

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

**Seventy-Third Session
March 25, 2005**

The Committee on Judiciary was called to order at 8:12 a.m., on Friday, March 25, 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. Sharron Angle
Mr. John C. 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:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness, Central Nevada Senatorial District
Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part)

STAFF MEMBERS PRESENT:

René Yeckley, Committee Counsel
Allison Combs, Committee Policy Analyst
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Michael Griffin, District Court Judge, Department 1, First Judicial District of Nevada, Carson City and Storey County
Karen Baggett, Deputy Director, Administrative Office of the Courts, Supreme Court of Nevada
Paula Berkley, Legislative Advocate, representing Nevada Network Against Domestic Violence, Reno, Nevada
Victor Miller, Justice of the Peace, Clark County and Boulder Township, Nevada
Ron Dodd, Justice of the Peace, Clark County and Mesquite Township, Nevada
Nancy M. Saitta, District Judge, Eighth Judicial District Court of Nevada, Clark County
Ron Titus, Director, Administrative Office of the Courts, Supreme Court of Nevada
Ben Graham, Legislative Representative, Nevada District Attorneys Association
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence, Reno, Nevada
Eva Garcia-Mendoza, Attorney, Southern Nevada
Renee L. Parker, Chief Deputy Secretary of State, Office of the Secretary of State, State of Nevada
Julie Slabaugh, Deputy Attorney General for the Department of Human Resources, Nevada Office of the Attorney General
Ray Kendall, Acting Director, Rural Clinics, Nevada Department of Human Resources

Chairman Anderson:

[Meeting called to order and roll called.]

Let's turn our attention to Senate Bill 86.

Senate Bill 86: Provides that counseling and evaluations required for certain offenses may be conducted in neighboring states under certain circumstances. (BDR 15-189)

Senator Mike McGinness, Central Nevada Senatorial District:

This bill came out of the Legislative Commission's Subcommittee to Study the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders. The members of the Committee were myself, Mr. Marvel, Senator Rhoads, Senator Washington, yourself, Mr. Chairman, and Assemblyman Sherer.

The Committee had a number of recommendations and this one, S.B. 86, fell into the counseling and evaluation requirements. Let me just read from the report ([Exhibit B](#)). The recommendation was to "amend *Nevada Revised Statutes* to allow counseling and evaluation requirements to be satisfied in neighboring states."

The reasoning was many jurisdictions do not have counseling and evaluation services available locally. Rather than changing the counseling requirements, the Committee reviewed the possibility of allowing people who live in border towns to meet these obligations by certified or licensed professionals, in neighboring states.

The language on page 3 [of S.B. 86], "If the person resides in this State but the nearest location at which counseling services are available is in another state, the court may allow the person to participate in counseling in the other state in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS [*Nevada Revised Statutes*] 228.470."

Evaluations for juveniles are on page 4; domestic violence is on page 7; and, I believe, DUI is on page 8.

Chairman Anderson:

This was a very, very important study. I consider it to be one of the more important hearings. Most of those were held here in Carson City. We have judges participating from throughout the state representing their various departments and unique problems.

Senator McGinness:

This is one of the more satisfying Committees' Interim Studies that I've been on. A number of the recommendations have already been followed through on. The rural coordinator position was recommended. The Ely Courthouse bill will actually be heard Monday in Senate Finance. We're very pleased with the results of that Study Committee.

Michael Griffin, District Court Judge, Department 1, First Judicial District of Nevada, Carson City and Storey County:

We're talking about this bill, which is really important because the Legislature passes laws requiring counseling in a variety of things, and an evaluation in a variety of things, and we don't have the resources in the rural counties to take care of these issues.

For example, once you get past Lovelock it's hard to find a counselor who is certified in any of these areas. We're trying to follow the law so when you sentence somebody to do something, or have an evaluation, they have to do it.

If you're driving from McDermitt to Winnemucca, it's 120 miles one way. If you're driving from any of these places it's very daunting. This talks about the border towns like Laughlin, where you might have some residents of Laughlin who would have to drive to Las Vegas to get counseling, or some residents of a place like Jackpot where the counseling is not available for 150 miles.

This is an attempt to solve some of the problems in the border areas. We obviously want to make sure that the counselors are certified and meet our requirements. This will help some of those communities on the borders.

Assemblyman Horne:

I'm concerned about making sure that this is not going to hamper those requests. Oftentimes, you get people in these programs that move to other jurisdictions and have to get permission, and of course do so. Do we check to see if they're moving to a place where they can continue their programs?

Judge Griffin:

Most of the justice courts in the state now have a way to track if somebody is doing what they're supposed to be doing. They can see if they're going to counseling. If they're not going to counseling, it's reported. Yes, if you move from here to there you normally would be able to resolve that in the former jurisdiction, because if it's not completed in the former jurisdiction the judges are notified of that.

That was done with the community supervision laws that were passed a number of years ago. I think it was about six or eight years ago. We have community supervision in most counties now. You can track most of the people that move. Most people won't move to the border towns. The people who are in the border towns are there. I guess, there's not going to be a great demand for this to be moved to Laughlin from Las Vegas, but it would be available if they did move there. Did I answer the question?

Assemblyman Horne:

When they make a request: "I'm going to go live with my Mom in Ontario, California."

Judge Griffin:

If they move there, we can't do anything about that.

Assemblyman Horne:

I know that oftentimes those requests are made because they're still under the purview jurisdiction and they have to get permission from the other jurisdiction, that they'll accept this particular person, in order to make these agreements.

Judge Griffin:

That's on the felony level, on the misdemeanor level there's not much you can do if somebody moves, because you can't get them back. We haven't solved that problem yet.

Assemblyman Mortenson:

Has there ever been any consideration of possibly putting these courses on the Internet and requiring people to attend? To ensure that they do, doing a test afterwards? I don't know if that's Constitutional, just a thought.

Senator McGinness:

There are a couple of other bills that hopefully will follow this one that will allow for videoconferencing of counseling. We're trying to work out some bugs and there's some concerns about that but that would expand the ability of counselors in rural Nevada, if there's just nothing available. That's S.B. 75 and S.B. 77.

Chairman Anderson:

I believe that the recommendation from the Interim Committee was to try to put these into separate bill drafts so that one concept would not be endangered by the others. This particular one was aimed at the question in places like Ely and Jackpot and several other rural communities. They were very closely associated with the border areas of the state, and it was quite possible to cross and get a counseling program available to them. To do the 200 or 300 mile drive the other way was not, so this is kind of aimed at a different question, I think, Mr. Mortenson.

Karen Baggett, Deputy Director, Administrative Office of the Courts, Supreme Court of Nevada:

About three years ago, the Supreme Court commissioned the Commission on Rural Courts and the Commission had about 6 meetings regarding the issue of rural justice. On that Commission were members from the district judges, the justices of the peace, municipal judges, district attorneys, and court clerks.

Through that they came out with the report that in turn was presented at the last session, and from that session the Interim Committee was convened. All I'm here to say is we support this, and the rural judges would appreciate any consideration that you can give to this, to make their job a little bit easier.

Paula Berkley, Legislative Advocate, representing Nevada Network Against Domestic Violence:

I signed in neutral because I thought Sue [Meuschke] would testify in support. She's out there working on another bill so she asked me to come in and support this legislation.

Chairman Anderson:

And you represent?

Paula Berkley:

Nevada Network Against Domestic Violence.

Chairman Anderson:

The Nevada Network Against Domestic Violence is in support of this legislation since it might solve some of the problems in terms of counseling. It broadens the counseling range and makes a practical application for the rural areas of the state.

Paula Berkley:

Yes, fine.

Chairman Anderson:

Close the hearing on S.B. 86.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
SENATE BILL 86.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley and Ms. Ohrenschall were absent for the vote.)

[Chairman Anderson, continued.] There are a couple of people I wanted to get into the record relative to supporting the work of the Senate Concurrent Resolution 32 [of the 72nd Legislative Session] Committee. Judge Bunch from Battle Mountain emailed me in support ([Exhibit C](#)). He was one of the judges on this.

Let's turn our attention to Assembly Bill 237.

Assembly Bill 237: Revises jurisdiction of certain justices' courts. (BDR 1-1239)

Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part):
Assembly Bill 237 came to me by way of suggestion from Judge Victor Miller in Las Vegas.

I come from Boulder City as does Judge Miller. Judge Miller has written a letter ([Exhibit D](#)) that I will be giving you, as well as letters from Judge Wendell Turner ([Exhibit E](#)) and Judge Terry Graham ([Exhibit F](#)) from Searchlight and Wadsworth respectively.

There have been some concerns that I would like to lay out, before we get into the bulk of the testimony. The concept is for rural people in places that are at least 25 miles from urban district courts, to be able to have restraining orders without having to travel long distances to be protected. That is the intent and concept. If you'll notice, there is no language in the drafted bill about the mileage figure, but in talking with judges throughout the state it became apparent that some judges are willing to do things that they aren't necessarily tasked to do, in order to help the people of this state be protected.

If I could give a preface to Judge Miller's testimony, yesterday the judges of the rural justice court of Clark County met. According to their manager, all 8 judges were strongly in favor of this legislation. They represent the townships and/or cities of Laughlin, Moapa Valley, Moapa, Good Springs, Mesquite, Boulder City, Bunkerville, and Searchlight.

There is a need. Hopefully, this bill will address that need, while recognizing there are some logistical challenges with records. With family court being in "Blackstone," and Judge Saitta is here to address you on those concerns.

Victor Miller, Justice of the Peace, Clark County and Boulder Township, Nevada:

I noticed at the end of last year that the jurisdictional statutes for the justice courts had been modified for counties or judicial districts of more than 100,000 people. The jurisdiction to issue protective orders against domestic violence was placed solely in the family court and that caused concern. First, all of the rural judges in Clark County had continued to issue these orders. Secondly, and probably more importantly is, it places a hardship, we believe, on our citizens in the rural areas that is not a hardship shared by other rural Nevadans.

To get a temporary or an extended order against domestic violence requires three or four trips to the courthouse. The individual seeking that protective order has to come in and fill out an application. That application is reviewed by the judge to see if the application is appropriate for the issuance of the protective order, and then it is either issued, what we call *ex parte*, without the other side having input, or it's set for a hearing where both sides can come before the judge and have an opportunity to explain themselves.

There's a requirement to come in and fill out the application, another one to come in and pick up the application if it's granted, and then another to attend the hearing for the temporary-protective order. If a request is made for an extended-protective order, that can go for up to a year. It's mandatory that there be a hearing, so that's another trip to the courthouse.

We have some far-flung townships in Clark County that are rural in nature. People from Laughlin and Mesquite, or the extremes, have to travel into the Family Court in Las Vegas. For many people it would be prohibitive. In a situation where you have a threat of domestic violence and the person against whom they're requesting the order—there could be one family car—has taken the car. There are transportation issues, child care issues, and work issues.

I felt it best that this be modified to accomplish the two goals of the jurisdictional legislation of having a central location for urban areas, and, at the same time, provide local access for those people that are at some distance from the urban area. That would be to modify the jurisdictional language from a judicial district of 100,000, to a township or municipality whose population is 100,000 or more.

We've had extensive discussions with the district court and family court judges here in the county. One of the benefits they see of having jurisdiction is that they have access to any divorce files which may be ongoing, and they could have the opportunity to coordinate those efforts.

[Judge Miller, continued.] In our meeting yesterday with the rural judges, we discussed this issue. We learned that uniformly throughout the rural judges, that if the people have an open family court file, it's our policy to send them down to family court anyway, because we want to avoid forum shopping.

I know Judge [Nancy] Saitta has mentioned the access to Blackstone, which is the court computer program in district court. That is available to us on the Internet so we can determine if there is a file opened. Our Internet access is limited, we cannot pull up copies of orders from family court, but we can know if there's an ongoing case.

Additionally, the people fill out the application under penalty of perjury. One of the questions that our uniform papers or applications provide for is whether there are any court cases other than the one for the request for the protective order, which have gone between the two parties.

We talked this morning with Judge [William] Voy of family court here, regarding coordinating and setting up a procedure to make sure that if there are ongoing cases, the family court has the opportunity to address them.

If the matter is urgent, and in most cases of domestic violence it is, that there be protection. One party or the other may be in jail for having committed a domestic battery. When they can come right then and get it from a judge that's local, it provides an extra measure of protection. Often what I and the other judges do is give a temporary or limited-protective order with instructions that it will expire upon a certain deadline. After that they have to, within that period of time, get to family court and get that issue resolved.

Chairman Anderson:

We had an interim study and there was another study two years ago that the Supreme Court conducted relative to rural courts and the problems of rural courts. You didn't feel that this was an issue that you needed to make the interim study committee aware of?

Judge Miller:

Two years ago we weren't aware of it. In fact, we weren't aware of it until around the first of the year. It came fully to light when we had our Winter Judges Conference in Jean and went through our jurisdictional legislation.

At some point it was changed. Initially, all justice courts had the ability to issue protective orders. The fact that our rural judges had been excluded from that was just recently discovered and that's why we wanted to ...

Chairman Anderson:

I'm having difficulty understanding what you're telling me. Are you telling me that January of 2005 is when you first discovered this problem?

Judge Miller:

Correct.

Chairman Anderson:

The only reason you discovered it was because of the update for the judges? It wasn't taken up at your January 2004 meeting, following the 2003 Session when you were updated with legislative changes?

Judge Miller:

No. This was the first time. It wasn't even brought up at our meeting. While I'm sitting there reading through the jurisdictional language it became clear that we were excluded.

Chairman Anderson:

The last two years you've been doing what you've always done in the past?

Judge Miller:

Correctly.

Chairman Anderson:

Incorrectly.

Judge Miller:

Correct.

Chairman Anderson:

If you have the Blackstone computer system available in Clark County, is that similarly available to, presumably, Incline Village, Wadsworth, and Gerlach here in Washoe County?

Judge Miller:

I don't know what's available in Washoe County but I do know that in the other rural courts, say in Ely, there could be an ongoing divorce case in the district court, but the Justice of the Peace in Ely still issues the protective orders against domestic violence, with or without access to that file. The judges all over the state are doing it and handling that issue.

Chairman Anderson:

Except in those two counties.

Judge Miller:

Correct.

Chairman Anderson:

Just because everybody else gets to do it doesn't necessarily mean ... I think the reason we moved it to a district court level in the family courts in Clark County was because of other kinds of problems that we'd heard about in the application of these. We were trying to come up with a uniform application system where they could get it, and where they could not.

Assemblyman Horne:

My concern lies with the fact that in some of our rural communities our justices of the peace are not licensed attorneys. I'm concerned about potential abuses. While I like this bill in concept that concerns me. How would you address?

Judge Miller:

That's the way we're doing it all across the state. All judges are trained once they take the bench whether they're attorneys or not, at the National Judicial College. There's funding throughout the state that makes sure that our judges are well educated in judicial functions.

We have two conferences per year for the limited jurisdiction judges. The rest I would refer to Judge Dodd from Mesquite who's here with me today and who's not an attorney judge. He can answer that as well.

Assemblyman Horne:

I still have a doubt.

Chairman Anderson:

You just said that the district court judges meet twice a year.

Judge Miller:

The limited court judges, the justices of the peace, and the municipal court judges in January and June.

Chairman Anderson:

Following the Legislative Session in 2003, nothing in the discussions ever came up relative to the change in this particular issue, or any discussions about domestic violence issues, in either of your presentations?

Judge Miller:

Domestic violence issues are discussed in every meeting that I've been to because it's something that's pressing for all justices of the peace, throughout the state. As far as this change in jurisdiction, no, that was never discussed.

We had judges yesterday who still picked this apart. "There's got to be a way," they said, "we've been doing it." And then thinking maybe I was misinterpreting it.

Chairman Anderson:

Who puts on your training?

Judge Miller:

There's a committee of justices of the peace, and through the Administrative Office of the Courts' Education Committee.

Ron Dodd, Justice of the Peace, Clark County and Boulder Township, Nevada:

I can't believe that the Legislature's intent was to deny equal access to the legal system to the citizens of rural Clark and Washoe Counties. I really think this legislation is just simply a matter of correcting that oversight. I appreciate Assemblyman Hardy's efforts in that matter and I'll answer any questions at this point.

Assemblyman Horne:

Did you hear my question to Judge Miller concerning JPs [justices of the peace] that are not licensed, and my concerns? While I'm sure that you are a conscientious judge on the bench, my concerns lie with the many others that may not be as conscientious as you are in these rural communities, and the possible abuses when we're talking about issuing these protective orders.

Judge Dodd:

I'm not certain that I understand the sort of abuses that you're speaking of. I can only tell you from my personal experience that I've sat on the bench for 20 years now and I have what I consider to be a lot of experience, so I'm not certain about the abuses you're referring to, what those might be?

Assemblyman Horne:

When I say abuses, I don't mean deliberate types of abuses from the bench.

Judge Dodd:

Let me just tell you in my instance, and I'm fairly typical of a non-attorney judge in a rural setting in Nevada. I have well over 1,000 hours of judicial continuing

education. I make decisions based on that training and on my interpretation of the law, just as any attorney judge would do.

[Judge Dodd, continued.] I can't fathom that the Legislature intended the citizens be treated different in rural Clark County and Washoe County, from the rest of the state. I try to do what I always do, not just in temporary protective order issues but also in harassing and stalking orders; civil cases, traffic cases, or simple misdemeanor cases, through the whole gamut of what we do.

Chairman Anderson:

There's a small disagreement in the Assembly and has been for some time, relative to whether justices of the peace should be an attorney, or not be an attorney. However, that's not the purpose of this particular bill, at least not at this time.

Assemblyman Hardy:

In conversations with the judges and people who work with the judges, Judge Wendell Turner from Searchlight for example, they recognize that if they haven't been in the flow of doing family or domestic violence restraining orders, there may be some potential fiscal impact to their particular budget. Likewise, Judge Kevin Higgins from Sparks pointed out that Sparks doesn't need to be in this, because their family court is just one floor above the other one, so there's no reason to have the population defined as 100,000 because Sparks would be in that population figure.

The other thing that Judge Higgins pointed out is that Washoe County is now at 385,000 and he suggests that we should consider that definition. He quotes Chapter 4.020 of *Nevada Revised Statutes* which addresses population caps and the demographer, and likewise [NRS] Chapter [360] and how we have the population fluctuation evaluation. He is suggesting that we look at the concept of a 500,000 population definition, and the state demographer reassesses the population every two years for purposes of not only this, but other purposes in the law.

Chairman Anderson:

Mr. Hardy, do you want to amend your bill?

Assemblyman Hardy:

Yes, Mr. Chair.

Chairman Anderson:

Broaden it to a different area? Do you have that in writing?

Assemblyman Hardy:

I do not want to broaden the area as much as to define it, so that the bill as presented doesn't become obsolete when we get another 15,000 people in Washoe County.

Chairman Anderson:

When I devised the number that you're talking about, I tried to create an opportunity for justice courts at the local level to be created when they needed to be created, rather than solely dependent upon the county commissioners to do that. There was a great need from the justice courts at the time to have a reasonable population number within the townships in order to create. It's a different question than the one that you're approaching here. I want to make sure which of the issues you want to be in your bill, if you're looking to see where it's going to go.

Assemblyman Hardy:

The direction I want to go is to protect people from domestic violence in such a way that they are adequately protected and that we have the opportunity to help those people.

Chairman Anderson:

Let's see if we can hold ourselves to that particular issue. If we get to a work session and we have a written document, we can look at the other issue. I know that the Research Department has provided you with some demographical background statistics and that may be helpful as well.

I know Mr. Horne continues to have concern about attorneys as judges. He and I disagree over that particular issue. If you have an amendment that you want us to consider then I would suggest that you try to have it in writing so that we can discuss it.

Assemblyman Hardy:

I have an amendment in handwriting that would apply to townships greater than 22 miles and counties less than 500,000, but would be happy to say 400,000 to form a district court. The intent would be to allow Washoe County rural areas, as well as Clark County rural areas, to have protection from domestic violence.

Chairman Anderson:

Would it still leave Las Vegas, Reno, Henderson, and North Las Vegas as the communities having to go to family court?

Assemblyman Hardy:

Correct, as well as Sparks.

Chairman Anderson:

And depriving those judges, of which they are currently deprived of, from being utilized in those townships? Is there any other fallout from changing that number here?

Assemblyman Hardy:

There may not be fallout. Incline Village has a special designation as a family master court. They would not be affected by this. The intent of making sure that I define "in mileage" is the concept that Wadsworth and the judge there wants included.

Chairman Anderson:

I'm concerned about creation of additional courts at the justice level by changing that particular number. There may be another issue that's at stake here other than the one you're looking at.

Assemblyman Hardy:

I received a letter from Judge Ruth Kolhoss from the justice court in Moapa ([Exhibit G](#)) that I could also put into the record.

Chairman Anderson:

We will put in the letters of support for the bill from Judge Turner of Searchlight, Judge Miller of Boulder City, and Judge Graham of Wadsworth.

Nancy M. Saitta, District Judge, Eighth Judicial District Court, Clark County Courthouse, Las Vegas Nevada:

I'm here on behalf of the combined Second and Eighth Judicial Legislative Committee. I am here to advise the Committee to go in the direction, Mr. Chairman, that you are going in on this. The district court and our legislative committees support the concept of this bill. There are some rather significant concerns, however, that we have about coordination of the process. We haven't yet been able to determine whether or not a coordination of computer systems presents a rather significant fiscal note.

We do support the desire to have the rurals properly covered, and to provide adequate access for protection orders. We would urge the Committee to take this bill into a work session, where we can work together with the AOC [Administrative Office of the Courts], the rurals, and our district courts, to provide a meaningful process to communicate among and between the jurisdictions.

[Judge Saitta, continued.] We would like to work a bit with this bill before it goes into any final form. We would also like to add with respect to the domestic violence training and the ability of our judges to handle these types of cases, that some time ago there was a mandatory domestic violence training program for judges. That might not be a bad thing for us to consider once again.

Our request is that you allow us to work with this, perhaps among ourselves, and then bring it back to you in a more readily appropriate, meaningful form.

Chairman Anderson:

There are some unanticipated consequences to what we see here and we want to make sure they are all flushed out. Have you explained that to Dr. Hardy?

Judge Saitta:

We are in communication with Dr. Hardy and hope that with Dr. Hardy, Judge Miller, Judge Dodd, and all of our jurisdictions together that we'll be able to work this through.

Chairman Anderson:

We need to get it processed.

Judge Saitta:

We're working on it.

Chairman Anderson:

We're looking at 15 days.

Judge Saitta:

We are optimistic that we can have it resolved well within that time frame.

Chairman Anderson:

Both Judge Miller and Judge Dodd indicated relative to the training programs that were available or made available to the justice court, the questions of domestic violence, which is part of that training. Domestic violence issues have been discussed at their June and January meetings following each session. We might consider that to be a somewhat significant piece of information. They only heard about the other issues in January. I would like to know what training you receive.

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

I did not come here prepared to make any formal remarks. I will try to answer questions you may have. As far as specific training that has been made available, we can go back to our records and take a look at that.

In Pahrump they had mock trial training on domestic violence issues. I know we've had training in domestic violence at those conferences. The training seminars are coordinated by the NJA's [Nevada Judges' Association] Educational Committee who are heavily involved in studying the curriculum for those conferences. We find speakers and arrange for that. We do have input in that as well. I can definitely find out what training has been given.

As far as specific requirements of the law and who can and who cannot provide temporary protective orders, I do not know what kind of training has been, or has not been offered in that area.

Chairman Anderson:

The District Attorneys Association and other groups that have a standing relationship with the Judiciary Committee often do a specific training for the District Attorneys of the state and their assistants following each Legislative Session, relative to bills that we do pass here that might impact the court in some possible way. A few of them from time to time have some significant inroads. I was curious as to whether the courts follow a similar path?

Ron Titus:

The answer is yes. Mr. Graham is a featured speaker at those. We've already started that process this year because we normally do that in about September. In fact, you have actually attended some of these yourself. We usually have one in the north and one in the south. They are available and we pay for the travel for all the judges to come to those.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

I just want to comment that the last couple of Sessions I was not included in the training; however, I have been invited to participate this coming June.

Chairman Anderson:

I've noted the documents that you've shared with me from time to time relative to some of those trainings, and I've always found them to be most useful for myself as kind of a recap.

[Chairman Anderson, continued.] Mr. Titus, there may be some nuances in the training package and what we do here may affect the way the domestic violence issue is treated by the court. I wanted you to have an opportunity to comment.

Judge Miller or Judge Dodd, is there something that you want to add to the discussion?

Judge Miller:

I looked at this as just more of a housekeeping measure to continue to let us do what we've been doing before. Once we noticed that wasn't, I sent my letter to Assemblyman Hardy.

Chairman Anderson:

This was added in 1993.

Judge Miller:

We didn't know.

Chairman Anderson:

Anybody else wishing to comment on Assembly Bill 237?

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence, Reno, Nevada:

We're here to support the intent of this legislation. When the legislation was passed in 1985, the original protective-order legislation, concurrent jurisdiction was given to district and justice court to make sure that people had access to this relief. We'd like to see and will work with anyone to make sure that relief is available statewide. I'd be happy to answer any questions.

Chairman Anderson:

I think that the point is very well made. I think we understand the issue and I am a little disappointed in the training question that has come forward and that we hadn't perceived this before.

Let me close the hearing on A.B. 237.

We'll open the hearing on A.B. 227.

**Assembly Bill 227: Revises provisions relating to advertising by notaries public.
(BDR 19-862)**

Assemblyman Mo Denis, Assembly District No. 28, Clark County, Nevada:

[Reading from the Legislative Counsel's Digest for A.B. 227.] "Existing law requires notary public who is not an attorney licensed to practice law in Nevada, and who advertises his services in a language other than in English, to include with the advertisement notice that he is not a licensed attorney and may not accept fees for giving legal advice. The appointment of a notary public who violates this provision will be suspended for at least one year, or revoked for a third or subsequent violation, and the notary public may be subject to a criminal prosecution for which he may be fined no more than \$2,000."

This bill prohibits the notary public who is not an attorney licensed to practice law in Nevada from using the term "notario," "notario publico," or any other equivalent non-English term in any communication that advertises his services including business cards, stationery, notices, and signs. Notary public who violates this prohibition is subject to the same penalties imposed on a notary public who is not a licensed attorney in Nevada, relating to advertising his services in a language other than English.

The reason I brought this forward is that we have some good statutes there to prosecute those that don't do this. However, several times I've received information from individuals that they have received help from a notary in some legal situations where they shouldn't have.

We started to do some research on this and found out that several states, California, Colorado, Michigan, Nebraska, New Mexico, Oklahoma, Oregon, and Texas, all have this provision in their statutes.

Last week I was on a Spanish radio program and brought up this bill. One of the commentators on the radio said that she didn't like the bill because she likes going to a notary because they are cheaper. I had to point out that's illegal for a notary to be able to provide immigration help or other types of things. The problem is still out there. I have several individuals that are going to also provide some additional information.

Eva Garcia-Mendoza, Attorney, Southern Nevada:

I've been an attorney for almost 25 years in southern Nevada. I'm also a Mexican-American child of Mexican immigrants and I'm completely fluent in Spanish and English. I also have been nominated by the Mexican government to be the attorney for the Mexican Consul for the state of Nevada.

Back in the early 1980s myself and my husband, who is a former judge, came before this Committee and had the language changed to make sure that the notaries who advertise in a Spanish language put in the language that said, "I'm

not an attorney and not authorized to practice law.” That was when our Latino population in the state was less than a quarter of what it is now. Since then, as you know, the population has exploded.

[Eva Garcia-Mendoza, continued.] We’ve got scam artists that come into town. I hear about this, at least monthly, where someone has gone to a notario and paid them thousands and thousands of dollars. The next thing they know, the notario disappears. Mostly, it’s for performing immigration work. I say to these people, “Why didn’t you go to an attorney, why didn’t you come to me?” I said, “I don’t even charge that much money.” They said, “Well, we thought a notario would be cheaper.” That’s the big fallacy.

I also sit on the Unauthorized Practice of Law Committee for the State Bar, I have sat on it for about 15 years. We review a lot of the complaints that come through the State Bar Committee for this type of scam. When we see this type of scam we turn it over to the Secretary of State, for them to take action against these notaries.

Although the statute is on the books, I wanted to note that last week I happened to be at a strip center at East Bonanza Road and Lamb Boulevard and noticed a sign up on the signage board, and it said “Notario.” I walked on over to see what it was and it’s one of these people that are jack of all trades, masters of none. They advertised a notario, they advertised they did IRS [Internal Revenue Service] work, and they advertised that they did money wire transfers.

I think that Assemblyman Denis is absolutely correct that we need to put some more teeth into this language in the statute, in order to protect the consumers of the state of Nevada.

I whole-heartedly support this proposed amendment.

Chairman Anderson:

Are there questions for Ms. Mendoza?

Assemblyman Horne:

I understand what you’re trying to achieve here but somebody who says in Spanish they are a notary—you don’t want them to say that in Spanish?

Eva Garcia-Mendoza:

Let me explain to you the reason. In Spanish, the word “notario publico,” is a very high-ranking attorney who is appointed by the state or province of that country, in order to engage in very highly-technical legal documentation. For

example, they do a lot of the title work on real estate transactions. The people in this country, or the immigrants who come here, think that a notary public is the same thing as a notario publico. Based on the fact the words are almost identical, these scammers take advantage of our consumers.

Assemblyman Horne:

My question was, can't you achieve the same thing with the explicit language stating that they are not attorneys; they cannot practice law within their advertisement. I can understand having the advertisement with just notario publico on that and leaving that alone could lead to these problems. But eliminating that, as opposed to requiring explicit language stating they are not attorneys in this country and don't have the skills and license to practice, wouldn't that accomplish the same thing?

Eva Garcia-Mendoza:

I don't think it will, because the word notario publico has a completely different meaning than notary public.

Assemblyman Horne:

I understand. That's why I asked about adding the explicit language stating here, they are not licensed. Even if they were attorneys in their former country, in this state and this country they're not. They don't have the license to practice law. Do you see what I'm saying?

Eva Garcia-Mendoza:

That language already exists in the statute, and it hasn't been effective.

Assemblyman Denis:

I might be able to add just a little bit to this. I talked to the Secretary of State's Office in California. They have this same statute like we do and they added the wording to eliminate the notario publico. One of the things that really help them in being able to prosecute is, they could see the advertisement, and if they're using the word, it makes it even that much easier for them to be able to prosecute with that.

Assemblyman Carpenter:

My question is along the same line. How is a notary that can speak Spanish allowed to advertise?

Assemblyman Denis:

I had that same question. In California they are still allowed to advertise but they have to use the English term in the Spanish. So, if they've got a Spanish

ad, they have to use the English word notary or notary public, as opposed to notario or notario publico.

Renee L. Parker, Chief Deputy Secretary of State, Office of the Secretary of State, State of Nevada:

I'm here in case you have any questions on any of the issues we have in our office. We fully support this bill. It will make it easier to prosecute if we receive a complaint. Right now, as you notice, there is that language that Mr. Horne was discussing that the notary is required to include, "I'm not an attorney in the state of Nevada, and I'm not licensed to give legal advice." But that language is English language. A notary that's advertising in Spanish is required to use the English language in the statute right now, which I believe does cause some confusion. This makes it more difficult for us to prosecute if a notary is misrepresenting their services and identifying themselves as a notario publico. It would make it easier for us to identify that this was an issue that we needed to pursue, or this was a valid complaint. If you have any questions I'll be happy to answer.

Chairman Anderson:

Close the hearing on A.B. 227.

I don't see any problems with the bill. I know Mr. Horne has a certain level of concern. Does he want us to hold it until he gets answers, or can we move it along so we don't have to put it to a work session?

Assemblyman Horne:

I probably should have asked this about that conspicuous language that is currently in English. Why didn't they request that it be required to be put in Spanish? That's my only concern. I don't want to hold up the bill.

Chairman Anderson:

I think that's a valid discussion, whether the other disclaimers should be part of the language.

Assemblywoman Ohrenschall:

If you translate, "I am not an attorney" into Spanish, that's fine, but there are other things that a notary public does. He is a highly respected person. We might accidentally imply that this person has more power than he has. A notary public in Mexico, and in most civil law countries, is not just a highly skilled attorney but has several functions that really have nothing to do with being an attorney, like court reporter, so I'm not sure that would work unless we were very, very technical in what we said in Spanish. I think English is best.

Assemblyman Carpenter:

Is that disclaimer in English or in the language of the advertisement?

Chairman Anderson:

If I'm to understand Mr. Denis' bill, a notary public trying to advertise to the Spanish community would be prevented from using notario publico as part of his advertising scheme. He would have to use, in reference to himself, the English term notary public. People, who might draw other kinds of inferences from it, would probably not be able to do. If, however, they use the term notario publico the Secretary of State's Office would have justification for it to be removed, because they do not have the right to utilize that term.

Assemblyman Carpenter:

The bill states, "The notice must be of a conspicuous size, if in writing, and must appear in substantially the following form." Is it put in English where it describes it in the advertisement and where they put in this disclaimer, or in the language of the advertisement, which in this case we're talking about Spanish?

Renee L. Parker:

A notary public who advertises in a language other than English must put this term that you see in Section 1 of the bill, in English, in their advertisement. I think the reason that you did that in English, when you adopted this in the 1980s, is exactly what Assemblywoman Ohrenschall was discussing.

Assemblyman Carpenter:

Maybe I understand the reason but to me that doesn't do anything. It seems to me like it should be in the language of the advertisement; otherwise, if someone can't read English, or doesn't understand English too well, they really don't know what this is saying at all.

Renee L. Parker:

I think that's the reason for Mr. Denis' bill and the addition of Section 2. Now, anybody who's reading it in the Spanish language will not be confused. I think it has the same effect, but in the Spanish advertisement if you understand English, you can read the disclaimer, if you don't, there's no confusion any longer between the two languages by adding Section 2.

Chairman Anderson:

In Section 1 of the bill, lines 6 and 7 state "A notice in the language in which the advertisement appears," that says, "I am not an attorney in the state of Nevada, I am not licensed to give legal advice, I may not accept fees for giving legal advice." The people who are reading the advertisement are going to see

that in writing. There's that disclaimer. In addition, the term "notary public" is going to be used, and not the term "notario publico."

Assemblyman Carpenter:

Mr. Chairman, I don't want to hold the bill up, but I'm going to ask them what they think about this other part, and then we can go from there.

Chairman Anderson:

We have a bill draft that has been delivered to us.

- BDR 43-665— Revises provisions governing the responsibility for the program relating to the Committee on Testing for Intoxication. (Assembly Bill 445)

ASSEMBLYMAN HORNE MOVED FOR COMMITTEE
INTRODUCTION OF BDR 43-665.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED (Ms. Buckley and Mr. Holcomb were not
present for the vote.)

Let's turn our attention now to Assembly Bill 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)

A letter ([Exhibit H](#)) has been distributed from the Division of Mental Health and Developmental Services answering several questions that were put forward by us at our previous meeting.

I don't believe it's necessary for us to rehear testimony.

Are there any questions or remaining concerns about the letter?

The nature of Ms. Buckley's concerns?

Allison Combs:

I think it was clarifying the additional people into the state immunity cap, and the need for that. Thus, the letter went out asking for additional information regarding the needs in the rural areas and how many psychiatrists are currently under contract in various areas, how many are actually employed by the Division, what the needs currently are in the rural areas, and what the stated reasons were for perhaps not wanting to contract for these services. There's a letter from Dr. Robert Andrew attached as well as the information received back from the Division of Mental Health and Developmental Services ([Exhibit H](#)).

Assemblyman Horne:

These doctors, aren't they also covered under the new initiative [ballot question 3 on the November 2004 general election ballot], Keep Our Doctors in Nevada? We've got the new caps and all of that already included with it. I'm looking at the chart and the table on the last page ([Exhibit H](#)), in Reno and rural Nevada compared to Clark in the 5th practice year. Looking at \$8,400 for their insurance compared to \$3,500. That seems like a big difference. It seems much cheaper in Reno and rural.

For me it begs the question, do we really need this piece of legislation when we have the new caps from the tort reform initiative that passed? The premiums are much less, \$5,000 less. If anything, you don't have any psychiatrists hired for rural areas, while we have 15 under contract. We should just hire a couple more. That's my observation.

Chairman Anderson:

Part of that may be as a result of the insurance differentiation between one part of the state and the other, and we saw that in the past.

Julie Slabaugh, Deputy Attorney General for the Nevada Department of Human Resources, Nevada Office of the Attorney General:

As for the caps, I think the concern we're finding from the doctors is not necessarily that there be a cap on their liability, but they don't want to make the claim against their own personal liability insurance. If they do face any type of a lawsuit from these rural areas, we have to keep in mind that the patients they see for us are the chronically, seriously mentally ill, which are a much higher risk group than the patients that they would see once a week, for an hour, in their offices.

They are treating a much higher risk group for suicide and self-injurious behavior, things that would possibly lead to harm, which could then lead to a lawsuit. Their concern is that they would then have to file the claim against their insurance company, which would then most likely affect their rates, rather

than thinking about the cap on the liability; that is really the issue. I would point out that this law already exists for contractors for the Nevada Department of Corrections. They are protected under state immunity. We have a situation now where we have doctors who would go out to the Ely State Prison and treat a maximum security inmate and if he sued, he's covered under the state. Any judgment or any defense, everything is covered under the state.

[Julie Slabaugh, continued.] If one of our contract doctors goes out to the Ely Mental Health Clinic and treats a law abiding citizen, and he faces a lawsuit, he's on his own. That's a real issue for the doctors. As far as employing doctors rather than contracting with them; there aren't any psychiatrists in the rural communities to employ. That's the situation there.

Assemblyman Horne:

In speaking about the risk of these types of cases, I see in your answer in this document that only 5 cases, 3 involving rural areas have been filed, and 2 in Las Vegas. What time period does that cover?

Julie Slabaugh:

To the best of my knowledge, we went back approximately 10 years. We had to do this pretty much from memory because anything that far back has been archived. Those 5 cases are the ones involving independent contractors as well as suits against the state. One of those is going on right now, and it's out of Elko. Three contract doctors were sued in that case, and it's still going on, and none of those doctors are now contracted with the state. One is deceased. So it has an effect. It might have just been 5 lawsuits but one of those lawsuits took in 3 doctors. One of the doctors got dismissed out after 2 years of litigation because he never saw the client, but they just sued him anyway. He then had to make the claim against his insurance company. The lawyer from Sacramento had to come in and the insurance company incurred a cost.

It is a risk and I think for mental health—having worked with prisons for a number of years, and knowing how litigious that population is—the mentally ill are a much less litigious population. However, of that population, the clients they are seeing on behalf of the State are a much higher risk of filing lawsuits than their private clients.

Assemblyman Horne:

It just doesn't seem like an epidemic of lawsuits.

Chairman Anderson:

From what I understand, if these were regular employees of the State they'd be covered relative to our protection. Because they're not, we don't give them the same level of liability. This would be an attempt to do so.

Assemblyman Mabey:

As a physician I can tell you that just one lawsuit and it's like you're averse. It's such an experience that it tarnishes you forever. These physicians, these psychiatrists—even though I agree with Mr. Horne that the facts and numbers aren't exactly convincing—will do anything to change their practice habits to avoid taking care of these patients. It's just going to boil down to, do we want the people to take care of them or not?

Ray Kendall, Acting Director, Rural Clinics, Nevada Department of Human Resources:

We do put our contract psychiatrists at a high risk of some liability. Many of them are in the clinic for a short period of time. Let me give you a quick example. Our consulting psychiatrist in Ely drives from Las Vegas on a Friday morning, sees clients Friday afternoon and Saturday morning, and goes back to Las Vegas. This is after prescribing some fairly complicated and heavy-duty psychiatric medication. During that month he will not be back for a full month.

During that time, he must rely upon our staff to be his eyes and ears to watch these patients for side effects, or for being a possible threat to themselves or others. That is a lot of trust that gets put in our staff. We will have him see anywhere from 18 to 25 patients each day that he's there. We ask our consulting psychiatrists to do a lot, putting their liability at risk, and we don't pay them that much money. We've got a lot of dedicated psychiatrists that do come out. It does hinder our ability to recruit psychiatrists.

Assemblyman Carpenter:

We would love to hire psychiatrists for the rural areas. In Elko we've been trying for years. Hopefully, we'll be able to get one but right now there are just contract people. I think the difference is whether we have care or not for these people, and they definitely need that care because otherwise it puts other members of our community at risk. I just hope that we can pass this bill.

Chairman Anderson:

Chair is going to entertain a motion.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY
BILL 9.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

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

- BDR 54-1095—Revises provisions governing court reporters.
(Assembly Bill 446)

ASSEMBLYWOMAN OHRENSCHALL MOVED FOR COMMITTEE
INTRODUCTION OF BDR 54-1095.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (Ms. Buckley and Mr. Holcomb were not
present for the vote.)

[Adjourned meeting at 10:15 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 25, 2005

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Meeting Agenda
<u>S. B. 86</u>	B	Senator Mike McGinness, Central Nevada Senatorial District	<i>Study of the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders</i>
<u>S. B. 86</u>	C	Max Bunch, Justice Court Judge, Argenta Justice Court, Nevada North Central Region [Did not attend meeting.]	Email note supporting <u>S. B. 86</u>
<u>A. B. 237</u>	D	Victor Miller, Justice of the Peace, Justice Court, Clark County and Boulder Township, Nevada	Letter to Assemblyman Joe Hardy regarding issuance of protective orders against domestic violence in rural areas of Clark County
<u>A. B. 237</u>	E	Wendell Turner, Justice of the Peace, Justice Court, Searchlight Township, Nevada	Letter to Assemblyman Joe Hardy in support of <u>A. B. 237</u>
<u>A. B. 237</u>	F	Terry Graham, Justice of the Peace, Justice Court, Wadsworth Township, Nevada	Letter to Assemblyman Joe Hardy in support of <u>A. B. 237</u>
<u>A. B. 237</u>	G	Ruth Kolhoss, Justice of the Peace, Justice Court, Moapa Township, Nevada	Letter to Assemblyman Joe Hardy in support of <u>A. B. 237</u>
<u>A. B. 9</u>	H	Allison Combs, Committee Policy Analyst, Legislative Counsel Bureau, Nevada Legislature	Letter to Allison Combs from Division of Mental Health and Developmental Services answering questions from a previous hearing on <u>A. B. 9</u> .