

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

**Seventy-Third Session
March 21, 2005**

The Committee on Judiciary was called to order at 9:14 a.m., on Monday, March 21, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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. Sharon Angle
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mr. John Carpenter (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

René Yeckley, Committee Counsel
Judy Maddock, Committee Attaché

OTHERS PRESENT:

Joe Guild, Legislative Advocate, representing Motion Picture Association of America, Reno Nevada
Stan Olsen, Executive Director of Governmental Services, Las Vegas Metropolitan Police Department and the Nevada Sheriffs' and Chiefs' Association
Ben Graham, Legislative Representative, Clark County District Attorney's Office and Nevada District Attorneys Association
Ron Titus, Director, Administrative Office of the Courts, Supreme Court of Nevada.
Joan Neuffer, Staff Counsel, Administrative Office of the Courts, Supreme Court of Nevada

Chairman Anderson:

[Meeting called to order and roll called.] We are in a work session today, so the opportunity to give testimony is not present. If we have questions on a bill and we want to clarify an issue we can call you forward to do so. Let me indicate that A.B. 118 is not going to be discussed this morning. There is a small problem with the bill. While we may take this bill up for discussion, depending upon how our time goes, there are a couple of issues I want to bring to your attention relative to the bill itself.

Let's then turn our attention to the work session document ([Exhibit C](#)).

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

Let's turn our attention to A.B. 12. I have a letter here from Ms. Baggett, the Deputy Director of Administration ([Exhibit B](#)). The Supreme Court has introduced A.B. 12 which extends a period for a transmittal of transcripts from Justice Court to District Court after notice of repeal is filed in criminal action. I will submit this letter for the record so that it is part of the records of this day. Judge Dannan and Mr. Brooks have decided they can address these issues without legislation. Therefore they are requesting A.B. 12 be withdrawn.

That is a clear statement that we are not going to look at this issue. So the Chair will entertain a motion of indefinite postponement for A.B. 12.

ASSEMBLYMAN HORNE MOVED FOR INDEFINITE
POSTPONEMENT OF ASSEMBLY BILL 12.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED (Ms. Ohrenschall, Ms. Buckley, and
Mr. Carpenter were not present for the vote.)

Chairman Anderson:

Ms. Combs, take us through your work session document.

Allison Combs:

The next bill is A.B. 92, which is on page 2 of the work session document ([Exhibit C](#)).

Assembly Bill 92: Revises provisions governing suspension of sentence of person convicted of misdemeanor. (BDR 1-529)

Allison Combs:

This is a measure that amends existing law authorizing a justice of the peace or municipal judge to suspend the sentence of a person convicted of a misdemeanor for one year. A.B. 92 increases the time that a misdemeanor sentence may be suspended from the 1 year currently in statute to 3 years. There was some discussion in favor of the bill indicating that the additional time is requested to allow people to participate in certain programs. There was some concern expressed for consistency in the law. In the middle of the document there is some information on the other statutory periods for suspending a sentence for which there is a misdemeanor constituting domestic violence; it is 3 years currently. A gross misdemeanor generally is 3 years and a felony currently is 5 years. There were not any formal amendments proposed during the discussion on the bill.

Chairman Anderson:

I was of the opinion that it was a fairly straightforward piece of legislation. The problem rests over the ability to put people from municipal court or justice court into drug or alcohol treatment programs that may stay longer than the usual 12 months, which is the usual jurisdiction. Most of those run out in about 15 or 16 months. I have no heartburn one way or the other about the bill, but it does

seem to me that the courts were looking for an extended period of time. I am a little reluctant about the 3 years, but I think that we could amend A.B. 92 at line 1, page 3, by changing it from 1 year to 2 years.

[Chairman Anderson, continued.] We've given them a large window of time and made some of these programs available. It's particularly difficult, in some of the rural areas, for people just to get themselves scheduled and participate in certain kinds of programs because they are not offered on a regular basis. Therefore, if you don't happen to be there at the right time, you just don't manage to get in. So this is a little bit better opportunity.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 92 CHANGING 1 YEAR TO 2 YEARS ON PAGE 3,
LINE 1, AS PROPOSED BY CHAIRMAN ANDERSON.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Carpenter was not present for the vote)

Assembly Bill 124: Prohibits operation of audiovisual recording function of device in motion picture theater. (BDR 15-644)

Allison Combs:

The next bill in the work session document ([Exhibit C](#)) is on page 3. The bill is A.B. 124 prohibiting the operation of audio visual recording function of a device in a motion picture theater.

The bill creates a new crime by prohibiting a person from knowingly operating things such as a camcorder in a motion picture theater. The first offense is a misdemeanor, the second or subsequent is a Category D felony. The bill also authorizes the detention of a person suspected of violating these provisions by a movie theater owner or operator. There was testimony in favor of the bill on behalf of The Motion Picture Association of America. There were some concerns raised regarding the detention provisions. The Committee discussed a possible conceptual amendment during the hearing to replace the detention language in the bill. Replace subsection 3, page 2 lines 13 through 28, with language that mirrors the existing shoplifting statute which is attached on page 4 ([Exhibit C](#)). Two things the Committee noted were that the standard of proof would then go down from what is currently in the bill for the civil action, if a person were to file a civil action based upon that detention being unreasonable.

[Allison Combs, continued.] The standard of proof in the bill is clear and convincing evidence. Under the shoplifting statute it goes down to a preponderance of the evidence. The shoplifting also requires signage, putting people on notice of their actions, and the authorization to detain the person. On page 8 of the work session document ([Exhibit C](#)) is language provided by Mr. Guild on behalf of the Motion Picture Association of signage that is currently used. The next page provides a sign that could be some suggested language for the bill drafters to consider if the committee were to adopt this amendment.

Chairman Anderson:

Do we have to deal with specifying the language of the sign with the current shoplifting statute?

Allison Combs:

I would suggest that if the Committee liked the language on pages 8 and 9 ([Exhibit C](#)), I would be happy to advise the bill drafter. Please note on page 4, towards the middle of the statute, there is some language under the shoplifting statute that the director could also use to mirror this statute, by replacing the appropriate terms for the movie theater operator and not a merchant.

Chairman Anderson:

Mr. Guild, have you had an opportunity to look at the language relative to page 4 of the language suggested by staff?

Joe Guild, Legislative Advocate, representing Motion Picture Association of America, Reno Nevada:

To answer the Chair's question I have reviewed it. I have no problem with it. Just for the help of the Chair, NRS 597.850, subsection 4, suggests that the signage should be in the substantial form from the statute. So whatever the Committee desires to use as a template or a model language will be fine from my client's point of view. You will note the packet of information that Allison Combs was just talking about has language which is a little bit different than the sample sign that was part of the fax to me. So you can see that even within the industry there is a struggle right now as to exactly which actual language to use. What I am suggesting, Mr. Chairman, is that the Committee use that just as a guide and whatever you come up with would be agreeable to me.

Assemblywoman Buckley:

I think combining the existing approach with the shoplifting laws makes a lot of sense.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 124 WITH THE PROPOSED AMENDMENTS OUTLINED IN THE WORK SESSION DOCUMENT ([EXHIBIT C](#)).

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Carpenter was not present for the vote)

Assembly Bill 157: Authorizes senior municipal court judge to serve in any municipal court regardless of whether he is resident of city in which he serves. (BDR 1-528)

Allison Combs:

A.B. 157 is on page 5 of the work session document ([Exhibit C](#)). It authorizes a senior municipal court judge to serve in any municipal court regardless of whether he is a resident of the city in which he serves. Currently under the law, municipal court judges must be residents of the city in which the municipal court is located for 6 months. The Supreme Court also has rules that allow the issuing of a commission to a formal municipal court judge to become a senior municipal court judge and serve in that capacity. The bill provides a law to allow that senior municipal court judges may be temporarily assigned to any municipal court in the state regardless of whether or not that person is a resident in the city in which they are located.

There is some additional information provided. Within the work session document on page 5 is a copy of the new Supreme Court Rule 12 which lifted the eligibility for assignment out of that on page 5 of the document. This provides that some additional information stating that the justice of the peace or judge, in order to be qualified, must have served previously at least 2 years in that office, meaning the municipal or justice court. There were not any formal amendments proposed on that issue during the hearing

Chairman Anderson:

I was concerned about this particular bill when we heard about it on March 10, 2005, in regard to what would happen in a county where a municipal court also had a JP court [justice of the peace]. Apparently it wouldn't be a problem for someone serving on the JP court, but the municipal court which requires you to be a resident of the city, did present some level of concern.

[Chairman Anderson, continued.] Mr. Carpenter isn't here today, or at least not yet. We can hold it until he is here. I don't think we have a real big issue here, other than trying to get the two rules to be simultaneous so that you can serve as a senior municipal judge in any municipal court regardless of whether or not you are a resident of that city. I guess the question about qualified elector has to come forward from time to time, which is also a requirement for JPs. I think that there are a couple of questions on A.B. 157 that we need to clarify, but Mr. Carpenter is not here. It is the pleasure of the Committee, however, to do as they wish. Mr. Horne has suggested that we hold it over for another time, unless somebody has a great desire to get it out. Let's turn our attention to A.B. 190. This is Mr. Perkins' bill.

Assembly Bill 190: Prohibits persons from entering upon certain property with intent to surreptitiously conceal himself on property and peer, peep or spy through opening in building or other structure used as dwelling. (BDR 15-631)

Allison Combs:

A.B. 190 prohibits a person from entering property with the intent to conceal themselves and peer through an opening in the building or structure that is used as a dwelling. It would be a new crime under the law with those elements, with the exception that is provided for law enforcement officers conducting a criminal investigation. The penalties are a Category B felony if the person is in possession of a deadly weapon. It's a gross misdemeanor if the person is not in possession of a deadly weapon but in possession of a camera type device. It's a misdemeanor if the person is not in possession of either of those.

There was testimony during the hearing from law enforcement and victims regarding the need for the legislation and there was not any testimony in opposition presented during the hearing. There also were not any formal amendments proposed, but there were questions raised by Committee members that the Chairman requested information on, outlined on page 7 ([Exhibit C](#)). The first issue of concern was private investigators and how the bill might apply to those. There is no exception in the bill provided for private investigators who currently are subject to the laws in the same manner as a private citizen.

There is a separate measure pending in the other house relating to the issue of video voyeurism. Mr. Carpenter raised a question on the language relating to enclosure, that is on page 2, line 8, which references a building, a structure, or an enclosure of any nature that is used as a dwelling on the property or the premises.

[Allison Combs, continued.] There was some information provided by the Committee counsel René Yeckley who indicated that this phrase referencing enclosure was based upon a similar law in Virginia, in that, "enclosure" could be removed if that were the Committee's desire. The Committee may want to modify the language or phrase of "that used as a dwelling" with regard to the enclosure. The dwelling issue applies to the building and structure as well. Finally, Mr. Carpenter also raised a question relating to the misdemeanor penalty and whether or not that penalty should be escalated if a person is convicted for that crime, on subsequent occasions.

Chairman Anderson:

I think that we can move this bill along. Mr. Olsen, I have asked you to come forward because I am a little concerned about page 2, lines 7 and 8. If we were to do the structure or enclosure and just change it to "building or structure."

Stan Olsen, Executive Director of Governmental Services, Las Vegas Metro Police Department and the Nevada Sheriffs' and Chiefs' Association, Las Vegas Nevada:

Let me help, because I was going to ask one question, and that is, "Is this to include a fenced backyard?"

Chairman Anderson:

So in other words, if you were sleeping outside in your backyard with a sleeping bag?

Stan Olsen:

Mr. Chairman in relation to the one suspect that the two ladies testified the other day, one of the things the gentleman was doing was that he was basically setting up house in their backyard and then peeking in the window in the middle of the night. He brought his own cooler with his refreshments and he brought a little radio over and peeked now and then.

Chairman Anderson:

That would be illegal.

Stan Olsen:

Yes, under trespassing it is illegal, but the way that trespassing is prosecuted is the person has to be captured, warned, released and then violates it again, with dates showing which date he was warned.

Chairman Anderson:

What happens if you happen to set up a tent in your backyard?

**Ben Graham, Legislative Representative, Clark County District Attorney's Office
and Nevada District Attorneys Association, Las Vegas Nevada:**

I don't know the answers. My note said, what about a pool house, a dressing room, the restroom in your backyard, or your enclosed backyard. Now you added a tent. So I am wondering if we've taken too much out. The intent of the bill is to protect people in their premises.

Chairman Anderson:

I guess it's the question of "used as a dwelling on the property of a premises." You don't think that the bill is going to be harmed if we take out the words "enclosure of any nature," which is a very broad topic. You know the term "enclosure of any nature" versus just the term "structure." We are playing a semantical game.

Ben Graham:

This is legislative construction. Whatever it is, it will have to be a dwelling of some type. Whether we get into arguments as to what is a dwelling and what isn't a dwelling, it becomes an issue for legislative history and intent. I guess I don't know the answer to that.

Assemblyman Horne:

It seems to me that the "enclosure of any nature" part is redundant, since the bill requires entering from the property. So that would be done and then the act of hearing, peeping through the structure, or whatever is what we're making a new law prohibiting. It does not sit at all well with me when you remove that enclosed structure.

Ben Graham:

I think that is certainly viable when he states it. I don't see any real problem with it.

Chairman Anderson:

Did the bill drafter put that in as the original intent? I guess it is a fenced yard that we are concerned about as compared to an actual dwelling place.

Ben Graham:

I don't know. Is it a structure? Do we get into the mobile home lady's issues? Tents? Is a structure just a stick home? I don't know if that is limiting. Perhaps that is why Legal put in "any enclosure." It says that "any enclosure" still has to be a dwelling of some kind. So that would have to be an element of proof if we left that in.

Chairman Anderson:

I am of the opinion that the bill is okay without it, but if the Committee would like, it could be clarified or narrowed in some way.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 190 AS SUGGESTED IN THE WORK SESSION
DOCUMENT ([EXHIBIT C](#)) ON PAGE 7, ITEM 3, ENCLOSURE
LANGUAGE.

ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Carpenter was not present for the
vote)

**Assembly Bill 118 Revises provisions governing smoking of tobacco in certain
places. (BDR 15-807)**

Chairman Anderson:

Let me indicate some problems with A.B. 118 that have come to my attention. It is not that we will be dealing with it this morning but I am a little surprised at the language on page 3. Child care facility on page 3 means that establishment operated to maintain and furnish care on a temporary or permanent basis during the day or overnight with 5 or more children if compensation is received for the care. The term does not include the home of a natural person who provides child care. So that means that you could take care of any number of children 18 years or under in your home regardless of where it was located, and you would be able to smoke in that environment.

I don't believe that is the intent. So I am asking you to look at that question. I am going to suggest that we not take any action on A.B. 118 until I get clarity to what we are really trying to make certain. I don't want to preclude somebody who is doing for their community a service from being able to smoke when the children are at their home. However, I am concerned about smoking during the time when the children are there, and the removal of the total limitation there.

In addition, I believe that a couple of you have other issues relative to this. I mentioned to Dr. Mabey one of my concerns and that is as an individual Assemblyman, not as a chairman of a committee. Relative to the question, the fact that you go to pick up a prescription because you have emphysema or any other number of health care problems relative to breathing and you would have

to walk past these slot machines. That is one of the issues that I am concerned about.

[Chairman Anderson, continued.] I know Dr. Mabey has indicated partial concern about that. So that whole issue is where you can smoke and where you cannot. Could you possibly write something that will take care of the child care problems? I know that there are some of you who have similar issues. If you could please talk to me so that we can try and get this bill out. I don't want to endanger the bill. I think that this bill is much too important for us to harm in any way, but I do feel that we need to make sure that even if it is only for a short time period before the two initiative petitions are presented to the public, we should have some level of protection for the people of the state of Nevada. Anybody else want to go on the record, other than me?

Assembly Bill 157: Authorizes senior municipal court judge to serve in any municipal court regardless of whether he is resident of city in which he serves. (BDR 1-528)

Chairman Anderson:

Mr. Carpenter, A.B. 157 was a bill regarding senior municipal court judges. You have raised the level of concerns relative to senior municipal court judges to serve in any municipal court regardless of whether he is a resident of the city in which he serves. We had put that bill on hold awaiting your return.

Assemblyman Carpenter:

I really don't have any problem with the bill. The only thing that I was wondering is, "has it been taken care of." In a lot of areas, especially in the rural ones, I wonder if the JPs and the municipal judges are the same. Could one person cover both capacities? Maybe it is taken care of by the Supreme Court ruling, or taken care of in the statutes. In Elko there are JPs as is the case in Wells and Carlin, and they're not that busy. So they always come to Elko to hold court and I think that they do a fine job. But I have had people that have been sentenced by them and said "Well, you know, I didn't get to vote for that judge from Carlin or Wells."

I guess that there is some concern out there, but on the other hand I told them that I thought that they were all well trained now and if they sentenced you, then you probably deserved it. However, there is enough concern out there for me to be worried.

Chairman Anderson:

Are you suggesting that we can pass the bill without any amendment then?

Assemblyman Carpenter:

I would like to see, depending on whether or not it is possible, in the statutes that you are able to serve as a municipal and JP at the same time. We need to make sure that it is covered in the rural areas.

Chairman Anderson:

I know that this is not the Supreme Court's bill but maybe you can clarify it for us. Most of the city charters for municipal judges require that they be residents of the city. How does the Supreme Court go around that? We will find out who really makes that decision.

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

You did raise a very interesting question. This same question came up in our offices just last week. I will let Ms. Neuffer address that issue.

Joan Neuffer, Staff Counsel, Administrative Office of the Courts, Supreme Court of Nevada:

Is the question whether Rule 12 will be applicable with the passage of A.B. 157?

Chairman Anderson:

The question revolves around the fact municipal court judges and JP judges are required to be qualified electors and residents of the city in which they are a judge. In the rural areas, particularly Mr. Carpenter's area, and many of the other jurisdictions, they operate where a judge is both municipal judge and the JP. What happens when this appointed judge by the Supreme Court goes out to one of these multi-jurisdictional municipal courts as a JP judge? Is he going to be able to serve or not?

Joan Neuffer:

He should be able to. Under Rule 12 there are specific requirements to become a senior judge. Either in the municipal courts or the justice of the peace courts, based on the experience that person has. Then the next step is to establish a proper commission. According to my reading of the rule, a commissioner can be either as a justice of the peace senior or a municipal judge senior or perhaps both. It is going to depend on the experience also of the person who is applying for that commission. Currently under the new rule which was in effect January 15, 2005, there are certain requirements. Once the senior passes the requirements of having the necessary experience then the commission is

established. So the answer is yes, as long as the appropriate commissions are written in the application and then given through the order of the Supreme Court.

Chairman Anderson:

So if I am to understand this, if you happen to be somebody who qualifies both as municipal court judge and a JP senior, and you have had good service for many years, you would be able to be designated by the Supreme Court with this dual certification. Then the Supreme Court would also designate those senior JPs and those senior municipals. However, senior municipals would not be able to play as senior JPs and senior JPs would not be able to play as senior municipals.

Joan Neuffer:

No. Under Rule 12 as long as the person who is applying for the senior status has the appropriate experience they could receive a commission for either a justice of the peace service, or a municipal court service, or perhaps both. I don't think anything in the rule precludes the municipal court judge serving as a JP as long as that person has the appropriate experience and obtains the appropriate commission.

Chairman Anderson:

I am concerned about the state statute, not the Supreme Court Rule, which we will of course be mirroring. I am concerned that the judge is going to be out there and somebody is going to have the basis of an appeal based upon an inadequate judge by state statute, not by Supreme Court rule. Of course it only comes to the Supreme Court to decide whether they were right or wrong.

Joan Neuffer:

It is my understanding the Supreme Court Rule would be superior to the NRS.

Chairman Anderson:

The residency specifies that senior justices of the peace who are qualified under the Supreme Court may serve in any justice court in the state regardless of residency. We would have to map and modify this so that service of a senior municipal court judge specifies that a senior justice of the peace, who is qualified under Supreme Court Rule 12, may also serve as a municipal court judge, regardless of residency, and then we would clear up that problem, if you would like to go that far Mr. Carpenter.

Assemblyman Carpenter:

I believe that we should do this. Otherwise somebody will have a problem with it. Therefore it is important that we take care of this issue in a statute.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 157 TO CLARIFY THE LANGUAGE IN THE BILL
AS SUGGESTED BY THE LEGAL STAFF.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:

Meeting adjourned at 10:10 a.m.

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

Katherine Andrews
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 21, 2005

Time of Meeting: 9:14 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|--|----------------|---|-----------------------|
| | A | | Agenda |
| A.B. 12 | B | Supreme Court of Nevada Administrative Office of the Courts | Letter |
| A.B. 12 A.B. 92 A.B. 124 A.B. 157 A.B. 190 | C | Allison Combs | Work Session Document |