MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
March 1, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:04 a.m. on Tuesday, March 1, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Ellen West, Committee Secretary

OTHERS PRESENT:

Michael R. Griffin, Department 1, First Judicial District
Arthur Mallory, District Attorney, Churchill County
Laurel Stadler, Chapter Director, Mothers Against Drunk Driving
Karen Baggett, Deputy Director, Administration, Office of Court Administrator, Nevada Supreme Court

Jone M. Bosworth, J.D., Administrator, Division of Child and Family Services, Department of Human Resources
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Roberta (Bobbie) Gang, Nevada Women's Lobby; National Association of Social Workers, Nevada Chapter
Sarah Stadler, Youth Coordinator, Mothers Against Drunk Driving
Robert W. McLellan, Deputy Administrator, Division of Child and Family Services, Department of Human Resources

Chair Amodei called the meeting to order at 8:04 a.m.

Senator Mike McGinness, Central Nevada Senatorial District, addressed Senate Bill (S.B.) 75.

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

Senator McGinness said he chaired the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders committee. He read from his written remarks (Exhibit C), which concluded with the Governor's appropriation of $8 million to assist White Pine County in the construction of a new court facility. On behalf of the interim study, Senator McGinness remarked, S.B. 75 allowed the use of audiovisual technology under certain circumstances for counseling and evaluations required for certain offenses. The Committee recommended provision of further relief to those citizens residing in rural Nevada who have difficulty complying with counseling requirements. The Committee recommended a bill draft request (BDR) expressly allowing counseling and evaluation requirements in *Nevada Revised Statutes* (NRS) 200.485, 62E.620 and 484.37943 to be conducted through the use of videoconferencing for offenders where services are unavailable within 50 miles of their residences. Various judges testified that counseling was not available. Senate Bill 75, page 2, line 32, said for the first offense within 7 years, an offender would be required "to participate in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 6 months, but not more than 12 months,

at his expense, in a program for the treatment of persons who commit domestic violence ... ." The weekly trip could involve a three- to four-hour commute, one way, he stated. Senator McGinness referred to line 1 of page 3 of S.B. 75, and quoted:

> If the person resides more than 50 miles from the nearest location at which counseling services are available, the court may allow the person to participate in counseling through the use of audiovisual technology.

With regard to juvenile offenders, Senator McGinness referred to page 4, line 25 of (S.B. 75):

> If the child resides more than 50 miles from the nearest location at which an evaluation may be conducted, the juvenile court may allow the evaluation to be conducted through the use of audiovisual technology.

He concluded the changes S.B. 75 provided gave some discretion to the courts.

Senator McGinness continued, saying S.B. 76 addressed the travel difficulties for evaluation of juvenile offenders who reside in rural areas.

SENATE BILL 76: Revises provisions pertaining to evaluations of juveniles who commit certain unlawful acts involving alcohol or controlled substances. (BDR 5-186)

Regarding S.B. 76, Senator McGinness said the Committee had heard testimony from Judge Dan L. Papez of the Seventh Judicial District and others that indicated all juveniles who violated Nevada Statutes pertaining to driving under the influence (DUI), controlled substances and alcohol must undergo an evaluation to determine if they abused alcohol or drugs. Qualified individuals to conduct such evaluations were often not available in rural locations, Senator McGinness said. Consequently, the juvenile had to travel long distances for evaluation, and it was a costly burden to many local jurisdictions and/or parents, he explained. The interim study committee had also recommended a BDR that would amend NRS 62E.620, allowing judges discretion in ordering a delinquent child to undergo an evaluation to determine if the child abused alcohol or drugs.

Such discretion would apply only to first-time offenses and instances when the child committed the unlawful act of using, possessing, selling or distributing controlled substances, or the unlawful act of purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020. He summarized, S.B. 76 would only give the court discretion for first-time offenders for an evaluation. Continuing in the vein of accommodating travel requirements for offenders, Senator McGinness noted S.B. 77 would adjust the counseling time frames for those convicted of domestic battery.

SENATE BILL 77: Revises provisions pertaining to counseling required for person convicted of battery which constitutes domestic violence. (BDR 15-185)

Judge Papez, who resides in White Pine County, and others, informed the subcommittee of difficulties many rural residents faced to comply with the counseling requirements of NRS 200.485. The statute mandated that 1 1/2 hours of counseling per week be completed for between 6 and 12 months for first offenses and 12 months for a second offense. Counseling was often not available in rural locations and people convicted of domestic violence were forced to travel great distances to comply with the law. Senator McGinness stated the subcommittee had recommended a BDR amending NRS 200.485, revising the time frame for compliance with required counseling from 1 1/2 hours per week to 6 hours per month for those persons convicted of battery constituting domestic violence. He concluded S.B. 77 gave the court discretion and intended to lessen the travel time, making it more flexible for the judges and the offenders.

Senator McGinness spoke about S.B. 86, stating many jurisdictions did not have counseling and evaluation services available locally.

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 McGinness said the subcommittee reviewed the possibility of allowing people living in border towns to meet their obligations with certified or licensed

professionals in a neighboring state and the subcommittee recommended a BDR requesting counseling and evaluation requirements in NRS 200.485, 62E.620 and 484.37943 be allowed to be satisfied in towns or cities of neighboring states if those towns or cities were closer to the residence of the offender. Senate Bill 86 facilitated this goal, he said. He addressed the evaluation qualification criteria, stating the prospective counselor would have to hold an appropriate license, certificate or credential issued by a regulatory agency in another state and be in good standing with that agency, thus essentially possessing qualifications substantially similar to the qualifications required by The State of Nevada. Senator McGinness read, for the record, e-mail letters supporting S.B. 75, S.B. 76, S.B. 77 and S.B. 86 from District Judges Dan L. Papez, Department 2 (Exhibit D), and Steven Dobresco, Department 1 (Exhibit E), of the Seventh Judicial District in eastern Nevada. Senator McGinness also submitted an e-mail letter from Battle Mountain Justice of the Peace Max W. Bunch of Lander County (Exhibit F).

In Exhibit D, Judge Papez remarked the bills addressed many issues unique to rural Nevadans and provided alternatives for counseling that met the mandates of the law. In his letter, Exhibit E, Judge Dobresco wrote there was a scarcity of counselors in rural areas and great distances between population areas which prohibited many offenders from getting services. The bills would give rural judges needed flexibility in addressing the problems of obtaining the mandated evaluations and counseling.

Senator McGinness said he understood there were some concerns these bills were taking a step backward in counseling and realized it was best to have face-to-face counseling, but it was not always possible in rural Nevada. He stated videoconferencing was a step in the right direction to get counseling to those who would otherwise be unable to obtain it. He added it only authorized judges to use videoconferencing if they thought it was best for the situation.

Senator Wiener asked Senator McGinness how many communities would not be able to use the videoconferencing, if it was available. He replied there would be several communities that would be inconvenienced, but other facilities such as

the university system and the Nevada Department of Transportation could help. He admitted videoconferencing was not the perfect answer, but it was a half-way step toward a solution. Senator Wiener asked if a minimum number of people would be required for a group setting in the evenings, since evenings would be preferable for those who worked, and how the courts would facilitate that scenario.

Senator McGinness said group size varied on any given night and although it was not the best way to handle counseling, it was better than the alternative. Senator Wiener asked him if there was a need to get a midpoint evaluation from the judges to evaluate if this was the right solution. Senator McGinness responded the judges would be the best evaluators of the system, and this alternative was only an authorization they could use.

Senator Horsford asked if, through the Interim Committee, there were other recommendations brought to the other committees such as the Senate Committee on Human Resources and Education dealing with general issues on health care needs. He stated there were few providers in some of the rural areas, and asked if there were any recommendations for the long term. Senator McGinness answered in the affirmative. Citing S.B. 75, he indicated they were trying to improve availability of legal services through externships from the Boyd School of Law at the University of Nevada, Las Vegas. He continued, stating he did not think there was anything on health care yet, but they encouraged the inclusion of a position to coordinate the needs of rural courts, and it had been included in their budget. Someone from Reno was trying to organize social services so they could get counselors into the rural areas on a rotating basis, Senator McGinness said. There was difficulty with scheduling, since the clients were not regular, so enthusiasm waned. Justice of the Peace Harold G. Albright of Department 4, Washoe County, talked about trying to organize some health care.

Senator Horsford inquired about the language in S.B. 77, section 1, subsection 2, paragraph (a), regarding the first offense. He asked if it would be permissible to have one session for six hours, or if it was at the discretion of the counselor to determine the schedule. Senator McGinness stated this would be at the judge’s discretion, depending on the circumstances.

Michael R. Griffin, Department 1, First Judicial District, testified he was on the Commission on Rural Courts established by the Nevada Supreme Court to look at the needs of rural Nevada for injustice and that became the advisory committee to the Legislative Commission's joint committee to study rural Nevada justice. A common issue reflected through these bills was a lack of counselors in rural Nevada, so the requirements for counseling were unenforceable. These bills established a mechanism to get counseling into rural areas, where it could be enforced, he explained. He expressed his frustration stating, if you don't have the counselors, you can't enforce the counseling mandate. He admitted videoconferencing was imperfect, but the best solution available now. Judge Griffin expressed the need for flexibility to comply with the law mandating counseling, and believed this was the best alternative. He said you can not make people do the impossible if they do not have any money. He explained they were trying to coordinate efforts in rural Nevada. We are trying to get a position in the rural areas, he said. No grants had been written, because there were no staff members. He expressed thanks to the Legislature for the juvenile facility in Silver Springs where the counseling was significant and successful, and a staff psychologist was available there for the community.

Senator Care asked what the courts' standards on an offender's finances would be to determine whether a person would be allowed to videoconference as opposed to driving to see a counselor. Judge Griffin replied that 80 percent of people seen in court daily were indigent, the standard being not having enough money to pay their bills and needing public assistance to hire an attorney and that standard could be applied. Senator Care said he regarded counseling as being constructive rather that punitive, but he thought driving a great distance, at great inconvenience, would make an impression on the offender of the significance of the counseling. He said he had his doubts that, in the long run, counseling was all that effective and he did not want offenders to think they were getting out of the inconvenience by going to videoconferenced sessions. Judge Griffin confirmed there was always a risk of people not taking the orders seriously, but, he emphasized, a jail sentence was a good deterrent for improving enthusiasm for counseling.

Arthur Mallory, District Attorney, Churchill County, testified he felt it was time to do something about domestic violence. He pointed out the inequity in justice of requiring a person to drive for several hours to obtain counseling in rural Nevada versus driving a few miles for people living in urban areas. He said some prosecutors and judges in rural areas were reluctant to go forward with a case

because of the collateral effects of requiring extensive counseling. In order to remove that reluctance by offering solutions such as videoconferencing, he asked the Committee to adopt Senator McGinness's bills.

Laurel Stadler, Chapter Director, Mothers Against Drunk Driving (MADD), Lyon County, stated she supported S.B. 75. The Lyon County MADD Chapter supported new technologies that facilitated alcohol and drug evaluations. The group helped service the rural areas on a volunteer basis and understood the challenges of the geography of rural Nevada. Ms. Stadler said MADD supported videoconferencing, but not audio conferencing for counseling, since the evaluator needed to see the body language and not just hear a voice. Senator Wiener validated her concern regarding audio conferencing, citing that words provided only 7 percent of communication, the voice 38 percent and unspoken, nonverbal body language represented 55 percent. Senator McGinness agreed with Ms. Stadler; the language needed to clarify only videoconferencing, and not audio conferencing, would be acceptable.

Karen Baggett, Deputy Director, Administration, Office of Court Administrator, Nevada Supreme Court, was asked to testify next by Chair Amodei. She stated the Judicial Council of the State of Nevada commissioned the Commission on Rural Courts, which met for over two years to bring these issues together. The four bills under discussion represented the wishes of the district attorneys and judges who attended the meetings. Ms. Baggett said the Judicial Council supported the positions of Senator McGinness, Judge Griffin and Mr. Mallory regarding S.B. 75. Senator Horsford asked if the perpetrators or victims of domestic violence gave any testimony regarding the bills. Ms. Baggett replied in the negative.

Jone M. Bosworth, J.D., Administrator, Division of Child and Family Services, Department of Human Resources, read from her written remarks (Exhibit G), and summarized her division's experience using videoconferencing at three juvenile facilities and two parole offices. She said it mitigated the challenges of Nevada's geography.

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence (NNADV), a statewide coalition of domestic violence programs in the State of Nevada, said she was opposed to S.B. 75. She read from her written remarks (Exhibit H), citing an attached list of certified programs in the State of Nevada, along with a map indicating the geographical spread of programs. She

asked if videoconferenced sessions were eligible for certification and how group dynamics could function. She expressed concern about the economic viability of such a program and asked if there was a fiscal note attached to S.B. 75. She questioned the effectiveness and practicality of using the videoconferencing approach. She requested the Committee delete the section of the bill allowing videoconferencing as a method to counsel perpetrators of domestic violence.

Senator Care asked Ms. Meuschke if her only objection to S.B. 75 was in reference to the sections that pertained to domestic violence. She said yes. He expressed concern about loss of employment as a result of the counseling requirement. She explained she understood the difficulties, but she did not see videoconferencing as a solution. Her solution was to bring the services into the communities. Chair Amodei asked Ms. Meuschke if she could describe the steps her group took to implement counseling in rural areas. She said the NNADV provided training and supported the Attorney General's Committee on Domestic Violence.

Chair Amodei referred to NRS 228, stating he was looking for the rural provisions. He said, clearly, there was a problem, and asked how Legislators could deal with getting counseling to people convicted of domestic violence or a DUI. Ms. Meuschke admitted it was difficult to get services in rural communities, but said videoconferencing was not the solution. Chair Amodei stated there were 99 days to find an answer and S.B. 75 was better than doing nothing.

In reference to S.B. 77, Ms. Meuschke said her group did not object to the change in the hours required, but that regularity of meetings was essential for assessment of the perpetrator as noted in a written supplement to her testimony (Exhibit I), which addressed concerns about S.B. 77.

Ms. Meuschke referred to remarks in a written supplement to her testimony regarding S.B. 86 (Exhibit J). The NNADV had concerns about the ambiguity of language covering certification of out-of-state programs which S.B. 86 clarified, so the group was not opposed to S.B. 86.

Chair Amodei asked Ms. Meuschke, if after giving the court the discretion to videoconference, as long as it complied with the other issues, would she still oppose it. She replied S.B. 75 was not a good bill if it allowed people to go to videoconferencing that did not work.

Senator McGinness asked Ms. Meuschke if there had been any studies done on the effectiveness of videoconferencing for counseling. She replied she was not a therapist and could only relay her conversations with therapists who indicated the lack of face-to-face contact and ability to assess clients in person hindered the therapeutic process. Senator McGinness agreed, saying his point was, although face to face contact was preferable to videoconferencing, it was better than nothing. He repeated it was only authorization they were seeking.

Roberta (Bobbie) Gang, Nevada Women's Lobby and National Association of Social Workers, Nevada Chapter, stated the organizations she represented did not hire a lobbyist year round, so had no representation during the Interim to provide input to the study committee. She said her groups question the effectiveness of videoconferencing. She stated rural Nevadans have always had fewer opportunities for counseling. She offered two suggestions to improve counseling for them. One was that any program involving counseling less frequently than weekly, or any videoconferencing, be required to get approval by the Committee on Domestic Violence. She then referred to NRS 228.470, section 2, paragraphs (a) and (b) in support of this idea. Secondly, the groups hoped the Legislature would authorize the Committee on Domestic Violence to do a pilot project in conjunction with the judges on videoconferencing, which would be evaluated at the end of 18 months, generating a report recommending any changes to the statute regarding videoconferencing for counseling. She addressed Senator Care's comment about the employer. She said she hoped employers would care enough about the mental health and stability of their employees to support them in their counseling.

Senator Nolan asked what criteria would be established to reevaluate the program. Would recidivism rates or violations of court orders be considered? Ms. Gang said the Committee on Domestic Violence would have the responsibility to structure the program regarding criteria and evaluation. Senator Wiener asked if Ms. Gang would also include the courts in that group, since they had standards that had to be met as well. Ms. Gang stated she did not think her groups would have any objection, and said they already had representatives from law enforcement on the Committee on Domestic Violence. Senator Wiener reiterated her desire to have the courts included. Ms. Gang concurred.

Sarah Stadler, Youth Coordinator, Mothers Against Drunk Driving, said she opposed S.B. 76. The consensus of the treatment community was and still is

that early treatment was vital, she stated. She referred to S.B. 76, lines 6 and 7 of page 1 and quoted, "This bill removes from the mandatory evaluation a child who commits certain unlawful acts for the first time." This portion of the bill was of particular concern since it referred not to the first time the act had been committed, but the first time the juvenile had been caught. Ms. Sarah Stadler said a 1994 study by researchers Wagner and Wolfson, found that 2 of every 1,000 occasions of underage drinking resulted in the drinker's arrest. This was a miniscule percentage, and we owed an evaluation to those caught. She again cited S.B. 76, line 9 of page 1, indicating the bill gave the juvenile court discretion to order the evaluation but realistically, she said, those individuals are not trained or certified to make that substance-abuse decision. She referred to a MADD document (Exhibit K) showing various statistics, and quoted, "In 2001, there were approximately 119,500 alcohol-related visits to the emergency department involving people under the age of 21." She said this was proof of the necessity for evaluation and treatment of first offenders. She said she believed alcohol use was related to an increase in suicide. The required evaluation of an offender, currently mandated by law, provided the earliest intervention, she concluded.

Ms. Laurel Stadler submitted and read a letter (Exhibit L) into the record from Gary E. Rubinstein, M.A., Nevada Licensed Drug Counselor, opposing S.B. 76. Mr. Rubinstein is the substance abuse coordinator at the University of Nevada, Reno; however, his letter was written as an individual counselor expressing his own opinions, she said. Senator Wiener asked Nicolas Anthony, Committee Policy Analyst, whether the language in a past bill regarding the use of marijuana provided for a mandatory evaluation on the first arrest. Mr. Anthony stated he thought it did, and he would research the bill. Senator Wiener said she was concerned about adolescent offenders not yet caught, since their body chemistry was more susceptible to addiction. She indicated she was reluctant to support S.B. 76 for that reason.

Robert W. McLellan, Deputy Administrator, Division of Child and Family Services, Department of Human Resources, commented passage of S.B. 76 would contribute to good public policy because it allowed for judicial discretion. He said the bill did raise questions regarding unintended consequences, that S.B. 76 could lead to situations where a youth with substance-abuse problems would not be diagnosed or could become more involved with alcohol or other substances. The removal of the evaluation requirement for first-time offenders could result in deeper penetration into the juvenile justice system for these

youths. The Division of Child and Family Services supported mandatory substance abuse screening as one alternative to the mandatory evaluation for delinquent children. The Substance Abuse Subtle Screening Inventory is a useful tool, he said. A licensed alcohol or drug abuse counselor or an alcohol and drug abuse counselor intern who is certified pursuant to NRS 641C, or a physician certified to make that classification, could do the screening, he continued. Screening was the first step and an evaluation the second step in determining a recommended course of treatment. Screening accomplished, in less time, what an evaluation did. Mr. McLellan referred to Assembly Bill 47, which addressed the need for mental health screening of youths in detention centers and State-operated facilities.

ASSEMBLY BILL 47 Requires screening of certain delinquent children for mental health and substance abuse problems. (BDR 5-194)

Senator Care asked what percentage of Nevadans took that first drink before the age of 18. He said he asked because he did not believe that every adolescent who took a drink before the age of 18 needed counseling and evaluation. He asked Mr. McLellan for statistics. Mr. McLellan responded he did not have any. Senator Wiener asked for clarification of the difference between screening and evaluation. Ms. Bosworth replied screening was the first valid step which assessed the degree of substance abuse or alcohol a juvenile had. The second step of evaluation, if alcohol or substance abuse was suspected, was more in-depth and looked at the psychosocial environment and family issues, she explained. Senator Wiener asked if utilizing the screening tool and then going to evaluation, if indicated, would be valuable in getting those juveniles on the right track. Ms. Bosworth responded in the affirmative and said resources would be needed by the counties to do the evaluations. Chair Amodei closed the public hearing on S.B. 75, S.B. 76, S.B. 77 and S.B. 86.

SENATOR McGINNESS MOVED TO DO PASS S.B. 86.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (VICE CHAIR WASHINGTON WAS ABSENT FOR THE VOTE.)

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Chair Amodei suggested the Committee talk about the remaining three bills to get an idea of what direction they wanted to take. Senator Wiener asked for more time on S.B. 75 and S.B. 77 and stated the new information gathered from testimony had to be considered. Senator Wiener said she recommended amend and do pass on S.B. 76, if it included screening language along with evaluation language. Senator McGinness responded neither option was available at the moment in the rural communities, nor did the bill take away the ability of a judge to order the screening or the evaluation process. It only gave the judges discretion.

Judge Griffin addressed the concerns in Ely with juvenile evaluations. He said all the juvenile justice programs occurred in the county seat, and in Eureka County, there was no availability to do counseling, treatment or the screening. In Ely, they had to take people to Elko for counseling, which in winter can be a daunting task. He emphasized there were mandates the courts could not fulfill. Senate Bill 76 was an effort to solve this problem. In the rural communities, the juveniles arrested with drug or alcohol issues were often known to the judges, he explained. The judges are aware of when screening is needed; even in a perfect world, it does not solve the problems in McDerrmitt, Kingston, Pioche and other tiny communities, he said. Chair Amodei asked Judge Griffin if S.B. 76 should be narrowed to rural applications instead of statewide usage. Judge Griffin replied he thought the intent of S.B. 76 was to address the problems of the rural counties, but it was Senator McGinness's decision. Mr. Mallory said everyone agreed that face-to-face counseling was best, but they wanted to accomplish something as opposed to doing nothing. Senator Horsford said it was cost-effective to address the problems in rural Nevada, now, because otherwise they would pay much more in the future to incarcerate people who did not get the early intervention help they needed. He stated, however, he did not want to make the process easier for the perpetrators because they made their choices and needed to know the consequences of their actions.

Chair Amodei stated the failure to participate in interim activities in the post-120-day reality of the Nevada Legislative Sessions was a fundamental mistake because Legislators are required to move quickly through the 120-day process. The interim process, in the context of 120 days, allows for these sorts of discussions in a much more reasoned and deliberative context than the Legislative Session permits. He said he would circulate amongst the members of the Committee this week to see what their concerns were. Senator Horsford

added, if help systems were lacking in the rural communities, it was important to bring forward all issues regardless of support.

Chair Amodei adjourned the meeting at 9:32 a.m.

RESPECTFULLY SUBMITTED:

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Ellen West,
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

DATE:_____