of the Courts, Supreme Court of Nevada  
Edward Dannan, Justice of the Peace, District 2, Reno Justice Court, Reno, Nevada  
Howard Brooks, Deputy Public Defender, Clark County Public Defender's Office, Clark County, Nevada  
Harriet Cummings, Appellate Deputy Public Defender, Nevada State Public Defender's Office

**Chairman Anderson:**

[Meeting called to order and roll called.]

We have a quorum of nine. We are one short of doing bill introductions.

[The Chair reminded the Committee members and those present in the audience of the Standing Rules and appropriate meeting etiquette.]

The Chair has a bill that was delivered to him just a few moments ago. This is BDR 1-221; it is requested by the Nevada Judges Association. Revising provisions relating to the bonding of the justice of the peace, increasing amount of bond required by a justice of peace before entering the duties of his office. Looks like it goes from \$1,000 to \$5,000 and the bond itself would go from \$10,000 to \$50,000.

- BDR 1-221: Revises provisions relating to bonding of justices of the peace. (ASSEMBLY BILL 55)

ASSEMBLYMAN MANENDO MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 1-221.

ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.

THE MOTION PASSED. (Mr. Oceguela was not present for the vote.)

**Chairman Anderson:**

Let's turn our attention to A.B. 9.

**Assembly Bill 9: Limits liability of certain persons, corporations and associations that contract to provide medical services for Division of Mental Health and Developmental Services of Department of Human Resources. (BDR 3-237)**

**Carlos Brandenburg, Administrator, Division of Mental Health and Developmental Services, Nevada Department of Human Resources:**

[Read from Exhibit B.] Next to me is Julie Slabaugh. She is the Deputy Attorney General for the Division. We are both here to provide testimony on Assembly Bill 9, which is a bill sponsored by the Division. The Division, for many years, has been contracting for psychiatric services in rural Nevada because of its inability to recruit psychiatrists in that area.

What A.B. 9 does is assist the Division in recruiting and retaining contract psychiatrists to serve our clients in rural Nevada. This bill will make contract psychiatrists immune under state law by limiting the amount of damage that may be collected against them to \$50,000.

Let me now have Julie Slabaugh walk you through the legal aspects of the bill.

**Julie Slabaugh, Deputy Attorney General, Human Resources Division, Office of the Attorney General, Nevada Department of Justice:**

Assembly Bill 9 would make contract psychiatrists with the Division immune contractors under an already existing Nevada law (Exhibit B). The main effect of this is that there would be a cap on the damages, just as there are with other immune contractors, to \$50,000 per cause of action. The effect of this bill would also be that the Office of the Attorney General would provide legal services to the contract doctors, if and when they are ever sued for actions taken under their contract duties.

I already undertake to represent members of the Division and employees of the Division in lawsuits filed against them in the course and scope of their public duties, so this would not actually increase the work load at all, because any lawsuits out there would be filed not only against the contract doctors, but also against the Division and, generally, other Division employees and agencies of the Division, so I am already involved in the lawsuits. Also, the \$50,000 cap is per cause of action; it is not per defendant, so it is not anticipated that this will have much of an effect on the tort claim fund, by the State indemnifying these doctors.

[Julie Slabaugh, continued.] The other point I was going to make was we actually are talking about very few lawsuits. Other immune contractors, under Nevada law, are doctors who provide medical services to the Nevada Department of Corrections. They obviously have significant lawsuits because the inmates tend to be very litigious. I currently only have two lawsuits. I've been with the Division for over a year now and only one of those involves a contract doctor, so I don't anticipate that this will have much of an effect on my caseload or on the tort claim funds, simply because there are not a lot of lawsuits filed.

**Chairman Anderson:**

Ms. Slabaugh, the nature of these kind of lawsuits have changed over time depending on who is in, and how astute they are in the use of the law, and how much trouble they wish to be, apparently, in this litigious society that you make reference to. Over the course of the last several years, obviously—you have been in the Attorney General's Office for two years?

**Julie Slabaugh:**

Actually, I have been with the Division for slightly over a year; I've been in the Attorney General's Office almost nine years.

**Chairman Anderson:**

In this particular Division, where you have been handling this particular set of cases, for over a year. Over the course of the last ten years, have there been a lot of cases in this particular area of suits, Dr. Brandenburg?

**Carlos Brandenburg:**

Chairman Anderson, I can only think of two cases—both of which were in the rural areas—that we ended up having to go to court on. So in the last ten years, those are the only two I can think of.

**Chairman Anderson:**

The outcome of those cases—were they found in the State's behalf?

**Carlos Brandenburg:**

In the State's behalf. What happens is that, since these are contract psychiatrists and since they have to go out and get their own insurance, it is becoming increasingly more difficult for us, as a Division and as a state, to bring in contract psychiatrists. One of the tools I need to have at my disposal is trying to immune these psychiatrists so that I can provide the services. My worst-case scenario would be the inability to recruit and retain contract psychiatrists. Now you might be asking, "Why can't you just hire full-time psychiatrists?" We have

tried over the last ten years to hire full-time psychiatrists and have been unable to recruit full-time psychiatrists in the rural area. You need to understand we have, basically, 16 sites in the 17 counties. To have a psychiatrist come in and travel to Winnemucca, Ely, Elko, Fallon, Douglas, Carson. I just can't bring in a doctor to do that. So what we have been resorting to having to do is bringing in contract doctors. Most of our contract doctors are from the medical school. It is becoming more and more difficult for us to bring in these contract doctors to provide the psychiatric services.

**Chairman Anderson:**

I guess the question—an old question for us here—relative to whether the cost for private practitioners is going to decrease as a result of giving this kind of immunity, has not been borne out by the insurance industry. This doesn't seem to have an effect since the insurance industries tend to be looking for an actuarial over ten years. Your contention, however, if I am to understand the need for the piece of legislation, is because you feel it will help with recruiting people to come in, but whether it will, in point of fact, really reduce psychiatrists' liability insurance, is kind of an up-for-grabs question.

**Julie Slabaugh:**

Chairman Anderson, I obviously cannot speak as to the rates for psychiatric professional malpractice insurance. I can say, however, that I have seen, since I have been here, the contract doctors are actually contacting me personally, which I do not believe has happened in the past. They are taking the contracts to lawyers for their insurance companies. The lawyers for the insurance companies want to negotiate and get involved in the language of the independent contract. I do think that the insurance does play a part in this and I don't think it is outside the realm of possibility that, at some point, the insurance companies will simply tell the contract doctors, "We aren't going to cover you for anything you do for the state of Nevada. We will cover you for your private practice." That seems to be what, in my discussions with the doctors, has been their concern and what they are getting from the lawyers of their insurance companies.

**Chairman Anderson:**

I would note to the members of the Committee—Section 2 of the bill—that this becomes effective on passage and approval. That's on page 2, line 30.

**Assemblyman Mortenson:**

We are putting a \$50,000 cap on awards. It bothers me a little bit that we pass some legislation which had much higher awards, because we felt that people who are harmed medically deserve awards up to a certain amount which was considerably higher than \$50,000. Why should people get less because they are

dealing with the state than they would if they were dealing with a doctor in private practice?

**Chairman Anderson:**

Let me, in part, help you and remind Mr. Mortenson that we brought forth that issue several sessions ago. The state has immunity for statewide immunity and we brought that to the attention of the Legislature and it chose to leave those in place.

**Assemblyman Mortenson:**

This Committee did choose to leave the caps smaller for the state?

**Chairman Anderson:**

Correct. It died in the cul-de-sac next door. It cost too much money to get the insurance.

**Julie Slabaugh:**

I can't speak to the legislative intent behind the \$50,000 cap; however, this applies to every other division. If we have a psychologist at the exact same clinic seeing the exact same client, his liability would be limited to \$50,000 because he happens to be a state employee, whereas the psychiatrists doing the same treatment plan, it would not apply.

**Assemblywoman Buckley:**

This bill applies to all areas, including urban areas, correct?

**Carlos Brandenburg:**

Yes, absolutely. It applies not only to contract doctors that we have in the rural areas, but the contract doctors we might have in the north or in the south.

**Assemblywoman Buckley:**

Did you ascertain how much insurance your contractors are paying and what portion of the insurance, if the state was to offer psychiatrists—it will pay a portion of your insurance, attributable to your state work—how much would that be? There is another way to skin this cat. You could pay part of their insurance, you could offer to pay their defense, which it sounds like you are already doing without creating a system where claims are capped. I share Assemblyman Mortenson's concern.

I think just two weeks ago, we all got a copy of someone who was hit by a bus, paraplegic, quadriplegic—\$50,000. Doesn't seem that would be analogous with mental health claims. Still, you're creating a different set of rights, depending on who injures you. That offends my sense of justice.

**Carlos Brandenburg:**

We didn't do an actuarial study of what these psychiatrists are paying, in terms of their insurance. What we end up doing is just basically interviewing our physicians and being told that they were unable to come and provide contract services for us because they could not afford the liability insurance. My biggest concern is, to be honest with you: I don't care which way we skin this cat, as long as you provide me the tools to be able to recruit and retain psychiatrists. My biggest issue is not in urban areas. I can bring in psychiatrists to work for me in Las Vegas and in Reno. In fact, all of my positions are currently full both in Clark County and Reno. I have vacant positions and patients waiting for services in the rural areas. I will be more than happy to sit down with the Committee and staff; I just need some relief in being able to bring in psychiatrists to provide services in that much-needed area.

**Assemblywoman Buckley:**

Mr. Chairman, if you would be willing to get that information, I would like to receive it. Thank you.

**Assemblyman Carpenter:**

I believe you said that you are providing defense in these situations. How does that work? Are you actually defending what the insurance company should be defending? How does that work?

**Julie Slabaugh:**

No, and I am sorry if I was not clear. I defend the Division of Mental Health and Developmental Services, their agencies, and their employees. The independent contract doctors have their own insurance company and their own lawyers at this point. In any lawsuit, where the contract doctors are named as well the Division, they have their own attorneys. My point was, it won't increase the caseload or the workload of the Office of the Attorney General, simply because I am already involved in the case anyway.

**Assemblyman Carpenter:**

You are not defending the...

**Julie Slabaugh:**

No, not currently.

**Assemblyman Carpenter:**

Take a doctor in Elko that is in practice there now, and you contract for him to go to NYTC [Nevada Youth Training Center]. Would that be something that could happen or not?

**Julie Slabaugh:**

Well, I cannot speak to NYTC, because that is under the Division of Child and Family Services. However, if we contracted with him to provide services at the Elko Mental Health Clinic, I would not defend him in a lawsuit based on his services currently. Under this bill I would, along with every other employee at the mental health clinic that was also named in the lawsuit.

**Assemblyman Carpenter:**

Say, then, he contracts to see certain patients at the mental health clinic there in Elko, but he also has a private practice on the side. Is there any way the insurance companies would reduce their rates or do something? I could see, maybe, it has a plus, but if they're going to keep charging him the same rate, I don't see that it helps the situation any. Why are they telling you they can't contract with the state if they're in private practice already? I guess I don't understand that.

**Carlos Brandenburg:**

The insurance companies feel that the contract service is outside their particular community. If I had a psychiatrist in Elko, which I do not, this would be a nonissue. What is happening is I have a psychiatrist that lives in Reno that drives to Elko, so his practice is in Reno. When he/she goes to their insurance company, they are saying, "We can cover you in your practice in Reno; however, now you are traveling all the way to Elko and you are seeing these clients in Elko, so that is outside the scope of this insurance. We are going to have to tack on some additional insurance coverage for you to do that. What is happening is a lot of the psychiatrists, Mr. Carpenter, are basically saying, "Carlos, thank you but no thank you. I'm not going to go to Elko, because my insurance rates are going to go up." The end result, Mr. Carpenter, is that you are going to be getting calls from your constituents, because they are not going to have psychiatric services in your area.

**Assemblyman Carpenter:**

I am already getting those calls, but do you have any kind of documentation or letter from the insurance companies, saying that we are going to have to increase your premiums if you go to Elko? Or are they just saying that? Can you get some kind of documentation from these people?

**Carlos Brandenburg:**

Sure, I will be more than happy to ask these psychiatrists, who have basically turned us down to provide contract services, to tell us the reason why.

**Assemblyman Carpenter:**

I am wondering whether they are using that because they don't want to come to Elko.

**Carlos Brandenburg:**

No, these are folks that have been going to Elko for five, six, and seven years.

**Assemblyman Carpenter:**

We ought to try to get them to move up there.

**Carlos Brandenburg:**

I agree with you sir, but in the meantime, I need to provide a service.

**Chairman Anderson:**

It is not dissimilar to some of the other programs that we would like to see provided in some of the rural areas of the state—treatment programs—that, because of the population base, that we are not able to generate. We saw when we did the court services study the kind of ancillary programs that might be necessary. There are two things we are going to be looking for from you or somebody. Substantiate information to back up from some of your physicians the letters from the insurance companies indicating that this is going to be their practice to increase the cost and Ms. Buckley's request for information that substantiates some of this. Seeing that we are dealing with psychiatrists here, therefore, fits under some of the medical malpractice. We need to see if some of the protections that were passed by initiative petition in the last election had some protection for these physicians. In addition, I know there are some people who are reluctant for this dual standard.

**Assemblyman Mortenson:**

I am just wondering if the Insurance Commissioner [Alice Molasky-Arman] couldn't do something about this. It makes no sense if a doctor has a policy that covers him for malpractice in his private practice, if he were to contract 50 percent of his time with the State, if they won't cover him with the State, he should get a 50 percent reduction in his premium, because he is only practicing half the time. The other point is: if he practices with the State, does that increase his potential for more malpractice suits? None of it makes sense to me. Of course, I don't know the statistics, but I am just wondering if the Insurance Commissioner couldn't nudge these insurance companies and say, "You are just making money or double-dipping," so to speak.

**Carlos Brandenburg:**

There is one variable, Mr. Mortenson, that I think we need to consider. Remember, the services that the Division provides are for those individuals who

are seriously and persistently mentally ill. That is a whole different population than most psychiatrists serve in their clinics.

**Julie Slabaugh:**

I would also say, Assemblyman Mortenson, that your question about why doesn't the insurance company reduce their rates by 50 percent, if they are working 50 percent of the time for the State. That is because, currently, their insurance companies are covering them for their work with the State. If they reduced it by 50 percent and didn't cover them, the contract psychiatrists would have no malpractice coverage and they would never contract with us. Currently, our contract psychiatrists have their own professional malpractice insurance that covers them for all their duties with the State.

**Assemblyman Mortenson:**

I just thought that we are trying to cover them for insurance when they practice with the State.

**Chairman Anderson:**

If I am to understand what the intent of this bill is, it is to try to allow the State the opportunity to tell doctors who are coming here, who already have malpractice insurance which they are required to have as a part of their professional responsibility, that if they agree to come to Elko or Ely, I don't think of Carson City or Douglas as being particularly remote areas, because they are relatively close to Washoe County—there is a comfort level when they are working for the State. They're treated the same as other people who work for the State on a full-time basis. All you are doing is moving them from part-time employees to full-time protection when they are working for us. Is that a fair statement to make?

**Carlos Brandenburg:**

Mr. Anderson, I think that is a fair statement to make. Just a point of clarification: will I be getting the questions from Allison Combs?

**Chairman Anderson:**

Ms. Combs will provide you with the necessary questions from the members of the Committee and if we were to take up the bill, it will be after we get the response back from you. I wouldn't anticipate seeing this in the first work session. It will probably be the second, if at all. We just have to see what the comfort level is with the Committee.

Dr. Mabey, I always hesitate to come to any kind of medical opportunity without calling on you. Not that you need to defend the medical profession or to pitch it, but you are the resident expert for us.

**Assemblyman Mabey:**

I have mixed emotions. The question will be whether these people get the services they need. If the liability insurance companies won't cover the doctors, then these people aren't going to get the care. That, to me, is the most important thing. However, it would be interesting to me that the insurance company experts tell us why the rates would have to be higher if they go to provide services at this facility. It seems like they don't sue any more than a person would in private offices; at least that is what I have heard today. So it doesn't make sense that their premiums go higher, but it sounds like the insurance companies are doing that. So it puts us in a tough spot.

**Judy Phoenix, Co-chair, Legislative Committee, Nevada State Psychological Association:**

We apologize for not asking the Division to include us on this bill at an earlier date, but we did not learn of the bill until just last week. We are in support of the bill and we are asking that the bill be amended to specifically include psychologists providing direct or supervisory services on contract to the Division. We don't have the same insurance issues at this point, and because of the short notice for preparing this, I don't have the number of psychologists who are actually on contract to the Division. I happen to be on contract, so I can speak for myself in that respect, but we do believe we are a part of providing services to rural as well as the other areas, and that we might be of help to the Division. We would like to be able to be covered by the same State coverage as immune contractors.

**Chairman Anderson:**

For members of the Committee who may not recognize the difference between psychiatrists and psychologists, you might want to explain that to the members of the Committee.

**Judy Phoenix:**

Psychologists are Ph.D.s, not M.D.s. We do a four year graduate program specifically in providing mental health services. We do not prescribe medications.

**Chairman Anderson:**

The nature of the work with the Department of Corrections that you often do is the intake screening and some of the psychological panel screening at the end.

**Judy Phoenix:**

I am not sure if psychologists have had contracts with the Department of Corrections. They have contracted mental health services that, sometimes, include psychologists, some of which are actually master's-level persons. That

is the only level in the State where there is an exception for a master's-level person being qualified as a psychologist. We do, in fact, provide services commensurate with psychiatry in a number of other areas in the state. We are listed in several *Nevada Revised Statutes* as qualified psychiatric mental health providers—for instance, in sex offender evaluations, in trial competency, and in juvenile court or involuntary commitment.

**Chairman Anderson:**

Some of the services you would be providing for, relative to your professional responsibilities as a contractor, may not necessary be at the prison level but may be at the court level, in pre-sentencing determination?

**Judy Phoenix:**

Yes, I am not sure that the Division would be contracting with us in that respect. Where the Division does contract with us is in providing supervision and, sometimes, direct services, particularly in the rural areas. The contract that I currently have with the Division is to provide supervision for a graduate student, who is providing direct services with Rural Regional Center. I have been contracted with the Division for the last four years in that capacity. What that means is that the person that I supervise does provide evaluations for people as to whether they can get services from Rural Regional Center and in addition, provides direct psychological care to some of the clients of the region. In the last four years, I have supervised students who were doing risk assessments for sexual acting-out and doing therapy with people who were highly suicidal. There are a number of places where I certainly am in jeopardy of being sued. As it stands now, I am the "deep pocket."

**Chairman Anderson:**

You then have been sued?

**Judy Phoenix:**

I have not.

**Chairman Anderson:**

Other than anecdotally, have you heard of any one within your group that has been sued?

**Judy Phoenix:**

I have not. The risk for us is low. Actually, we get sued at a lot lower rate than psychiatrists do.

**Chairman Anderson:**

Some people within your association have been sued over these types of issues within the prison system?

**Judy Phoenix:**

I do not know.

**Chairman Anderson:**

Could you find that information for us? I would ask you to respond to Ms. Combs. If we were to take up such an amendment to expand it out to a broader group, it is somewhat worrisome. I presume, you are not speaking against the bill in any possible way, nor is it your desire to slow the bill down if we were to move forward?

**Judy Phoenix:**

No, it is not.

**Assemblyman Carpenter:**

Have you had any correspondence or notice from your insurance company that they may be increasing your rates because you are doing contract service for the State or contracting to supervise people in rural areas?

**Judy Phoenix:**

I have not.

**Assemblyman Mabey:**

I think she brought up a good point that I failed to mention the first time. This happens, sometimes, at UMC [University Medical Center] in Las Vegas, where the facility has the \$50,000 cap. The doctor, or in this case, the psychologist, if they had \$1 million coverage, would be viewed as the deep pocket. I think physicians have that concern of being the deep pocket. Now how the initiative petitions that passed last time will affect this with joint and several liability, I am not quite sure. With the \$1 million coverage that most of us carry, we are concerned that we would be viewed as the deep pocket. That was a good point, I thought. Thanks.

**Chairman Anderson:**

Anybody else who may wish to testify in support of Assembly Bill 9? Does anybody wish to testify in opposition to A.B. 9? We'll close the hearing on A.B. 9, and turn our attention to Assembly Bill 12.

**Assembly Bill 12:** Extends period for transmittal of transcript from justice court to district court after notice of appeal is filed in criminal action. (BDR 14-521)

**Ron Titus, Court Administrator, Administrative Office of the Courts, Supreme Court of Nevada:**

Assembly Bill 12, as you mentioned, does extend the time from 10 days to 30 days for the transmission of the transcript up to the district court, in cases of appeal. This is a Nevada Supreme Court bill, and it is backed and supported by the Judicial Council of the State of Nevada. With me is Justice of the Peace Ed Dannan from Reno Justice Court. He will explain the reason and purposes for this bill.

**Edward Dannan, Justice of the Peace, Department 2, Reno Justice Court:**

This bill is a result of a continuing problem we have in our court and, I think, in other courts as well. It's regarding getting transcripts from our court to the district court, when a defendant in a misdemeanor case files a notice of appeal, because of the number of cases that we deal with, and we have a limited number of court reporters available to us for all the judges. Quite frequently, we cannot meet the 10-day limit for the transmission of the transcript to the district court. What we are looking at is a way to achieve compliance with the statute by amending the statute, to give a longer period for my appeals clerk to forward just the transcription. All other documents which are in her possession, which mean the file, and exhibits, and so on, could be immediately transmitted to the district court and meet the 10 day period. That is the reason for asking for the Committee's favorable consideration of the extension of time.

**Chairman Anderson:**

Part of this deals with moving this forward to a 30-day period. It kind of sets the whole process back 30 days. That is somewhat of a concern. I kind of think of the justice court as being closest to the people, as compared to the district court, which has a fairly crowded calendar. Not that your calendar is not crowded, Judge, but people anticipate that they are going to be able to get in and get out fairly quickly. I am a little concerned about the time factor in terms of how this takes place. How is this going to help the average guy on the street have a better court system and, thus, a better process?

**Judge Dannan:**

Mr. Chairman, maybe I can explain a little bit more about what happens once the record is transmitted to the district court. The district court does not immediately take up the appeal and determine whether the decision of the judge in our court was correct or not. Frequently, the appeals are not heard for months in the district court. In my experience with appeals that are filed, I

receive a decision back from the district court, sometimes, six to eight months later, or possibly as long as a year. Ninety percent of the people are out of custody at the time they go to trial in our court, and during the time they are on appeal, either they are out of custody on bond, or they are out of custody because they were released on their own recognizance at the time they were arrested. I don't think it would slow the process down, because the process, as I indicated, takes a good long time once the appeal reaches the district court. In other words, the district judge who would be receiving that appeal would not know that the transcript arrived 20 days later than what is allowed now or not. By the time that judge dealt with the appeal it would be far past either the 10-day period or the 30-day period.

**Chairman Anderson:**

If they are having problems scheduling at the district court level, and you get it to them within 10 days, now giving it to them 20 days later isn't going to mean that the court isn't going to put it on their scheduling calendar.

There are 127 bills sitting out there in people's drawers, right this second, that haven't been introduced on the Floor of the Assembly. Some of them should come to this Committee on Thursday of this week; we won't hold a Committee hearing, because we don't have any bills to hear. So I know there are 100 of them waiting to fall on me as an avalanche, and everybody is going to be saying, "How come you didn't hear my bill?" I'm going to say, "Because it wasn't introduced when I could have gotten to it." It's like you guys have to be up this early.

**Judge Dannan:**

The mechanics of it are that when the appeal is sent, across the street in our case, to the district court, the clerk of the district court opens the file. The file remains downstairs in the clerk's office, until the judge can get to that file. When the transcript is received, frequently beyond the 10-day period because of the problem I'm describing, the transcript goes into the file with the other documents that have already been submitted by my appeals clerk. They link up all of the documents at one time. That doesn't mean that the district court has been waiting for that transcript and that it has been unable to act on the transcript, because as a practical matter with all of the cases that the district court has also, they get to that appeal in due course, but it is frequently months after the appeal was filed. I don't know if that answered your question or not, but in my opinion, it would not delay action by the district court because the district court doesn't get to it immediately at the end of the 10-day period as it is.

**Assemblyman Carpenter:**

What kind of cases are we talking about here? A wide variety or mostly certain cases that get appealed?

**Judge Dannan:**

It can be anything from a traffic citation, to a domestic violence case or a misdemeanor driving under the influence (DUI) case. There are a number of misdemeanors that we deal with because of the jurisdiction of our courts, so it varies. It could be a dog-at-large case. If someone is really unhappy about the decision of the court, they can appeal that decision to the district court. I would say probably the main ones we have, however, are domestic violence and misdemeanor cases.

**Chairman Anderson:**

Let me try to make sure that I understand there may be those kinds of misdemeanor cases that could eventually, if they are reoccurring, be moved up from jail time to prison time, like first-time DUI, and somebody may decide they want to have an appeal and push it up for a full jury trial, because justice courts generally don't have jury trials.

**Judge Dannan:**

There are no jury trials for misdemeanor cases, because the Supreme Court has held they have no right to a jury in cases where the penalty is six months or less of imprisonment.

**Assemblyman Carpenter:**

Are there any statutes for anything that say these people have to get a speedy trial on an appeal? Or can it just linger?

**Judge Dannan:**

It can linger. You have the right to a speedy trial, but you don't have the right to a speedy appeal.

**Chairman Anderson:**

So the speedy trial question comes to the justice court. That's one of the things that I think that we believe so strongly about, relative to the justice court system, is that opportunity to get in and out early and quickly. Then, of course, since they have already had their first bite of the apple at the justice court, the district court doesn't feel there is any great need for them to have the appeal question taken up. That is not a rock that I am trying to put, or a burr under any of you district court judges who might be listening out there in television land, but I am concerned about justice delay.

**Assemblywoman Ohrenschall:**

I have a question on the same topic. We all received an email from a gentleman from the Clark County Public Defender's Office. He states lengthening the time of the transmittal of transcripts on appeal also lengthens the time citizens, possibly wrongfully convicted, will have to spend incarcerated before their appeal can be heard by the district court. For example, consider a situation where a defendant is wrongfully convicted of domestic violence, a misdemeanor, and sentenced to 60 days in jail. Under A.B. 12, his sentence will probably have already expired by time his appeal is heard in the district court, effectively rendering it moot. Have such interests been looked at?

**Judge Dannan:**

Before presenting my testimony this morning, I spoke with a gentleman who will be speaking to the Committee in a few minutes. He indicated that, in the county where he practices, it apparently is the practice for a person who is convicted in the justice court to be put in jail, pending the appeal. That isn't the case in our county. I don't want to take away from this testimony, but what he proposed, and I see no problem with it, is this: if a person is in custody at the time the appeal is filed, then it would be a 10-day period for the transcript, and if the person is out of custody, either on bail or on own recognizance release, then it would be 30 days.

**Assemblywoman Ohrenschall:**

Does the bill say that?

**Judge Dannan:**

This would be an amendment to the bill.

**Chairman Anderson:**

Judge, I note that you have brought with you a memo from Reno Municipal Court, Department 1, Judge Jay Dilworth ([Exhibit C](#)), and we will include this memo as part of the record of the day in support of A.B. 12. The essence of this reads that, to extend the number of days would be a great help for the transcribers, who are often overcrowded with work. So it is the transcribers that you're concerned with. This Committee does have jurisdiction over the transcribers too, believe it or not, and I think this is kind of a question, that they are getting paid to do that. They are working as hard and as fast as their fingers will go, then they have the opportunity to transcribe those into hard copy. I am concerned about how much that costs. You don't get a reduction in rate because they're giving them more days?

**Judge Dannan:**

No.

**Chairman Anderson:**

Questions from any members of the committee? Any one else wishing to speak in support of A.B.12? Mr. Brooks in opposition.

**Howard Brooks, Deputy Public Defender, Clark County Public Defender's Office  
Clark County, Nevada:**

I am also representing the Nevada Attorneys for Criminal Justice today. Let me say first of all: if this bill is passed and applied solely to those out of custody, we have no problem with it at all. Our concern is if this bill was applied to people who are in custody. Realistically, most of the trials in justice court in Clark County—misdemeanor trials—are DUI trials and domestic battery trials. Most people who actually insist on their right to going to trial, on a misdemeanor charge in Clark County, are likely going to jail. The fact is: throughout the entire system, almost all transcripts are late. The preliminary hearing transcripts are late, trial transcripts are late, and misdemeanor trial transcripts are late. But, when a person goes to trial on a misdemeanor charge and receives a sentence of anywhere from 30 days to 6 months, because of the limited time that their sentence lasts, you want to take this particular transcript and put it at the top of the stack, because you have a limited time to get to district court and challenge what happened at the justice court.

If I have a client who is convicted of domestic battery, and I am going to appeal it the district court, what I am going to do is go in and start talking to that court reporter and try to get her to give me preferential treatment, because if I don't, she is not going to make the 10-day deadline. The precision in this bill is far better than the precision that currently exists, in the statutes. For example, the statute governing my filing an appeal for my client who was just convicted of domestic battery is NRS 189.010. It says that I basically have to file the appeal within 10 days. Now, attorneys are taking that to mean we need to get the case going and file an appeal within 10 days. Now as a practical matter, you can probably get away with filing something and then requesting the transcript, but you want to file something substantive under the current statute within 10 days. So you want that transcript as soon as possible, especially if your client is serving 30 days or 60 days in jail. I think the Judge is absolutely correct that, if your client is out of custody, these misdemeanor trials can be delayed for some period of time. If they are in custody, you want to get this heard as quickly as possible, because it will be moot if your client serves his sentence in jail before this is transmitted. I would be glad to answer any questions, if there are any.

**Chairman Anderson:**

Having a double standard bothers me a little bit, Mr. Brooks. That is in terms of uniformity, of seeing that the court operates in a single fashion and consistently for all. In your experience as a public defender in Clark County, I'm sure about 50 percent of your clients who are judged—the charges against them are strong enough to hold them over or move on, and you do 100 percent appeal in those cases, anyway. What percentages of them are being held in jail?

**Howard Brooks:**

I have not practiced in justice court enough in the last few years to know the precise numbers, but I do know that if you are convicted at trial in justice court in Clark County of a domestic battery, you are absolutely going to jail. Quite frankly, there are not that many misdemeanor trials in justice court, because of the way they are handled. It is so much to your advantage to go ahead and negotiate. As far as DUIs, there is some jail time prescribed by statute, so a lot of those people are going to jail.

**Assemblyman Carpenter:**

Maybe I should have asked the Judge this question, but why, in one jurisdiction, are they going to jail, especially on domestic battery, I think you mentioned, and in the other, I guess, they are out?

**Howard Brooks:**

I really don't know how to answer that. All I can say is that there is such a crush of cases in Clark County that a tremendous pressure is brought to bear to not take the case to trial if it is a misdemeanor charge. One of the ways you make sure that no cases go to trial is to give lots of jail time, because we attorneys tell the client, "Look, you go to trial, you're going to jail." Maybe it is just a fact of the enormous case load in Clark County. Please understand me—some JPs [Justices of the Peace] are not going to send every person to jail that has a misdemeanor trial, but in some courtrooms that's what happens. I think, perhaps, Reno doesn't have quite the crush of cases that we have. Again, I have not practiced in Reno, so I don't know that for sure.

**Chairman Anderson:**

Are there any other questions for Mr. Brooks? Judge, maybe, through the Administrative Offices of the Court, it would be helpful for the Committee to see if this is a statewide problem or only a Washoe County problem, in terms of the justice courts, in terms of this process if we were to move forward. I ask Mr. Brooks: if he has language he is willing to suggest, if we were to move forward with this piece of legislation, that we would try to have some language ready for the first work session, which is probably a couple of weeks away. It doesn't look like it would be a difficult question to divide it into those

defendants being held in custody and those who are not. I am curious to whether Mr. Carpenter's question is an anomaly for the Justice Courts in the Second District, as compared to the Eighth Judicial and to the Fourth where Mr. Carpenter is.

Anybody else wishing to testify on Assembly Bill 12? We'll close the hearing on A.B. 12 and turn our attention to the third bill of the day. A. B. 17.

**Assembly Bill 17:** Repeals requirement that certain attorneys appointed to represent indigent defendant report to State Public Defender concerning such representation. (BDR 14-379)

**Harriet Cummings, Appellate Deputy Public Defender, Nevada State Public Defender's Office:**

With me at the table is Mary Liveratti, Deputy Director of the Department of Human Resources, who joins me in thanking you for the privilege of appearing before you today. We are here in support of Assembly Bill 17, which would repeal the provisions of NRS 180.070. A.B. 17 was requested by our office, essentially, as a housekeeping measure. NRS 180.070 currently requires any attorney, other than the Public Defender or a Deputy Public Defender, who is appointed to represent an indigent defendant to report to the State Public Defender concerning the attorney's representation, in a form prescribed by the State Public Defender. Since NRS 180.070 was enacted in 1971, no form for these reports has ever been prescribed by the State Public Defender, no reports have ever been submitted, no reports have ever been collected, and no reports, under the statute, have ever been sought by our agency or by anyone else for that matter. Repeal of NRS 180.070 will simply end the reporting requirement which has never been implemented since the statute's enactment and for which there appears to be no sound reason to implement now or in the future. That sums up our position on the bill. We would be pleased to answer any questions that the Committee might have.

**Chairman Anderson:**

I'm going to hang on here, Ms. Cummings and we will wait for Ms. Liveratti. Did you want to speak in support of the piece of legislation?

**Harriet Cummings:**

No, we have completed our statement.

**Chairman Anderson:**

Okay, so you came up for moral support. Good thing you did. Ms. Cummings, one of the things that most distresses me is that the State Legislature has a tendency to put it in the blue binders, and then the Executive Department of the

government doesn't do it. It just ignores the law, and that is kind of a slap in the face to us. I know that when this was put in place in 1971, the State Public Defender's Office was relatively new in terms of its historical development. In the last session we spent a good deal of time dealing with the issues surrounding the death penalty, the preparedness of and the need for proper defense in that particular type of case, and we had a difficult time drawing statistical information on the qualifications of people who practice in the death penalty cases and making sure they were well-prepared. Wouldn't you like to know, as a State Public Defender, when they're hiring attorneys to practice in your area, that maybe they are not aware that you're in existence?

**Harriet Cummings:**

Chairman Anderson, the problem with this particular bill is the mechanism by which attorneys are appointed to represent indigent defendants in cases, in counties where our office ordinarily provides those services, is in an individual case where our office would have a conflict of interest with regard to that particular defendant. We may represent a co-defendant or a material witness in the case or something of that nature. So conflict counsel is brought in to handle those cases. The feeling from our office was that, in some sense, we are particularly ill suited to be collecting information from conflict counsel, precisely because we have a conflict of interest with regard to that particular defendant that attorney might be representing. I hasten to point out that there are already several mechanisms in place, whereby there is oversight of conflict counsel. Counties, of course, that contract with conflict attorneys have their mechanisms in place for budgeting for these things and keeping track of these statistics, as far as the types of cases that conflict counsel might be handling, things of that nature. Of course, the court system has oversight over conflict counsel. If a judge sees a particular attorney not performing up to par, the court, of course, has power to impose sanctions or to declare ineffective assistance of counsel, or something of that nature. Finally, there is, of course, the State Bar system which has its forms of oversight to govern attorneys who are required to comply with the rules of professional conduct.

**Chairman Anderson:**

Are there any questions from the members of the Committee? It is kind of scary. The reason I'm a little hesitant here is that clearly, this section is part of the original legislation which created the State Public Defender's Office. I'm sure that the wisdom of the legislative members of 1971, which, of course, we are not bound to do what they did. In fact, no legislative body can create a requirement for the next. I want to make sure that we don't do something inadvertent that may be necessary.

**Harriet Cummings:**

Chairman Anderson, in doing the legislative history research regarding NRS 180.070, there was really very little in the legislative history with regard to this particular provision of the bill. However, at the time the State Public Defender's Office was initiated, I think the general sense of things was that this is an experiment; we are going to have to put something on the books and see how it goes, and perhaps tinker with it over the years as the need arises. This particular provision was put in there initially; since it appears to have not had a useful life in the 30-plus years that it has been on the books, we are simply suggesting that it is perhaps the time to tinker with the statute. A Legislative Audit brought this to our attention. The last audit that was done at our office, it was pointed out that we were not in compliance with this statute. One of the alternatives, so that it would not come up again, would be to simply request that the provisions be repealed.

**Chairman Anderson:**

For those members who are not familiar with the purpose of the Legislative Audit, that is the legislative oversight function rather than the bill-drafting function or the lawmaking function. The other half of the boat that you rarely ever see are they really doing what they ask them to do? This would appear to be one of those pieces of legislation that is no longer needed, but I am trying to prepare myself for this, indeed, have difficulty trying to understand where they were going, and it looks like it was part of the experiment when they put Public Defenders in place.

**Assemblyman Carpenter:**

Maybe this statute isn't the way to do it but, you know, I get calls from people that are being represented by the Public Defender and they are very unhappy. They say they don't prepare, they don't ask any questions, and it just looks like they're in there to draw the wages or salary, or whatever you want to call it. Aren't a lot of these appeals that we read about or hear about because of inadequate counsel or something like that? It seems to me that there has to be some kind of mechanism. Maybe this isn't it, but there should be some kind of a mechanism to hold these people accountable. I don't think I have ever heard of a judge that really reprimanded an attorney. The State Bar, I think, really doesn't do it unless it is really a case that they have to, that they have done something really wrong. So I think there needs to be something in there. This may not be it, but I think you people need to try to do something to make sure that they do their job, because the people that are being represented by them, in many instances, don't think that they are doing their job. They're not preparing, they just kind of show up with them and that's it.

**Harriet Cummings:**

Mr. Chairman, to address the Assemblyman's concerns, I certainly agree with your concern that there is a great need to ensure that there is quality representation to indigent defendants and that they are not short-changed in the legal system simply due to their indigence. However, it is our position that this statute does not accomplish that because our office does have a conflict of interest with regard to the individual cases in which conflict counsel is appointed. It is somewhat improper for us to be making inquiries as to the representation that is being given in an individual case due to the conflict we have in a case. As far as you mentioned that you get calls complaining about the Public Defender services in your particular district, this statute would not address that because this statute is geared toward conflict counsel and not the actual defenders themselves.

**Chairman Anderson:**

I was going to point out that very point. If you were the State Public Defender or a deputy state public defender, we already exclude you from the reporting requirement. This would not appear to affect that. I think in the original statutes, when there were maybe three public defenders, one for the State, one for Clark County, and one in Washoe County, there might have been a different fear of what was going to happen here. This does appear to be an out-of-date statute. We are concerned about the Office of the Public Defender and making sure it is providing services for the indigent and for those people who can't afford legal counsel, so that they don't get sent off to take up a bed space, to be warehoused with the State at a higher cost. That doesn't appear to be the issue in this case.

Are there any questions from the Committee?

Anybody else wish to testify on A.B. 17? Anybody wishing to testify in opposition to A.B. 17? We will close the meeting on A.B. 17. The Chair will entertain.

ASSEMBLYWOMAN ANGLE MOVED TO DO PASS  
ASSEMBLY BILL 17.

ASSEMBLYMAN MABEY SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley, Mr. Conklin, Mr. Horne,  
and Mr. Ocegüera were not present for the vote.)

The Committee will not be hearing bills on Thursday.  
[Chairman Anderson adjourned the meeting at 10:31 a.m.]

RESPECTFULLY SUBMITTED:

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Judy Maddock  
Committee Attaché

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Judiciary

**Date:** 2/14/05      **Time of Meeting:** 9:08

<b>Bill #</b>	<b>Exhibit ID</b>	<b>Witness</b>	<b>Dept.</b>	<b>Description</b>
	A			Agenda
AB 9	B	Carlos Brandenburg	Dept of Human Resources	Introduction of A.B. 9 and brief description of effects the bill would have on the Division
AB 12	C	Judge Edward Dannan	Reno Justice Court	Letter in support of A.B. 12 from Judge Jay Dilworth