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

**Seventy-Third Session
May 4, 2005**

The Committee on Judiciary was called to order at 8:18 a.m., on Wednesday, May 4, 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
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 Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mrs. Sharron Angle (excused)

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7
Senator Mike McGinness, Central Nevada Senatorial District

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst
Judy Maddock, Committee Manager

OTHERS PRESENT:

- Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
- Ron Titus, Director and State Court Administrator, Administrative Office of the Courts, Supreme Court of Nevada
- Stephanie Liester, Co-Clinical Director, SafeNest, Las Vegas, Nevada
- Cornelius Sheehan, Jr., Social Worker, Domestic Violence Treatment Provider, American Comprehensive Counseling Services, Sparks, Nevada
- Karen Baggett, Deputy Director, Administrative Office of the Courts, Supreme Court of Nevada
- John Sande III, Legislative Advocate, representing the Nevada Bankers Association

Chairman Anderson
[Meeting called to order. Roll called.] I will open the hearing on S.B. 266.

Senate Bill 266 (1st Reprint): **Revises provision governing recommencement of actions dismissed for lack of subject matter jurisdiction. (BDR 2-732)**

Senator Terry Care, Clark County Senatorial District No. 7:
Last session, A.B. 40 of the 72nd Legislative Session passed out of both houses with very little trouble. What you have before you is the first reprint of S.B. 266, which is the same bill, except for subsection 5. Under this bill, it will delete that portion of what used to be A.B. 40 of the 72nd Legislative Session.

When Mr. Oceguera introduced this bill two years ago, it was on the heels of a Supreme Court decision. The issue was, if you have a case filed in federal court, and they determine it does not have jurisdiction, what are your remedies? The bill that the Assistant Majority Leader proposed said that you could go ahead and recommence that same action in state court as long as you proceeded within 90 days of dismissal and within five years of the date the original action was commenced. There was no opposition.

Subsection 5 was added after I had discussions with Mr. Oceguera. What happens if the federal court determines it has no jurisdiction, and it is the fault of the plaintiff's attorney? Basically, he committed malpractice and should have filed in state court in the first instance. Is it fair in that circumstance to make the original defendant have to go through everything all over again?

[Senator Care, continued.] We have to undo everything that was done by the federal judge—findings of fact, inclusions of law, et cetera. Since that time it's been brought to my attention by practitioners, whom I respect, that this might be unconstitutional. In effect, you are saying that the state court is bound by determinations made in a court that did not have jurisdiction to begin with. I don't have any cases that are involved in this, and I am unaware of any pending litigation involved in this. I have discussed this with Mr. Oceguera, and he is agreeable that maybe we should repeal this and restore what is now NRS [*Nevada Revised Statutes*] 11.500 to the Assistant Majority Leader's original bill.

Assemblyman Oceguera:
Senator Care described the story applicably.

> ASSEMBLYMAN OCEGUERA MOVED TO DO PASS SENATE BILL 266.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mrs. Angle and Ms. Buckley were not present for the vote.)

Chairman Anderson:
I will open the hearing on S.B. 77.

Senate Bill 77 (1st Reprint): **Revises provisions pertaining to counseling required for person convicted of battery which constitutes domestic violence. (BDR 15-185)**

Senator Mike McGinness, Central Nevada Senatorial District:
This is the last bill before this Committee from the interim study, the Study of the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders. Senator Marvel, Senator Rhoads, Senator Washington, Mr. Anderson, Mr. Sherer, and an advisory group that included three district judges, municipal court judges, district attorneys, folks in the Administrative Office of the Courts, and county commissioners all met for five meetings, including a work session. Four of the meetings were held in Carson City and were videoconferenced to Las Vegas, and one meeting was held in Ely. The

advisory committee met one time, and we had no opposition to any of our measures during the interim. One of the recommendations was S.B. 77.

[Senator McGinness read from a prepared statement, Exhibit B, which is incorporated herein.]

The committee recommended a bill draft request that would amend NRS 200.485 by revising the timeframe for compliance with required counseling from one and a half hours per week to six hours per month for those convicted of battery that constitutes domestic violence. We have gone from a mandated one and a half hours per week to six hours a month, giving the judge some leniency—maybe every other week—depending on what the judge felt was available.

I understand that there are some amendments proposed to expand the mileage limit; I think we put 50 miles, and some of the other bills put 75 miles. I understand there is 90-mile language proposed for this bill. I think that is excessive, and there should be something in between.

As chairman of an interim committee, it falls upon me to bring these bills forward, and it seems that some of these have begun to affect other legislation. At this point, whatever they want to do with these amendments is fine with me.

Chairman Anderson:
I have had the opportunity of championing some of the interim studies bills. You are often surprised when the interim committee adopts the bill itself, and you are always hopeful to get the issue rediscussed in front of the full Body. Sometimes we need to revisit some of our earlier decisions, because they have an impact that we had not anticipated, or we hear from a group of people that we had not listened to as carefully as we should.

I appreciate your hard work on this particular committee. The issues that came before that committee were very real for the judges in the rural area, and they did a study two years previous to ours. It raised my awareness of some issues that I had not fully appreciated—the rural point of view—and made me an advocate of it.

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:
I am here today to speak on S.B. 77. This bill and its companion bill, S.B. 75, have been difficult for me, because I respect the work of the interim committee, and I understand and appreciate the difficulty facing folks in rural Nevada and,

in particular, the geographical issues and the lack of services. I thank the members of the interim study committee for bringing this issue forward, because it's an issue that needs to be addressed. In previous testimony on other bills, there have been suggestions that in some rural communities, judges are reluctant to convict batterers of domestic violence, because of the lack of services. That's troubling for me, because that means batterers are not being held accountable, victims are not being provided safety, and for that reason alone, it would make sense to support this piece of legislation.

[Susan Meuschke, continued.] You will hear testimony in opposition to this bill from the Committee on Domestic Violence and by counselors who are certified through that process. They oppose this not because they don't understand the problems in rural Nevada, but because this committee was created by the Legislature to set standards for batterers' intervention programs. This bill changes one of those standards, and they are concerned about the impact that it would have. I understand and support that opposition. It would be something like with a physician, where a patient is concerned about the increasing dollar amount of the prescription and asks the doctor if they can cut their dose in half, so that they can afford the medication. The doctor would probably say that it wouldn't work, because this dose that they have prescribed is what will treat this underlying condition, and if you take less, the chances of the illness progressing are very real. I think that is the position that the providers have had.

In an effort to move this bill along, we have worked with the Administrative Office of the Courts to come up with some amendments that we hope will provide a solution to some of the dilemmas that we face. I have provided you with copies of the documents with amendments to S.B. 77 (Exhibit C) and S.B. 75 (Exhibit D), which is a companion piece of legislation. I would like to quickly go through those amendments.

Senate Bill 77, Section 1, subsection 2(b), lines 7 through 11—which is on page 3 of the bill—would be amended as follows: "If the person resides more than 50 miles"—insert 70, not 90 miles—"from the nearest location at which counseling services are available, the court may allow the person to participate in at a minimum of every other week, certified counseling sessions of not less than 6 hours per month for the number of months required pursuant to paragraph (a) or (b)."

We appreciate the distances that people in rural Nevada need to travel. We believe that 70 miles is a good compromise. I have some appreciation for the barriers facing those in rural communities, but I would not suggest that we make an accommodation for them, because it takes them such a long time because of the traffic. Advocates have cited driving more than 100 miles each

way as a justification for the need for this bill. We believe that 70 miles is an appropriate amount, and we have gotten concurrence from the Administrative Office of the Courts (AOC) on this issue. We have also clarified in this amendment that certified counseling sessions occur at least every other week, because as the experts tell us, the more time that elapses between counseling sessions, the less effective they are. We are hoping that we have reached a compromise in every other week counseling.

[Susan Meuschke, continued.] You should have also received a document from the Administrative Office of the Courts (Exhibit C) talking about a study that they are proposing. This would amend the section of this bill that provides for reporting by the courts about their using this alternative method of treatment. The study that the AOC is proposing would be a statewide study that would look at batterers' counseling and find out how it's being implemented throughout the state. We would concur with that amendment, and we believe that would give us the opportunity to evaluate these alternative methods and provide us with valuable data about what's happening around the state. The AOC has also agreed, as part of that, that there would be an evaluation by this committee at the end of that study as to whether this section should remain in statute.

The last amendment we are proposing—one that the AOC does not concur with or oppose—is to add an additional section that directs the Division of Mental Health to report to the Legislature on progress towards certifying rural mental health clinics.

We understand that the intent of S.B. 77 and S.B. 75 is to make sure that services are available in rural communities. We have a unique opportunity this session to work with rural mental health clinics to make sure that they get the training to be able to provide those services in rural communities. There is no concern about driving 70, 90, or 100 miles. We have had conversations with the Division, and the money committees actually have prioritized funding for training for battered certification as a priority as they look over the biennium. The Committee on Domestic Violence is willing to help provide the training and figure out how to make sure the training happens. There is one clinic in Battle Mountain, which provides services to Winnemucca, that is currently certified and can provide a model. We are asking that this Committee direct the Division to report on progress at the next legislative session. This would make us feel more comfortable that progress is being made to reaching the real solution to this issue.

Chairman Anderson:
Domestic violence counseling has been a difficult one for us to deal with. I am of the opinion that somebody who is a batterer is required to get counseling, which may deal with his/her underlying problem with violence. The fact they have to do that on a regular basis, rather than the actual counseling, may be enough to recognize that they have a problem they need to deal with. If a student misbehaves in my classroom, they may do so because of outside factors, rather than what is happening in my class. There might be something happening at home or with another student at school, and this might create their opportunity to speak out.

In my opinion, I think people who are caught up in domestic violence see it as a learned behavior or think it's acceptable. By going to the counseling session, there is a value in that, and I remain committed to it. I am hopeful that with these compromises, we will be able to do our own study.

Assemblyman Carpenter:
Changing from 50 to 70 miles—which community does this affect?

Susan Meuschke:
Currently, it would affect the communities of Lovelock, Yerington, and potentially the community of Hawthorne, which is 72 miles away from the nearest counseling center.

Assemblyman Carpenter:
Where would the people in Lovelock go?

Susan Meuschke:
Lovelock is 62 miles away from Fallon.

Assemblyman Carpenter:
Where would the people in Yerington go?

Susan Meuschke:
They are 58 miles away from Fallon.

Chairman Anderson:
I think Yerington has two potential choices in the 70-mile range. Both Carson City and Fallon are potential sources for treatment. I believe Elko, White Pine, and Ely would go to Fallon.

Susan Meuschke:
There are certified counseling programs available in Battle Mountain and in Winnemucca.

Chairman Anderson:
It is 72 miles from Lovelock to Winnemucca?

Ron Titus, Director and State Court Administrator, Administrative Office of the Courts, Supreme Court of Nevada:
We support S.B. 77 and are in agreement with the proposals that Ms. Meuschke has made. We have been negotiating with her over the last week. Item 2 on the handout (Exhibit C) is a repeat of what Ms. Meuschke has said. We became interested in item 1, because in the amendment in the Senate Judiciary Committee—page 4, Section 1, subsection 8—they added some data collection requirements for the courts on a routine basis, and we realized that probably wouldn't get to what the Senate was after, and that was what the results would be of sending them to less-than-weekly counseling sessions. Some of that data would be hard to collect, primarily the subsequent charges or subsequent violations of battery, especially if it happened in different jurisdictions.

What we have proposed is a study that would be more of a longitudinal study sampling, with a controlled group of those individuals that had the regular sampling, as well as those that received the reduced-time sampling—the same number of hours, but attending the session every other week. We are also requested to look at teleconferencing, which is in S.B. 77.

We propose that we do a longitudinal study, taking the individuals from the filing of the domestic battery complaint with the court and following them through an 18-month period. We figure we should be able to get through the trial, sentencing, and probation time within the 18-month period. We would see how often they attended, what the impact was, and whether there were any repeat offenses. We are talking about a total of 3 years for repeat offenses, because after they finish their sentence and wait a year to see if there are any repeat offenses, we would track the individuals, and that would be easier if we had to deal with multiple jurisdictions. We would have to rely on the Criminal History Repository to identify whether they had committed other crimes. We think we could track these individuals to find out if they have additional charges. Then have a report for the committee by the 2009 Session.

What you have in paragraph 1 is a proposal to eliminate the monthly reporting in favor of a longitudinal study, and that study would also recommend what data elements should be collected on a routine monthly basis. We do have our annual

report. We do collect information on a routine basis, and if there is anything, in addition, that we currently collect, we would be able to include it at that point. It would also help us to verify the data that we are collecting in this area.

[Ron Titus, continued.] Paragraph 3 talks about reevaluating the requirements of S.B. 77 and S.B. 75 in the 2009 Legislative Session. The second page has more verbal description of what we contemplate; this isn't a full-blown study evaluation. We will look for grant funds to help us with this study. We will get some sampling assistance from UNR [University of Nevada, Reno] or UNLV [University of Nevada, Las Vegas]. We did some work to see what was out there, and we found a study in San Jose, California, but as Ms. Meuschke mentioned, it would be nice to know exactly what's happening here in Nevada. With a controlled group, we would be able to tell if there is any difference or against decreased number of sessions, and also look at videoconferencing.

Chairman Anderson:
Would there be an interim report to make sure where you are? I would like to see something two years from now. Are you proposing a sunset clause relative to the question that would be in front of us, so that the Legislature itself is forced to reexamine the question in 2009?

Ron Titus:
As far as an interim report, we could report what data we have at that point in time. It would not be final. It would take us 6 to 9 months to get a study up and going and identify the individuals. I have no problem letting you know where we are. As far as a sunset, I would leave that up to the Committee to determine if they want to actually sunset it or have something in there that says to reevaluate it.

Stephanie Liester, Co-Clinical Director, SafeNest, Las Vegas, Nevada:
[Submitted Exhibit E.] I have grave reservations about S.B. 77 as it's currently proposed, but I am in support of it with the proposed amendments.

Chairman Anderson:
Can you summarize the nature of your reservations? Some of us will not be here in 2009.

Stephanie Liester:
My main reservation rests with the ability to assess the lethality of a batterer if you go to a session once a month or less-than-weekly sessions. When we work with perpetrators of domestic violence, we do a lot of things to be able to assess lethality. We have them do a weekly abuse check-in to increase awareness about the different forms of abuse that they may use with their

partner or other people throughout the week. We have them write a self-report, whether or not they have separated from their partner, because we know lethality increases when there has been a separation. Oftentimes the men in the program will separate numerous times throughout the program, and that helps us on a timely basis to be able to assess their lethality.

[Stephanie Liester, continued.] The other thing that is really important in seeing perpetrators weekly or bi-weekly, as the proposed amendment states, is that we can determine whether or not they are preoccupied with their partner, are obsessed with their partner, whether they appear distraught, or whether or not they are having homicidal thoughts or expressing some suicidal thoughts. Just how central is the victim to their well-being and their sense of themselves and the world? The more obsessed or preoccupied they are with her, the higher the lethality rate. If you were to see a perpetrator only once a month, it would be difficult to determine whether they are together or not, whether they are having repeated thoughts of this person, and what type of abuse are they using throughout the week.

Chairman Anderson:
You recognize that maybe there is a need. Because of the nature of rural areas—in terms of distance, time, and availability in service—seeing somebody every other week would be better than not seeing them at all. The distance question is better, but finally, there would be an actual study done with Nevada facts, rather than relying upon a national study as the AOC is suggesting. This will help put the legislative mind of whether these programs are effective or not.

Stephanie Liester:
That is correct.

Cornelius Sheehan, Jr., Social Worker, Domestic Violence Treatment Provider, American Comprehensive Counseling Services, Sparks, Nevada:
I am in opposition to S.B. 77. The most valuable testimony that I could provide would be a treatment provider's perspective on what can happen in the course of a week. I would like to talk about two cases that occurred in my practice.

The scope of my practice is that I see approximately 110 to 120 domestic violence perpetrator clients per week. A client of mine missed a week. There were some issues where this client was wearing the program elements well and doing things in the community that looked favorable. You might have a good impression of this client and the relative safety of this client. I was disappointed to learn later that the client had re-offended. When I spoke with the client—because I also do domestic violence groups of people in custody at Washoe County Jail at Parr Boulevard in Reno—I learned from the client that it

was, in fact, that one week having missed that session. It was a week where he did not check in.

[Cornelius Sheehan, continued.] A check-in process is very critical in assessing lethality and assessing other dangers that the victim might face. He didn't have the opportunity to do that; it was regrettable for everybody and devastating for the victim. The injuries were severe, and the perpetration was severe. Were I to have an opportunity to intervene with this client that week, I feel there is a great likelihood that I would have been alerted to the danger that occurred. I believed waiting an extra week is not enough time for a check-in. I encourage clients, if they are having difficulty, to form peer networks or to call our office to let us know what is going on. That is the case of Client A.

Client B came in to group and described in his weekly check-in—what we call our "gut check"—some escalation that was occurring in his relationship with his wife. Client B felt criticized and felt misunderstood by his wife. This was resurrecting some very strong old emotional wounds for Client B, and he came to group actively seeking skills that he could not have waited a day longer for. He was actively seeking skills and methods for coping with the situation that he faced. Client B has proceeded on without any recidivism or reperpetration. I hope that paints a portrait of the situation that I face in clinical practice.

Chairman Anderson:
I have not been through counseling sessions, and the ones that I have observed in counseling are drug court counseling. Some of the observations that I was going to make are relevant to that. Generally speaking, people who are recidivists, repeat offenders, or who have drug and alcohol problems tend to have them for a long period of time before they begin to change their addictive personalities. It's not unusual in that particular counseling for someone to go three-quarters of the way through the year-long counseling program before there is a marked change in behavior. Of course, we require weekly testing and daily testing with people with addictive problems, whether those addictive problems are to medications or other kinds of drugs, including alcohol. Is there a similar difficulty in terms of changing behavior with batterers? Do they get some sense of positive feedback, of taking control? What is their frame of reference? What are they getting out of being a batterer, and what is it you are trying to break, other than a learned behavior?

Cornelius Sheehan:
Some of the scholars challenge the assumption that part of it is not a learned behavior. We know that some of this is learned behavior. Where it's similar to an alcohol and drug intervention is that we are trying to affect a behavior change for the perpetrator.

Chairman Anderson:
The time frame is that there is a constant monitoring and an objective outside criteria, which is the daily or weekly drug testing. Is there an outside objective test that you can utilize?

Cornelius Sheehan:
That is correct. The objective factors are ones that clinicians like me are trained to recognize with a client—like, perhaps, alcohol and drug counsel—to recognize some of those same objective factors. I am trained to recognize certain evidence that the person may not be coping well with relationship stresses or other stresses that might lead to a domestic violence situation. In the case where I am suspect of that, an interval administration might be something like a conflict tactics advocated by Strauss and colleagues, where both the perpetrator and the victim complete a conflict tactic scale and you get a more objective picture of what's happening in the relationship and how the couple handles conflict. Then you might exercise at that point a duty to warn or advise the victim that they may be in some kind of danger, based on conflict-handling skills.

I think one of the disadvantages of looking at this is that it's really hard to paint a picture of what goes on. I wish I could invite all of you to observe a group and see what the process is like. There are a lot of factors that the literature speaks about that aren't quite intangibles, but they are, and you develop a sensibility working with these people. The more often you see them, the greater the opportunity you are going to exercise the clinical judgment and expertise that you have developed on behalf of the safety of the victim, and that is a part that I can't emphasize enough. That is my role.

Chairman Anderson:
The longitudinal study suggested by Mr. Titus from the AOC over the four years, which would be about a three-year study, and bi-weekly counseling to facilitate the rural areas are not, in your opinion, the best way to go?

Cornelius Sheehan:
That is correct.

Chairman Anderson:
Would weekly counseling be best if it were available?

Cornelius Sheehan:
That is correct.

Chairman Anderson:
Would no counseling at all be acceptable?

Cornelius Sheehan:
I agree that no counseling at all is not acceptable. The question came up: "Is no counseling better than some counseling?" I think that some counseling has to be qualified, in regard to what "some counseling" is. There is some counseling that is detrimental. Again, there is some counseling that is pure relationship counseling. It doesn't involve a professional, but it is very beneficial. The literature shows that a client's motivation to achieve the change effect is the strongest predictors, ultimately, of change, and a sustainable change. I believe that fortifies my stance that if I am working with a client on a frequent basis, I am aware of what those change motivation factors are and what that client's circumstances are, one being that client has a weekly obligation to attend a group check-in.

Assemblyman Horne:
You mention about time frames on whether or not certain violations could have been prevented, had the client been able to be seen more often over a period of time. Is there anything set up with, for example, AA [Alcoholics Anonymous], where a client can call and say, "These stresses are happening in my life," even though they don't have a session scheduled for that week? If this bill were to pass, you would only see them bi-weekly, but certain things in the last session would give you cause to call them to see how things are going. Are you prohibited from doing that?

Cornelius Sheehan:
That does occur, and there is no prohibition against that.

Chairman Anderson:
Would you like to see this bill go away?

Cornelius Sheehan:
Yes. I would like to see the perpetrator be accountable and the victim to be safe.

Chairman Anderson:
I will close the hearing on S.B. 77.

We see the amendments in front of us, with the amendments we will go to our work session and S.B. 75. I believe there is another document to be distributed for S.B. 75 from the Network Against Domestic Violence, as well as letters from SafeNest and Ms. Liester (Exhibit E) and Ms. [Tamara] Utzig (Exhibit F) to the Committee, as part of their positions on this bill.

[Chairman Anderson, continued.] In Section 3 of the mockup that you are referring to from the AOC, the 70 miles and the minimum of bi-weekly counseling and the longitudinal study with the report to the 2009 Session, my only concern would be the interim report, so that it remains a flagged issue to the next legislative Body to anticipate what is coming forward, and that the questions relative to the distance and the "6-hour minimum of every other week" requirement be sunseted for the 2009 Session.

Assemblyman Carpenter:
I don't have any problem amending your suggestions into it.

Chairman Anderson:
That way, the 2009 Session will be forced to take up the issue.

Assemblywoman Gerhardt:
I want to be sure that we are including all of the amendments from the Network Against Domestic Violence, as well as the Office of the Courts.

Chairman Anderson:
It is my understanding that the amendments that were suggested by the Nevada Network Against Domestic Violence are included in the mockup document. Is that not included?

Assemblywoman Gerhardt:
It doesn't look like it is included.

Chairman Anderson:
You are correct. Is that more proper for S.B. 75 than it is for S.B. 77? Mr. Carpenter is adding an additional section that directs the Division of Mental Health to report to the Legislature on progress towards certifying rural mental health clinics to provide counseling for perpetrators of domestic violence, which was also one of the recommendations from the Network Against Domestic Violence. At the top of their second page of the document, I don't believe it does harm to the bill.

Assemblyman Carpenter:
I don't have any problem with that.

Chairman Anderson:
We should anticipate these discussions to take place in S.B. 75 when we take it to work session.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 77 WITH THE AMENDMENTS FROM THE ADMINISTRATIVE OFFICE OF THE COURTS AND FROM THE NEVADA NETWORK AGAINST DOMESTIC VIOLENCE:

- TO CHANGE THE DISTANCE RANGE FROM 50 TO 70 MILES
- THAT THE MINIMUM COUNSELING BE EVERY OTHER WEEK
- THAT THERE BE A SUGGESTION TO THE SUPREME COURT TO DO A FOUR-YEAR STUDY FOR A FINAL REPORT TO THE 2009 LEGISLATURE, WITH AN INTERIM REPORT TO THE 2007 LEGISLATURE
- THAT THE DIVISION OF MENTAL HEALTH REPORT TO THE LEGISLATURE ON PROGRESS TOWARD CERTIFYING RURAL AND MENTAL HEALTH CLINICS AND PROVIDING COUNSELING FOR PERPETRATORS OF DOMESTIC VIOLENCE. THOSE REPORTS WOULD BE EXPECTED IN THE 2007 AND 2009 LEGISLATIVE SESSIONS
- THAT THERE WOULD BE A SUNSET OF 2009 ON THE PROVISIONS OF BI-MONTHLY COUNSELING AND ON THE DISTANCE
- THAT THERE WOULD BE A SUNSET ON THE 2009 SECTION AND REPORTS BI-ANNUALLY TO EVERY SESSION AS PART OF THE JUDICIARY PROCESS SO THAT THE DOMESTIC VIOLENCE COUNSELING REMAINS A CONSTANT ISSUE IN FRONT OF THE BODY.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Angle and Ms. Buckley were not present for the vote.)

Chairman Anderson:
Judge Papez from White Pine County sent a letter of support for S.B. 77 (Exhibit B). A document from Kathleen Brooks (Exhibit G), Associate Director of SafeNest in Las Vegas, raised issues on S.B. 77, and the Committee on Domestic Violence (Exhibit E) raised concerns about S.B. 77.

Let's turn to our Work Session Document (Exhibit H). Let's deal with S.B. 75, since we have just finished the general topics of S.B. 77. In my conversation with Legal, we may have come up with a solution that may be helpful to everyone. We will clarify what we are going to do by combining the two bills into one so that we aren't redundant in what we have done in S.B. 77. Ms. Combs, could you tell us what our choices are in S.B. 75? Perhaps we will

move with a single bill. That would mean a reconsideration of the motion previously taken.

Senate Bill 75: Allows use of audiovisual technology under certain circumstances for counseling and evaluations required for certain offenses. (BDR 15-188)

Allison Combs, Committee Policy Analyst:
Turn to page 9 of the Work Session Document (Exhibit H). Senate Bill 75 would allow the counseling for domestic violence offenders to be conducted by closed circuit video if the person resides more than 50 miles from the nearest location. There were some amendments submitted yesterday (Exhibit H) that are similar to the ones being handed out right now on behalf of the Nevada Network Against Domestic Violence.

The amendments to this bill, which are similar to the ones discussed under S.B. 75, revise the mileage requirement from 50 miles to 70 miles and is the current proposal that was distributed here (Exhibit C), rather than the 90 miles in the Work Session Document (Exhibit H). The proposal is 70 miles, with clarification that it must be a certified counseling program.

The second two amendments (Exhibit H) would provide for the study that was mentioned in S.B. 75 through the AOC, as well as the reporting requirement from the Division of Mental Health concerning progress toward certifying rural mental health clinics.

Also considered from the amendments submitted yesterday, which isn't in the ones today, is the sunset provision that Chairman Anderson mentioned in S.B. 77. This would provide that the provisions sunset in four years. The suggestion would be, if the Committee were of a mind to do so, to combine these two bills so that the same studies and reporting requirements are not reflected in two different bills.

Senate Bill 75 also has the option to do counseling for drug and alcohol offenses, and there was no opposition to those provisions when the bill was originally presented. If the Committee wanted to move with these amendments, there would need to be a reconsideration vote on S.B. 77 to do so.

Chairman Anderson:
I was in such a hurry to get closure on S.B. 77 that I didn't realize my options were broader than I anticipated. Ms. Lang, would it make drafting easier if we

move with a single bill rather than with two bills? Could we move the concept that the counseling programs be certified, the 70-mile requirement, and the sunset provisions as suggested? Then we wouldn't have to take a motion on S.B. 75. We would move to reconsider our previous motion on S.B. 77.

Allison Combs:
You mentioned the 70 mile change to counseling, the study from the courts, and the reporting requirement from the Division of Mental Health.

Chairman Anderson:
Are there any concerns from the members of the Committee?

Assemblyman Carpenter:
In S.B. 75, it talks about the evaluation and that it could be done audiovisually. Are we going to leave that out so that they would have to go to a person to be evaluated, rather than a videoconference?

Chairman Anderson:
I think we still have the audiovisual component, but I'm not sure.

Allison Combs:
The proposal is to retain that option for the court if the person resides, as amended, 70 miles from the nearest location, so they could attend a certified program. That is the crux of S.B. 75.

Assemblyman Carpenter:
I thought we were talking about two different things. When a person is evaluated, the counselor comes up with a program. The evaluation to find out if the person needs counseling should be done face-to-face with a counselor. At that time, they can make a decision to use video counseling for the program they will be following.

Allison Combs:
The evaluation portion goes to the drug and alcohol offenses, and there weren't any amendments proposed on that.

Chairman Anderson:
Do you believe that we should amend S.B. 75 and let it stand with its problems concerning the counseling program, that the initial visit be done face-to-face and the video counseling after the initial assessment?

Allison Combs:
I might suggest, with regard to the domestic violence provisions of S.B. 75—which are contained in Section 1 and deal with counseling and mileage, but do not mention the initial evaluation—that it may be possible to move that one into S.B. 77 and keep the evaluation issue regarding the drug and alcohol offenses separate in S.B. 75.

Chairman Anderson:
I suggest that we put all the domestic violence issues and counseling issues into S.B. 77. In S.B. 75 we will deal with the evaluation and videoconferencing issue. Senate Bill 77 will move by itself. In S.B. 75, we have the initial counseling done face-to-face, and subsequent audiovisual counseling only being done where the initial evaluation indicated that there may be warranty for that by the judge. Then they have to come back to the judge and ask for that second option. The audio and visual only takes place in alcohol and drug counseling programs.

Karen Baggett, Deputy Director, Administrative Office of the Courts:
If you move the domestic violence counseling out of S.B. 75 and it goes to S.B. 77, then there would be no video counseling available for domestic violence in S.B. 77. Is that what you are saying?

Chairman Anderson:
That is pretty much what we are talking about. The video counseling program that would be available would be for the initial evaluation in the alcohol and drug program.

Assemblyman Carpenter:
I didn't think there was an initial evaluation for domestic violence; you just have to go to counseling. There is an evaluation for drug and alcohol when making a determination of what kind of program you need to follow.

Karen Baggett:
I am confused about whether or not domestic violence would be getting video counseling. Another issue is if they do get video counseling—I have been told that the people who certify the counselors would not certify for video counseling, but there may be some conversations coming up on certification for video counselors.

Chairman Anderson:
If I'm to understand Mr. Carpenter's concern, in alcohol and drug counseling, the first initial evaluation must be done one-on-one. Any subsequent event, if the judge and counselor agree, may be accomplished through videoconferencing

in alcohol and drug counseling. It does not include domestic violence, which I believe is going to be the initial counseling, and all subsequent counseling has to be one-on-one. That is the purpose of this study, which is in S.B. 77. The only changes in S.B. 77 are those counseling sessions that could possibly be biweekly, but they are still face-to-face counseling sessions. The question of video counseling for domestic violence is not an option that the judges have.

Karen Baggett:
Thank you for the clarification, Mr. Chairman.

Assemblyman Carpenter:
That was not my idea, because I thought when I made the motion on S.B. 77 that videoconference was an option if it's more than 70 miles.

Chairman Anderson:
You may be correct. I think the videoconferencing question is in S.B. 75. What I was suggesting was that we were going to move the material from S.B. 75 over to S.B. 77. You are correct, Mr. Carpenter. Videoconferencing for distances greater than 70 miles would still be an option. The initial counseling program must be done on a one-on-one basis.

Assemblyman Carpenter:
I don't have a problem with having that initial counseling on domestic violence. I just have a problem with the initial evaluation for drug and alcohol being videoconferenced under S.B. 75. I don't think that is proper; I think the initial consultation or evaluation should be face-to-face with drugs and alcohol.

Assemblyman Conklin:
It was my interpretation of S.B. 77 that we did not allow videoconferencing if it was more than 70 miles away. Instead of meeting once a week, they could meet once every other week for more hours because they have to drive to get to the location.

Assemblyman Horne:
That was the line I was speaking of, which Mr. Conklin just brought up. If we're making those amendments in S.B. 77, there is no need for the videoconferencing. I am uncomfortable with videoconferencing counseling, specifically for domestic violence.

Chairman Anderson:
There are at least four of us who are on the same page.

Allison Combs:
Senate Bill 75 and S.B. 77 amend the same statute on the domestic violence issue. Senate Bill 77 would allow bi-weekly counseling if you reside more than 70 miles from the nearest court. Senate Bill 75 would allow the counseling to be conducted via audiovisual technology. The question is, if the Committee wishes to—as a policy matter—go with the audiovisual counseling, would you like to put them into the same bill, since the study is proposed on both bills of these new provisions, rather than putting the study in two bills? It is a policy choice whether you want to allow the audiovisual counseling option.

Chairman Anderson:
We could let S.B. 77 stand as it is and move with S.B. 75 separately. Does Mr. Carpenter want video counseling to be available in domestic violence cases or not?

Assemblyman Carpenter:
Yes.

Chairman Anderson:
I think the Committee is of the opinion that—at least several members of the Committee—by moving to bi-weekly, in person counseling for over 70 miles in distance, rather than the weekly counseling, we alleviate some of those issues in domestic violence. We are trying to give the judges the option in S.B. 75, after the initial screening a person resides more than 70 miles from the nearest location of a certified counselor, allow audiovisual counseling. Your suggestion was after initial screening and determination by the court.

I was under the impression that we were really dealing with the juvenile DUI [driving under the influence] and drug questions rather than the domestic violence question, which I thought we had resolved in S.B. 77. We also want the court to do a study on the effectiveness of video counseling, in addition to the one we have already asked them to do on domestic violence.

Assemblyman Carpenter:
If you look at S.B. 75 on page 4, lines 24 through 28, it provides that an evaluation may be conducted through the use of audiovisual technology. I believe that the evaluation should not be conducted through audiovisual technology; it should be conducted by a face-to-face meeting.

Chairman Anderson:
So, you would remove from S.B. 75 the provision of the initial evaluation: "The evaluation of a child may be conducted, if the child resides more than"—and now we say—"70 miles from the nearest location at which an evaluation may

be conducted, the juvenile court may allow …" Maybe there wouldn't be a need for S.B. 75 at all.

Assemblyman Carpenter:
There is a need if we change the mileage, which has been recommended, from 50 to 70 miles, and then the court may allow a person to participate in counseling. The counseling would be after the evaluation, through the use of audiovisual technology.

Chairman Anderson:
Are there observations from members of the Committee? Mr. Carpenter is suggesting that, in S.B. 75, the bulk of the issue has been moved to S.B. 77, where we have already handled the question of domestic violence. Mr. Carpenter's concern is that the initial evaluation should be done face-to-face. After that, the court would have the flexibility to provide for participation through audiovisual technology, provided that the program is a certified counseling program.

Finally, the Administrative Office of the Courts would be asked to report to the next session of the Legislature, and each subsequent session of the Legislature, the effectiveness of this audiovisual program. We want to know how many people participated in it and what the evaluation of the court was. We would put a sunset on the availability of an audiovisual program that would expire in 2009.

Assemblyman Horne:
Page 4 of S.B. 75, referenced by Mr. Carpenter, deals with juveniles and audiovisual. Page 3 deals with the domestic violence portion and the audiovisual part. If we are going to move S.B. 75, would we be deleting that because we were addressing that issue in S.B. 77?

Chairman Anderson:
Correct. Mr. Carpenter, do you want to leave the audiovisual counseling available to domestic violence perpetrators after the initial evaluation if the judge is so determined?

Assemblyman Carpenter:
Yes. It is okay if you want to do the initial evaluation of cases involving domestic violence in person, and then afterwards have the opportunity to use videoconferencing.

Chairman Anderson:
I would be more comfortable if we didn't do it in the domestic violence issue. If we are going to expect the study in S.B. 77 to be legitimate about the distance and every other week questions, as well as the ongoing question about whether domestic violence counseling is effective—we heard from some of the counseling groups that having no counseling was equal to audiovisual counseling—then we would be hurting the study's legitimacy by giving more ways out than ways in.

Assemblyman Mabey:
I would like to see the audiovisual parts remain. I think it will be interesting to see what the study finds so we can learn from that experience. I would agree with Mr. Carpenter that if we evaluate them on the first visit, whether it was a child or the offender child, and then after that, if they could go for audiovisual counseling, I would support that.

Chairman Anderson:
Dr. Mabey, if I understand this, we are going to have a weekly counseling controlled group and a group that has bi-weekly counseling with more hours. We also have the initial evaluation by a counselor and the recommendation to put him into an audiovisual program. Have we not increased the variable by one and decreased the overall pool by a substantial number, in terms of the validity of the study?

Assemblyman Mabey:
I am not a statistician and don't feel comfortable saying yes or no. I would guess that even though we increased the variable, it would be okay.

Chairman Anderson:
I'm not a statistician either, but I don't like a lot of variables in my controlled experiments.

Assemblywoman Gerhardt:
I am uncomfortable with experimenting with people's lives. In the testimony we heard, the counselors are not comfortable with this videoconferencing idea. We didn't really hear any testimony that it's effective, and it hasn't been proven. We only heard the opposite, that there was a lot of concern about whether this was going to be effective. If we are already taking the step of doing counseling every other week, adding videoconferencing on top of that worries me.

Chairman Anderson:
The testimony from the doctors did not exactly ring true. Initially, on S.B. 75, because I recently read a Department of Justice publication about a study they

had done on the effectiveness of counseling programs in family domestic battery cases, I was concerned about the validity of the study I was reading.

[Chairman Anderson, continued.] One of the things I felt was positive about S.B. 77 was that we were going to have some Nevada statistical data. Domestic violence counseling has not had a long track record to do a good study, and that is the reason why a four-year study, instead of a two-year study, was going to be in there. I still have some reservations, and that is the reason I was happy to see that a future Body was going to have to deal with it again.

Assemblywoman Gerhardt:
I don't have a problem with taking this step and gathering statistics on doing counseling every other week, but I heard a lot of opposition to the videoconferencing and I'm not comfortable with that component.

Chairman Anderson:
What do you want to do with S.B. 75? The problem with S.B. 75 and the reason that we need it is that if, following the initial evaluation by the judge and the counseling program for these young juvenile offenders, we feel that they will get better service through the videoconferencing modality, in DUI and drug abuse questions, we should make this available to them.

Youthful offenders have a different set of travel problems than those with drug and alcohol issues. It seems to me that the DUI representatives, Mothers Against Drunk Drivers, were accepting of the provisions in S.B. 75 if it would mean that they would raise the level of awareness in the courts. We would expect the Administrative Office of the Courts to track, in a separate study, whether the audiovisual was an option for the rural judges in a distance over 70 miles, provided that the certified counseling program is also in place.

Assemblyman Horne:
I am voting no if there is videoconferencing for domestic violence in either bill. It seems like that is what I am hearing from some others, that the videoconferencing is a problem with the domestic violence portion.

Chairman Anderson:
How many of you think that we should be doing videoconferencing at all? I count seven of you. How many of you don't believe that we should be doing videoconferencing, in terms of counseling programs, period? I count four of you. How many of you believe that you should do videoconferencing as an option for the judges in juvenile drug cases after the initial evaluation only? How many of you believe that audiovisual should not be available for juveniles after initial

counseling only? In other words, it shouldn't be an option available to them? How many of you believe that audiovisual counseling should not be available after initial screening in domestic violence cases? The domestic violence question is not even in front of us.

[Chairman Anderson, continued.] Let's go back and only deal with the question of alcohol, because that's the only question we have to deal with. It also includes adults. We are no longer discussing the question about domestic violence issues.

> ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS SENATE BILL 75 TO ALLOW VIDEOCONFERENCING AFTER THE FIRST EVALUATION ON DRUG AND ALCOHOL OFFENDERS WHO ARE 70 MILES FROM A CERTIFIED COUNSELOR, WITH A SUNSET IN 2009.
>
> ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.

Chairman Anderson:
I haven't accepted the motion yet. I want to make sure that we understand what the initial evaluation entails. Ms. Combs has some observations that we need to get into the record.

Allison Combs:
The bill goes to the evaluations of whether a person abuses alcohol or drugs for juveniles and adults. My understanding of what the Committee is looking to do is—assuming that these evaluations take place over more than just one day, and I don't know how accurate that assumption is—require that the first day be a face-to-face evaluation. The bill does not go to any subsequent counseling on these alcohol and drug issues. It's just talking about whether someone is abusing alcohol or drugs. That's what the bill is addressing now.

Assemblywoman Gerhardt:
I think we are talking about people who have been convicted of these charges, so we already know there is a problem. The initial assessment is not to determine whether they do or do not have a problem; it is to determine what type of counseling they are going to receive. Should it be intensive counseling where they have to be seen every week, regardless of what this bill says, or is it appropriate for them to receive videoconferencing? That is how I see this assessment, if I were to support this amendment.

Risa Lang, Committee Counsel:
The provisions of this bill are only addressing the initial evaluation. It just talks to the offender who resides more than a certain distance from an evaluation center, that the evaluation could be conducted through audiovisual technology. It doesn't address the ongoing issue of counseling; it's just in the sections that deal with that evaluation.

Chairman Anderson:
With this amendment there may be no need for the bill, other than to clarify the fact that there still needs to be a one-on-one. After that, if there is a counseling program that is certified, you would be able to utilize it for drug and alcohol counseling if the judge felt that you fit into that category, and that's only if you reside 70 miles away from a counseling program. The discretion that we are giving the judges is that they can put someone into a distance counseling program in drug and alcohol. Right?

Risa Lang:
I think this bill currently is only addressing that evaluation. If the Committee is not in favor of the evaluation being conducted through the audiovisual technology, I am not sure that the other issues are addressed here.

Chairman Anderson:
Do we need S.B. 75?

Assemblyman Conklin:
I will remove my motion on S.B. 75.

Chairman Anderson:
Ms. Combs, I wouldn't throw away your papers on S.B. 75, because I have seen things reappear before.

Let's move to S.B. 27.

Senate Bill 27 (1st Reprint): **Revises provisions governing selection of alternate jurors in criminal and civil trials. (BDR 14-851)**

Allison Combs, Committee Policy Analyst:
Senate Bill 27 was heard on March 24. It deals with alternate jurors in civil and criminal cases. It proposes to increase the number of alternate jurors that could be called from four to six in a criminal case and provides for three preemptory challenges if there are five or six alternates impaneled.

[Allison Combs, continued.] There are other provisions in the bill that authorize civil and criminal courts to designate alternate jurors, either during jury selection—based on the order in which they are called—or before the jury retires. If the court chooses to designate the alternates through random selection in open court, the court does not make any distinction as to which jurors are designated as alternates.

The testimony on the bill was that some judges are using this now through attorney stipulations. There were concerns raised by the Nevada Trial Lawyers Association about taking away the attorney's discretion. Subsequent to the hearing, the sponsor of the bill, Senator Wiener, met with the parties involved and has proposed an amendment to the bill that essentially deletes much of the bill. There is a mockup that is provided (Exhibit H). The only thing that would remain in the bill would be to increase the possible number of alternate jurors and the number of preemptory challenges. The remainder of the bill would be deleted.

Chairman Anderson:
The suggestion is to amend and do pass with the amendments as suggested in the mockup, which almost deletes the bill in its entirety and leaves the provision from four to six jurors in addition to regular jurors, and the preemptory challenge is available.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 27, WITH THE MOCKUP PROVIDED BY THE LEGISLATIVE COUNSEL BUREAU.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mrs. Angle was not present for the vote.)

Chairman Anderson:
Let's turn our attention to S.B. 209.

Senate Bill 209 (1st Reprint): **Provides that unclaimed capital credit of certain nonprofit cooperative corporations is not subject to provisions of Uniform Disposition of Unclaimed Property Act under certain circumstances. (BDR 7-839)**

Allison Combs, Committee Policy Analyst:
Senate Bill 209 is a bill that relates to nonprofit electric cooperatives. It would exempt from distribution the capital credit back to the State if that capital credit remains unclaimed. There was testimony in favor of the measure from the rural electric cooperatives. Included behind the tab is one of the exhibits from the meeting as a reference on the issue (Exhibit H). It was noted in the testimony that 26 states are doing this now and that Nevada statute may now be unclear, according to the testimony. There were no proposed amendments during the hearing.

Chairman Anderson:
I was a little confused at first about S.B. 209 in trying to understand the cooperative nature of this kind of corporation. It was clearly demonstrated that this was a needed element in the rural electrical questions. There was a need to clarify the intent of state law.

Assemblyman Carpenter:
I'd be prepared to make a motion if you would accept one. I think we need to understand that the unclaimed credits that are not at the present time going to the State are being used for various projects within the community. They donate the money to charitable causes, or they use the money to enable people to winterize their homes.

Assemblyman Horne:
What precedent would we be setting in this particular incident? These properties usually escheat back to the State. We are now setting this group in front of the State in order of priority. Who will come next to say, "We want to keep it," instead of having it escheat back to the State? That's basically what they are asking to do. Somebody put money into this co-op and left, and they can't find them to claim it; instead of giving it to the State, they want to keep it.

Chairman Anderson:
The dollars that come from it are to be utilized for philanthropic purposes or for the betterment of those people who are within the cooperative.

Assemblyman Horne:
The testimony was not necessarily that it was used exclusively for those benefits; it can also be put back in the cooperative itself.

Chairman Anderson:
I am not sure they can put the money back into reinvestment. I think they offered it in the Santa Claus project and educational programs.

Assemblyman Carpenter:
I believe this is a different situation. Let's say someone dies and leaves some stock, and you don't find it. That stock goes to the State. I believe these capital credits are when there is a profit made by the corporation, and then they use that money to retire debt and things like that. After a number of years, the directors decide that the profit they haven't used needs to go back to the customers. They then try to find those customers and actually give them a check for the amount that they should receive, depending on the amount of electricity that they have used.

If they can't find them, they put these capital credits into a fund, and the board decides where this money should go. They have a number of requests from the community, such as ongoing scholarships. They also have requests from the community for someone who wants to have money given to them for a specific purpose, and they decide where it should go. They also set aside a certain amount of this money to help people winterize their homes.

It's a little different than most of these situations that go back to the State, like stocks, bonds, or even sometimes cash in a safety deposit box.

Assemblyman Holcomb:
I like the concept that the money originated in the community; it should stay in the community in this particular situation.

Chairman Anderson:
I think Mr. Horne's argument is relative to what would happen to, for example, a credit union—which might be a smaller lending institution—that has a limited number of customers who have to meet a specific criterion in order to belong to the credit union. If there are funds left untapped in those accounts, because people have left the area, those dollars have to be returned to the Unclaimed Property Fund.

Why would this not set a precedent for not withstanding the worthiness of the electrical rule for these other groups who may like to utilize the money to bolster their scholarship programs or other charitable groups—things that the credit union board of directors may choose to address with the dollars that are left in credit union accounts?

That, I think, is what Mr. Horne's concern is. That's the only one that comes to mind. There may be other corporate structures that have a similar limited question about the Unclaimed Property Fund. The State Treasurer's Office had no problem with this particular bill.

Are there any other concerns for the members of the Committee?

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS SENATE BILL 209.
>
> ASSEMBLYMAN MABEY SECONDED THE MOTION.

Assemblywoman Buckley:
I am a little concerned about Assemblyman Horne's point, because even though it might make sense to let the money stay in the community where it originated, that would completely destroy this program. Right now, we are thinking of using it to fund the Millennium Scholarship and State programs. Most of it goes to Clark County. We would be taking it away from the State programs to give it back to the county. It's a small thing in the big scheme of things, and I am wondering if co-ops are different, which might justify it more.

The co-op structure is more like a nonprofit structure in which you are returning it to that company, as opposed to me forgetting my stocks are there, and because I live in Las Vegas, they go back to Las Vegas. The co-op is a form of ownership where it's formed for a nonprofit purpose, and if one of the members is going to escheat their property, it goes back to further the mission of the nonprofit. As long as it's a justifiable legal expenditure from the co-op, it might justify doing this. I think co-ops might be a little different.

Chairman Anderson:
I was willing to take the motion because I believe a co-op does fall into an unusual circumstance, and I think another group would have to provide their information in front of the Committee to be considered. I don't disagree with Mr. Horne's analysis; however, it does set the edge more plainly for other groups to come forward.

Assemblywoman Gerhardt:
I had in my notes that they actually sign a contract when they sign up with this co-op. As I understood it, they knew that was what happened to funds, and they agreed to that. I guess this was just a further step to ensure, but it sounds like the people who sign up know that this could be the case.

Chairman Anderson:
That was part of the original testimony. I think it's an intricate part of the reason why it may be a more acceptable question in this case, and then future cases would have to prove a similar line.

Assemblyman Horne:
I remember asking that question too. If they have it in their contract, then why do we need it in statute? It's an enforceable contract; it's not illegal, so why would we need it in statute?

Chairman Anderson:
I believe they felt it would raise their comfort level and, more importantly, the comfort level of the State Treasurer, who feels more obligated to follow State statute.

THE MOTION CARRIED, WITH ASSEMBLYMAN HORNE VOTING NO. (Mrs. Angle was not present for the vote.)

Chairman Anderson:
Let's look at S.B. 382.

Senate Bill 382 (2nd Reprint): **Makes various changes relating to property. (BDR 13-727)**

Assemblyman Horne:
Could we get to the number of years we were considering?

Chairman Anderson:
How many of you feel that 1,000 is an acceptable number? How many of you feel that it should be a lesser amount of time? How many of you think it should be a greater amount of time?

Mr. Carpenter, do you want to take it from 90 to 250 years, or do you really want to go to 500?

Assemblyman Carpenter:
As far as I'm concerned, Mr. Chairman, I won't be here anyway.

Chairman Anderson:
How many of you feel that the current time of 90 years should remain in law?

Assemblywoman Ohrenschall:
In the discussion (Exhibit H), it says, "With regard to the rule against perpetuities, it was noted that at least 17 other states have abolished the rule,"

but we have it in our *Constitution*. Does that influence how we have to look at this bill or any of the others? We have it in our *Constitution*, and it hasn't been abolished.

Chairman Anderson:
I believe the voters had an opportunity to do away with that constitutionally and rejected that argument. We can all argue whether they understood the rule of perpetuity, which we all understand. The question of the rule of perpetuity and the 1,000-year lifespan is always an interesting discussion. Are we overriding the will of the people by moving to a date beyond 250 years?

John Sande III, Legislative Advocate, representing Nevada Bankers Association:
The rule against perpetuity is very confusing. Currently, we have 90 years, which you could argue violates the rule against perpetuities, because it's a set amount. If you gave a gift 90 years from now, you couldn't be assured that lives and being plus 21 years would be applicable; that is the rule against perpetuity. I would say that if you don't want to go to 1,000 years, because of the testimony indicating how beneficial it is. Maybe you reduce that to 500 years and go from there. At least it would help from a trust standpoint for the State of Nevada and make some kind of a compromise that you feel more comfortable with.

Chairman Anderson:
We wouldn't want future legislative bodies not to have to deal with the rule of perpetuity. I hesitate to tie the hands of future legislative bodies by pulling an arbitrary number out of the sky.

Assemblywoman Ohrenschall:
I thought the 90 years that is in at the moment was justified. Logically, if you took an actuarial median of life or lives in being plus the 21 years, given lifespans today, it would come to about 90. We are kind of following the rule.

John Sande III:
In my opinion, putting in 90 years violates a strict interpretation, arguably. When it went to the people for a vote, the problem was that it was lobbied by a lot of lawyers that wanted this to be in the statutes. I helped to get it to go to a vote of the people. Like Question 8 last time, it took away the used car trade-in credit. People didn't understand it. It's clear that they didn't understand the rule against perpetuities, or they would have gotten rid of it. I would suggest that you consider, if you don't feel comfortable with 100 years, going with at least double the 90 years, so that estate planners can go to their clients and say, "This is going to be beneficial for you if you want to set up a dynasty-type trust."

Assemblyman Horne:
I would suggest 200 years.

Assemblyman Oceguera:
The rule against perpetuities is there for a reason, but I think Ms. Ohrenschall is right. I think if you stayed within the next generation, you could argue that you weren't. I think you would have a constitutional problem if you went out too much further, that we've eliminated the rule against perpetuities in statute. I think 150 years is okay, because that's two generations.

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 382 TO CHANGE THE RULE FROM 1,000 YEARS TO 150 YEARS.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION CARRIED, WITH ASSEMBLYMAN ANDERSON AND ASSEMBLYMAN HOLCOMB VOTING NO. (Mrs. Angle, Ms. Buckley, and Mr. Mortenson were not present for the vote.)

Assemblywoman Ohrenschall:
I understand the purpose, but it should be done by a vote of the people to change the rule against perpetuities.

Chairman Anderson:
The meeting is adjourned [at 11:05 a.m].

RESPECTFULLY SUBMITTED:

____
Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

____
Linda Ronnow
Transcribing Attaché

APPROVED BY:

____
Assemblyman Bernie Anderson, Chairman

DATE:______________________________________

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 4, 2005 **Time of Meeting: 8:18 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda (1 page)
S.B. 77	B	Senator McGinness	Letter from Judge Dan L. Papez
S.B. 77	C	Ron Titus / Administrative Office of the Courts	Amendment (6 pages)
S.B. 75	D	Susan Meuschke / Nevada Network Against Domestic Violence	Amendment (2 pages)
S.B. 77	E	Stephanie Liester / SafeNest	Letter wanting to change wording of weekly counsel sessions (1 page)
S.B. 77	F	Tamara Utzig / SafeNest	Letter discussing being an advocate for victims of domestic violence (1 page)
S.B. 77	G	Kathleen Brooks / Committee on Domestic Violence	Letter from Rebecca Thomas in opposition to S.B. 77 (2 pages)
S.B. 27 S.B. 75 S.B. 119 S.B. 209 S.B. 272 S.B. 331 S.B. 347 S.B. 382	H	Allison Combs / Legislative Counsel Bureau	Work Session Document (32 pages)