

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

**Seventy-Fourth Session
February 6, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:06 a.m., on Tuesday, February 6, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chair
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegura
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel



Judith Maddock, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, Nevada
Howard S. Brooks, Attorney At Law, Office of the Public Defender, Clark County, Nevada
Phillip A. Galeoto, Director, Nevada Department of Public Safety
Philip K. O'Neill, Division Chief, Nevada Department of Public Safety

Chairman Anderson:

[Meeting called to order. Introductory comments, read from ([Exhibit C](#)).]

I would like to recognize any of the members of the committee who would like to say anything.

Assemblyman Carpenter:

I have been on this Committee for many years, and there is no doubt this is the most interesting Committee in the Legislature. I have always enjoyed my mornings here, and hopefully this year will be no different.

Assemblyman Conklin:

I look forward to getting to business.

Assemblyman Horne:

I am excited to get started, and I appreciate being your Vice Chair for another session. I look forward to working with everyone on the Committee. Welcome to all of the new members. You are on a Committee that is going to require a lot of work from you, and you all have important skill sets that are going to be well utilized. We look forward to having a successful session.

Assemblyman Manendo:

I appreciate working with you and this Committee again.

Assemblyman Mabey:

It is a privilege to be here. This is a great experience that I will never forget, and it is an honor to serve on this Committee.

Assemblyman Mortenson:

It is good to see all my colleagues back here again and all the new ones.

Assemblywoman Gerhardt:

I am pleased to be back with this Committee. For those of you who are freshmen, you will learn an enormous amount under the guidance of this Chairman. I feel very privileged to be working with him again.

Assemblywoman Allen:

I, too, find it a privilege to serve on this Committee.

Assemblyman Ohrenschall:

I have always respected the way you conduct the Committee meeting, and I am looking forward to my service on this Committee.

Assemblyman Segerblom:

Having dealt with Nevada law, I enjoy being on the other side trying to create it.

Assemblyman Cobb:

It is a pleasure to be here this morning and an honor to be on the Committee with you. I am looking forward to seeing what we can accomplish on the Judiciary Committee.

Assemblyman Goedhart:

It is an honor and a privilege to serve on the Committee with you.

Chairman Anderson:

[Roll called.] Let us move to the adoption of the Standing Rules ([Exhibit D](#)). Most of them are not out of the ordinary. They are a restatement of our own Standing Rules from the Floor. In this Committee, we do use Rule 3, although it is not required. Generally speaking, a Committee has a second although *Mason's Manual of Parliamentary Procedure* does not require that. The Vice Chair takes the Chair when I am out of the room, although any member of this Committee—Democrat or Republican—can be called on to take the Chair. Your voice here is equal to that of the rest of us. Each of us has a vote on the Floor, and, therefore, we are all on the same level.

Rule 15 provides that exhibits for hearings may be submitted by electronic mail at the discretion of the Chair and must be received by the Chair for consideration by 4 p.m. on the business day prior to the hearing. The Chair may require additional information on the exhibit from the person submitting it prior to approval, including the minutes of the hearing. We will often receive information that you want to have copied or you feel someone should have. People will send it to you overnight, and they expect that you are going to read it in your sleep because it is going to be introduced at 8:00 a.m. If we do not have it at least by 4:00 p.m. the day before, it is not

going to get into the record. I try to include emails that we receive if I know that they are from valid sources.

The direction of the staff is done through the Chair. Ms. Chisel's work is for this Committee, not for individuals, but she will answer questions for you. The minutes are prepared through the Chair. One of the rules that I think is most unclear is dealing with motions. You might want to review Section 156 in *Mason's Manual* about a motion not being a real motion until the Chair has stated it is. It makes a clean record. You can state a motion; however, it is not an official motion. Unlike in *Roberts' Rules*, it does not belong to the body until the Chair has stated the motion. That is one of the subtleties of *Mason's Manual* that is not generally understood.

If you vote for a bill in this Committee, the presumption is that you will also vote for it on the Floor. You may receive information after the vote that you feel really changes what was told to you in Committee. You need to tell the Chair if you are going to change your vote. If there is a bad bill that has come to the Floor, I need to hold it. We can substantiate the process by which we hold the bill with Rule 11. This Committee can only function as a group, and it is respect for each other that is most important. You have privileges and an insight that somebody else may not have. That is what makes us all unique.

ASSEMBLYMAN CARPENTER MOVED TO ADOPT THE STANDING
RULES OF THE ASSEMBLY COMMITTEE ON JUDICIARY.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT
FOR THE VOTE)

Let me draw your attention to the Committee Brief that Ms. Chisel has distributed ([Exhibit E](#)).

Jennifer Chisel, Committee Policy Analyst, Legislative Counsel Bureau:

I want to go through the Committee Brief, which provides an overview of the Committee, its jurisdiction, and some of the legislation that was considered last session.

[Chairman Anderson left the room.]

I would be happy to answer any questions you may have on any particular legislation after the meeting. If you will turn to page 2 of the brief, this provides an overview of the jurisdiction of the Committee. As you can see,

there are several Titles here. This Committee has primary jurisdiction over Titles 1–15, which include the Judicial Department, civil practice and procedure, juvenile justice, criminal law and procedure, property rights, business associations, commercial transactions, and domestic relations. Typically, the Committee also has primary jurisdiction over Title 16, which is the Corrections Department. However, there is an Assembly Select Committee on Corrections, Parole, and Probation this year, which will focus exclusively on those issues. This Committee also has jurisdiction of Titles beyond 16, including gaming in Title 41 and problem gambling in Title 40. Additionally, this Committee has primary jurisdiction over issues related to criminal responsibility for fires and driving while under the influence of alcohol or controlled substances. The top of page 3 provides additional information on the number of bills considered and passed by this Committee during last session.

The next several pages discuss many of the measures considered by this Committee last session. Page 3 begins with the measures related to the criminal justice system. Some of the things considered in 2005, under Crimes and Punishments, involved controlled substances, more specifically, the cleanup of labs, identity theft, involuntary servitude, and sexual offenses. Issues related to criminal procedure are discussed on page 5, and those include the sealing of criminal history records and the forfeiture of bail. The Committee also considers legislation related to juvenile justice, which is discussed on page 5. Moving to page 6, you will see issues on corrections and the death penalty, and Assembly Bill No. 6 of the 73rd Session, which actually increased the threshold age for imposing the death sentence from 16 to 18 years old. The bottom of page 6 begins a discussion of the measures relating to domestic relations. The Committee considered measures related to child custody, domestic violence, and child abuse and neglect. On page 8, child support and guardianships are discussed. Beginning on the bottom of page 8 is a discussion of the measures related to the court system. The issues included the qualification of judges, the caseload, the increased need for judges, and the mental health courts. Page 10 outlines some of the judicial studies that were requested, which include the judicial retirement system and the need for an intermediate appellate court. Also on page 10 are the measures related to gaming. One of the significant issues was Assembly Bill No. 471 of the 73rd Session which addresses the rapidly changing technology by authorizing mobile gaming devices. Page 11 outlines the measures related to driving under the influence, and also begins the discussion of civil laws. Last session, the civil laws included business laws and common interest communities. Finally, issues related to eminent domain are discussed on page 12. Both Senate Bill No. 326 of the 73rd Session and Assembly Bill No. 143 of the 73rd Session were designed to place certain limitations on the government's eminent domain power. Page 13 begins a brief

discussion of some of the issues that may come before this Committee this session.

There were three interim studies that you will likely hear more about this week, and also as we move further into the session. The first study deals with child welfare issues and a review of the child fatalities that have occurred in government shelters. The second study discusses sentencing and parole and probation, which Assemblyman Horne chaired. The third study, discussed on page 14, deals with the treatment and prevention of substance abuse, which will likely be tied to methamphetamine issues, and will also be discussed later this session. Page 15 of the document provides an overview of the 120-day session deadlines; let me highlight some of the more significant deadlines for you. The first date is February 12th, which is the deadline for legislators to submit their bill draft requests (BDRs). February 23rd is the committee deadline to submit BDRs, March 19th is the deadline for all legislator bills to be introduced, and March 26th is the deadline for the committee bills to be introduced. All bills must be passed out of committee by April 13th and out of the first House by April 24th. May 18th is the deadline for bills to be passed out of the committee in the second House, and May 25th for those bills to be passed out of the second House completely.

The next two pages provide a list of judiciary contacts. This list does not include everybody who will testify before this Committee, but it provides a foundation based on previous sessions. I am happy to provide any assistance or information that may be needed by any of the Committee members.

[Chairman Anderson returned.]

Chairman Anderson:

I will have to take a motion on this if we want to get it introduced today. I have a Committee introduction for BDR 14-801.

ASSEMBLYMAN MANENDO MOVED TO INTRODUCE BDR 14-801.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

Risa Lang, Committee Counsel, Legislative Counsel Bureau:

It is certainly my privilege to be back working with this Committee for the sixth consecutive session. Mr. Anderson asked me to present the Committee with information concerning cases of interest that occurred during the interim.

During previous interims, I mostly discussed cases that held Nevada laws unconstitutional, which were within the jurisdiction of this Committee. In 2003, there were 12 such cases to discuss. Last session there were four, and this session I am happy to report that our research indicated there is only one case relevant to this Committee. It held the Nevada law unconstitutional, but it was only held unconstitutional if applied in a particular manner. I am going to tell you about that case, but Mr. Anderson also asked me to provide some background on other areas of interest to the Committee. Those areas include eminent domain, construction defects, and the recently enacted smoking ban. Before we begin, I am going to make my usual disclosure that I do once a session. As a staff of the Legislative Counsel Bureau, I serve in a nonpartisan capacity. When I present information to you, I am neither urging or opposing legislation nor any particular viewpoint.

The case that was heard during this interim that held a law unconstitutional in part is the case of *Pantano v. State*. In this case, the Nevada Supreme Court considered the constitutionality of *Nevada Revised Statute* (NRS) 51.385. This statute allows a person to testify during criminal proceedings about statements made to him by a child under the age of ten, which describe any act of sexual conduct or acts of physical abuse. The statute allows a person to testify about such statements, although it is hearsay, when the court finds that there is a sufficient circumstantial guarantee of trustworthiness, and either the child testifies at the proceeding or is unavailable or unable to testify. The defendant in the case challenged this statute as violating the Confrontation Clause of the Sixth Amendment to the United States Constitution, which guarantees individuals an opportunity to be confronted with the witnesses against them in an opportunity for cross-examination. The Nevada Supreme Court had previously upheld this statute, but in 2004, the United States Supreme Court held that, if a hearsay statement of an unavailable declarant is "testimonial in nature," a determination of reliability by the court is inadequate to override the Confrontation Clause. The United States Supreme Court stated that "dispensing with confrontation because testimony is obviously reliable, is akin to dispensing with a jury trial because the defendant is obviously guilty" [*Crawford v. Washington*, 541 U.S. 36, 61-62 (2004)]. However, in reaching its conclusion, the United States Supreme Court left for another day in the effort to spell out a comprehensive definition of "testimonial." The court noted, however, that whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial. It further noted that it applies to police interrogations. Thus a testimonial statement is admissible in court only if the defendant has an opportunity to cross-examine the declarant, either before the hearing or during the hearing. Applying the holding from the United States Supreme Court, the Nevada Supreme Court, in this case, provided that NRS 51.385 is constitutional if used

to admit hearsay of a child, even if it is testimonial, as long as the child testifies in the subject of cross-examination. It also remains valid to admit a child's nontestimonial hearsay. Nontestimonial hearsay would include statements, for example, made by a child to his parent or to another person when statements were not made for the purpose of preparing for trial. The court concluded, however, that NRS 51.385 is invalid for admitting statements made by a child to another person in preparation for trial unless the child is called to testify.

Chairman Anderson:

Have the child advocate groups reacted to this in any way that you are aware of?

Risa Lang:

I am not aware, Mr. Anderson.

Chairman Anderson:

Any other questions on this particular case? It is troubling, and may be something we need to worry about.

Risa Lang:

The next issue Mr. Anderson asked me to discuss is the issue of eminent domain ([Exhibit F](#)). This issue, as you know, was brought to the forefront this interim with the decision to the U.S. Supreme Court case of *Kelo v. City of New London*. In *Kelo*, the petitioners were property owners in Connecticut who claimed the taking of their properties as part of a development project would violate the public use restriction in the Takings Clause of the Fifth Amendment of the U.S. Constitution. The Fifth Amendment prohibits the government from taking private property for public use without paying just compensation. The properties of the petitioners were not alleged to be blighted or otherwise in poor conditions, rather they were condemned only because they were located in a development area. The Supreme Court first held that the court has not given a literal meaning to the term "public use." Rather, the Supreme Court has interpreted "public use" more broadly to mean "public purpose." Thus the issue before the Supreme Court was whether the development proposed by the City of New London, in that case, served a public purpose. In determining that the proposed development did serve a public purpose, the Supreme Court deferred to the judgment of the City and the Legislature. The Supreme Court emphasized that great deference is given to the Legislature in determining what constitutes a public purpose. The Supreme Court specifically provided that nothing, in its opinion, precludes any state from placing further restrictions on its exercise of the takings power. In fact, the court noted that many states already impose public-use requirements that are stricter than the federal baseline.

Following *Kelo*, the People's Initiative to Stop the Taking of Our Land (PISTOL) was circulated, added to the November 2006 ballot, and approved by the voters. The initiative proposes to amend the *Nevada Constitution* to address several issues relating to taking private property by eminent domain. It addresses procedural issues, including the uses for which private property may be taken. It also addresses issues such as just compensation for property taken by eminent domain. It will be presented to the voters again in 2008, after which, if passed, will be added to the *Nevada Constitution*. I have provided each of you with a copy of the initiative. However, before the initiative was placed on the ballot, the Nevada Supreme Court ruled that several of the provisions were unconstitutional and thus should be stricken. You will see on your copy that those provisions were also stricken. In *Nevadans for the Protection of Private Property Rights v. Heller*, a group of individuals and governmental entities who opposed the initiative filed a complaint in district court, seeking to prevent the initiative from being placed on the ballot. The group alleged that the initiative violated the single-subject rule as set forth in NRS 295.009. The district court denied all relief, ruling that the initiative encompasses only a single subject and thus is not disqualified from appearing on the ballot. On appeal, the Nevada Supreme Court first determined that NRS 295.009 is not unconstitutional. After making that determination, the court concluded that the primary subject of the initiative is eminent domain. However, the court held that Sections 1 and 8 of the initiative did not relate to that subject and thus violated the one-subject-matter rule. The court determined that the appropriate remedy for violating this single-subject rule is to sever those provisions, thus the initiative should be read as if those provisions were not included.

Next, the Nevada Supreme Court considered the other provisions of the initiative. The court ruled that an initiative must propose policy and may not dictate administrative details. The court stated that the initiative of powers reserved to the people, although broad, are limited to legislation and do not extend to administrative matters. The court concluded that three provisions of the initiative dictate administrative details and thus struck Sections 3, 9, and 10 of the petition. In contrast, the court declined to rule on whether the initiative violates the Equal Protection Clause of the U.S. Constitution, finding that challenges to substantive validity of an initiative are not proper until it becomes law.

To summarize, Sections 1 and 8 of the initiative were stricken as exceeding the one-subject rule, and, in addition, Section 3, 9, and 10 were stricken because the Nevada Supreme Court held that they propose administrative details rather than policy. I have counted eleven BDRs that have been submitted for drafting

this session that address issues relating to eminent domain; therefore, I am certain we will have more opportunities to discuss *Kelo* and this petition, and how that is going to impact Nevada.

As you know, there was another initiative on the ballot in November of 2006. This is the Nevada Clean Indoors Act, known as Question Five. This initiative expanded the public places where smoking is prohibited. This initiative prohibits smoking in indoor places of employment including, without limitation, child care facilities, movie theaters, video arcades, government buildings and public places, malls and retail establishments, grocery stores, and indoor areas of restaurants. I have also provided you with a copy of the initiative as it has been codified, as well as the initiative that includes the arguments both for and against the initiative.

The initiative specifically excludes areas in casinos where minors are prohibited, stand-alone bars, taverns, saloons, strip clubs, brothels, retail tobacco stores, and private residences, unless the private residence is used as a child or adult care facility or health care facility. This initiative also reverses the current law which prohibits local governmental entities from enacting regulations of smoking that are more stringent than those provided in NRS. Instead, this law, in Subsection 5, allows local governments to adopt and enforce local tobacco control measures that meet or exceed the minimum applicable standards set forth in the initiative. Question Five was approved by the voters and became effective on December 8, 2006. It has been codified and added to the NRS. The initiative has been challenged twice—once before and once after the election. The case was filed before the election challenged constitutionality of the statute. The Nevada Supreme Court refused to opine, finding that a challenge to the hypothetical constitutionality of a statute before it is enacted is not appropriate. After the initiative, voter approval, another action was filed in the Eighth Judicial District Court, alleging violations of due process and equal protection. The judge in this case issued a preliminary injunction prohibiting the enforcement of the criminal penalties and then asked the parties to brief the issues fully. On January 24, 2007, the judge issued an oral ruling declaring the measure to be constitutional except for the criminal penalties. The order in this case has not been filed yet, so I have not had an opportunity to review it. When changes to statutes are made by initiative petition, the Legislature is prohibited under the constitution from amending, annulling, repealing, setting aside, or suspending the law for three years from the day that it takes effect. Therefore, NRS 202.2483 cannot be amended or repealed for three years.

The last issue that Mr. Anderson asked me to discuss is construction defects. There was one case this interim in particular that addressed construction defects in class action cases. In this case, they basically found that class

actions are, in most instances, not going to be allowed. In this case, called *Shuette v. Beazer Homes Holdings Corp.*, the Nevada Supreme Court limited the circumstances of a class action. *Beazer* involved a class action in which the plaintiffs claimed that expansive soil caused defects in the homes. The plaintiffs also claimed over 30 additional construction defects unrelated to the soil and which were not necessarily common to all of the homes. On appeal, the Nevada Supreme Court was asked to determine whether hearing the case as a class action was appropriate. The court held that the claims did not meet the requirement for a class action that common claims are predominant because the home owners have various claims, and the manner in which the damages occurred differed among the various homes. The court further held that, because of the important variances in the individual interest of the members of the class, hearing the case as a class action to inefficiency, unfair results, and overall unmanageability. The court held that the lower court failed to perform a thorough analysis of Rule 23 of the *Nevada Rules of Civil Procedure*, which establishes the elements for determining whether a class action is appropriate. The court held that without such an analysis, it was improper to allow the class action. The court further held that before a class action may be brought, the plaintiffs must comply with the procedures set forth in Chapter 40 of NRS. Those procedures include notice of defects to contractors and an opportunity for them to inspect and repair such defects. In some way, this case held up that parties seeking to file a lawsuit for construction defects must comply with the provisions of Chapter 40 of NRS. If a class action is then filed in court after such compliance, the court must perform a thoroughly documented analysis pursuant to Rule 23 of *Nevada Rules for Civil Procedure* to determine whether all requirements for a class action are met. In determining whether to grant class certification, the court will consider whether the defect is truly common, similar to all homes in the proposed class, and derived from a similar cause. If individual proof is required for various claimants, class action is likely to be denied. Although the court did not prohibit class actions in cases involving constructional defects, the court concluded that constructional defect cases would more often than not be inappropriate for class action treatment, but that, in some cases, it may be amenable to class action certification.

Those are the issues that Mr. Anderson asked me to give you some background on. I am sure that we will have more opportunities to discuss them. If you have any questions I would be happy to answer them.

Chairman Anderson:

Questions for the Legal staff?

Assemblyman Cobb:

I have a technical question about the PISTOL decision. What was the process by which the court determined what was an appropriate issue to be retained within the initiative, versus what would be on the outside of the initiative under the single-subject rule, and, therefore, what would be severable?

Risa Lang:

When the court left it the single-subject rule, they felt that those two sections went beyond just eminent domain. Because they affected areas other than eminent domain, proper notice was not given to people about the impact. They felt that the best remedy was to sever it. In addition, there was also a severance clause in the act itself, which is why they took them out.

Assemblyman Segerblom:

Is there some bill that is going back that the Governor vetoed?

Chairman Anderson:

That is a Floor question; it is a transportation bill.

Assemblyman Segerblom:

It just looked like it was something to do with our Committee, but it is not.

Chairman Anderson:

It is not a bill in our Committee's jurisdiction.

Assemblyman Carpenter:

When do you think we will have a decision on the smoking situation?

Risa Lang:

I am not sure when the written opinion will come out, but in the Eighth Judicial District they have suspended the enforcement provisions.

Assemblyman Carpenter:

Has all enforcement been suspended?

Risa Lang:

Just the penalty provisions have been suspended in Clark County. That is my understanding.

Assemblyman Segerblom:

I thought the \$100 fine was still available.

Risa Lang:

Yes, it is only the criminal penalty that has been suspended.

Assemblyman Horne:

Just as a point of clarification, there was only a challenge against this bill in Clark County, is that correct? So, wherever there was no challenge—basically a suit at what was passed on the ballot—everything is status quo, is that correct? What was done in Clark County is not going to have effect in Ely or anywhere else?

Risa Lang:

Until it is appealed and decided by the Nevada Supreme Court, it is unclear how that applies throughout the State.

Chairman Anderson:

That is very much an open question. That is one of the reasons why I thought it might be interesting since this Committee does have jurisdiction over that particular issue, or did until the initiative.

Assemblywoman Allen:

The Assemblyman from District 37, Chairman Anderson, and I all worked together last session on the topic of post-adoptive contracts. There was discussion then that the courts might take action in interim, and I presume because it was not a part of your presentation that the courts took no action?

Risa Lang:

Not that I am aware of.

Chairman Anderson:

The Administrative Offices of the Court, Ron Titus, specifically, will be here on Friday. That might be one of the questions that we can test him on. I am sure he will appreciate the heads-up. Welcome, Mr. Graham and Mr. Brooks.

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office:

The colored cartoon in front of you is an item that a student of mine produced that talks a little bit about crime and punishment ([Exhibit G](#)). It is a little bit humorous, but it is a perspective that is not too far from reality. I have taught in the university system since 1979, and I taught in undergraduate school as well. I have an undergraduate degree from American University in Washington, D.C. in government public administration. I then returned back to Oregon where I grew up and went to law school at a university in Salem. I did criminal

defense work for a number of years and have now been in the Clark County District Attorney's office approaching 30 years.

The first page deals with an arrest ([Exhibit H.](#)) An arrest may be made without a warrant for a misdemeanor committed in the presence of a law enforcement person or upon probable cause for a felony. We deal with three types of courts here in Nevada. The first one is the municipal court. These are courts that have misdemeanor jurisdiction for offenses committed in that town or city.

The justice court has jurisdiction over misdemeanors committed outside of the municipality. Unlike municipal courts, justice courts have an additional function over and above finding people guilty or not guilty; they also have jurisdiction over preliminary hearings.

In district court, you can get sent to prison for at least a year or potentially receive the death penalty. There is a couple of procedural things with regard to municipal and justice court that are of interest, too. If the crime is punishable by less than six months in jail, there is no automatic right to acquire an appointed attorney and no right to a jury trial.

Something we have had to add to our discussion, as mentioned on page 3, are what we sometimes call specialty courts. We have drug courts at the district court level and also for juvenile court. We try to only deal with people who are truly addicted to drugs and who are not violent offenders. It appears to be successful, and we hope that it is because it is keeping hundreds of people out of the felony cycle and keeping them out of prison, saving us up to \$20,000 a year in tax dollars. We have developed a juvenile drug court as well, which is similarly situated to try to help young people deal with addiction. In the mental health court, we have people with multiple misdemeanor convictions and misdemeanor arrests. Some of these people are turning their lives around because of the caring people we have in the courts helping to break this cycle.

On page 5 we deal with the classification of crimes out of our statutes. A misdemeanor is punishable by a day to a year in jail. We still have a day to a year in jail, but we call that a gross misdemeanor. Under those circumstances, since it is punishable by more than six months and up to a year, that classification of crime is here in district court where you would have a court-appointed attorney and a jury. Generally speaking, gross misdemeanors are used as part of a plea bargain. The misdemeanors we talked about have no automatic right to a court-appointed attorney. However, if jail time is anticipated, as with DUIs and domestic violence charges, a court-appointed attorney is available. Keep in mind you can bring an attorney with you at any

time for any charge. Whether it is jaywalking or murder, you are entitled to be represented by counsel.

Felonies were divided into categories A-E in 1995 and the various penalties for capital cases from life in prison, life without parole, and life with the possibility of parole. With a felony, you are entitled to a hearing in justice court where you would have a court-appointed attorney. If there is an indictment, you do not get an attorney until after that happens. You are entitled to a jury trial and, if acquitted, the defendant goes home. If convicted, the judge will generally require a pre sentencing investigation and report by the Division of Parole and Probation. That is optional in gross misdemeanor cases, and then there is an appeal to the State Supreme Court.

Chairman Anderson:

I hesitate to point this out to you, but we are going to have to hear from the Department of Public Safety, and I know that these members would like to get to the Floor by 10:45 a.m.

Ben Graham:

I have two pages left and then we are done. We have four different habitual criminal-type statutes, and again our three-strikes-you're-out policy is primarily aimed at very heavy repeat offenders and offenders with violent histories or violent pasts. The preliminary hearing, which is under procedure after the habitual felony charges, deals with the process in justice court where the State has to prove probable cause. That is different than beyond a reasonable doubt because it gets you arrested, gets you into court, and possibly gets you then into district court. If you hear somebody has been indicted, then you know they have gone to the grand jury. The decision to take a case to the grand jury rests solely with the prosecution and the State. A preliminary hearing is open to the public, and cross-examination is available from the defense counsel. At the grand jury, it is held in secret. Sometimes there are various reasons why you take a case to the grand jury, such as an undercover operation or if you have witnesses of very tender years. But again, fortunately or unfortunately we get another 118 days of being here, and if you have questions on these things, we certainly will be available. The burden of proof of the prosecution is beyond a reasonable doubt in all criminal trials. That is part of your attachment, and then of course the juvenile court authority under NRS 62B.330. There are various attachments including reasonable doubt instruction and the *Bill of Rights*, which all of us are beholding to, and appropriately so.

There is one other thing I want to mention before I conclude because it has been in the paper a lot here lately, and you are going to see a couple pieces of legislation on the subject: undercover and sting operations. Some of you are

going to think of the term "entrapment." Entrapment is a very specific defense, and it is much more detailed than what we think. Simply because the law enforcement community is sneaky does not mean it is entrapment, and it does not mean it is a defense. I apologize for taking too much time, but hopefully we will flesh these things out over the next four months. Thank you.

Chairman Anderson:

I just wanted to make sure Mr. Brooks had time to make his presentation too. Are there any questions for Mr. Graham? The tenth page of this handout has a really good flow chart. It might be good to keep in mind as we talk about the process and where those various elements are.

Assemblyman Mabey:

How are the drug courts working in Clark County?

Ben Graham:

That happens to be one of the units that I supervise and it seems to be working, which is exciting. I have had a lot of experience working with attorneys and judges concerning addictions. I was a little bit skeptical to begin, but with real care and effort they are working, and I think it is a good investment on our dollar.

Chairman Anderson:

I think it is an important issue, and I am sure the question will come up again during the presentation from the court system. We will have a couple of other legislative pieces that will specifically deal with that. In terms of processes from the District Attorney point of view, do you see any new changes in the process?

Ben Graham:

There is a real effort to try to divert prosecution in many cases. The drug courts are really important to me, and I personally think that probably 80 percent of our criminal activity is based upon controlled substances, from robberies on up or down. If these people were not on drugs, they would not be doing these things. That is what we hope to be doing to encourage more and more diversion.

Howard Brooks, Attorney At Law, Office of the Public Defender:

Prosecutors and defense attorneys have very different perspectives on the issues that will come before you during this session. The goal of the Nevada Attorneys for Criminal Justice is to review the bills and try to provide you with a different perspective. During the session, you will receive emails from us, and some of us will come and testify. We are always available to help you. Feel

free to call us if you need information. I intend to send each member of the Committee a letter at the end of the week giving you several phone numbers. Feel free to call me 24-hours a day if you have a question about a bill or want our input. Also, you are very lucky this session because you are going to have two fantastic representatives here full time. They are Jason Frierson from the Clark County Public Defender's Office, and Cotter Conway from the Washoe County Public Defender's Office. They are going to be a tremendous resource to you. That is really all I have to say today. Thanks for being here and, if I can do anything to help you, please feel free to call.

Chairman Anderson:

Thanks to you for being here, and we appreciate you giving up your time. The reason I asked you both to be here is that I would not want you to feel that we are giving deference to one side of the issue or the other. It is the balanced presentation that makes the system work for all of us, so we appreciate your willingness to be a resource for the Committee. I wanted to make sure they all recognized that there were two sides to this coin that we are all very aware of. Are there any questions?

Assemblyman Horne:

I would like to say that I have the privilege of wearing two distinct hats: one as a legislator, and I am privileged to help craft the laws that protect the citizens of our State. At the same time, I am a criminal defense attorney and protect those charged with crimes violating those very statutes we help craft. It is a unique position, and I enjoy it. It gives me a unique perspective. I am willing to talk with anybody on both sides of those issues.

Chairman Anderson:

We are fortunate to have both Mr. Horne and Mr. Segerblom who have criminal history backgrounds in terms of defense. Also, we have the opportunity of Mr. Cobb. What area of the law are you practicing, Mr. Cobb?

Assemblyman Cobb:

I have prosecuted for two different district attorney offices, one as an intern and one while I was waiting for my bar results. I also ran political action committees. I have done general litigation most recently for the Jones Vargas Law Firm.

Chairman Anderson:

Thank you, Mr. Cobb. We do appreciate your resources being available to us, Mr. Graham. It is always nice to know the cast of characters who are out there.

Let us turn to the criminal repository for Nevada records of criminal history. Let me acknowledge a staff attorney from the American Civil Liberty Union (ACLU), Lee Rowland. I have had the opportunity to work with this agency of the Department of Public Safety, and I want to acknowledge the new director, Mr. P.K. O'Neill. Also, Mr. Galeoto is here and has the difficult responsibility of picking up the reins of one of the more important departments of State government with multiple responsibilities, in what previously was called the Highway Patrol, and is now part of the Department of Public Safety. Mr. Galeoto is a former police officer with the Reno Police Department.

Paul Galeoto, Nevada State Department of Public Safety:

Thank you, Mr. Chairman.

Chairman Anderson:

Captain P.K. O'Neill is the official director, the Division Chief. Mr. O'Neill has been a very pleasant surprise for me in terms of his competency and taking up the responsibility of the agency that I consider the central web that holds the entire criminal justice system together. I think in today's presentation you will see that. I have the privilege of representing the Assembly as a committee assignment to serve on his Board, and it is one that I look forward to with a great deal of relish.

P.K. O'Neill, Division Chief, Nevada Department of Public Safety:

Mr. Chairman, I appreciate you inviting me here today. About a year ago I was assigned to Division Chief of Records and Technology, a newly formed division within the Department of Public Safety. I will try to move through this as quickly as possible; however, I do welcome any questions you have at any time concerning our operation. I am very proud of the division that I have been allowed to be Chief of. I have excellent personnel; I feel every single one of them has gone above and beyond the call of duty in the past year, supporting our department and community as a whole. I am going to present a different kind of presentation than what I think you have heard in the past about the Criminal History Repository and the Records and Technology Division. Although there are still many challenges, there are numerous accomplishments, and they all should be attributed to the resourcefulness of a tremendous group of dedicated personnel that make up the Records and Technology Division ([Exhibit I](#)).

The Records and Technology Division was created under Senate Bill No. 452 of the 73rd Session from various bureaus within the department. It was giving enhanced direction to these two interrelated operations, whose mission is to serve the Department of Public Safety, the statewide justice community, the

citizens, visitors, and businesses of Nevada. The division consists of 112 full-time employees with a total combined legislative approved budget for FY 2006 and FY 2007 of just over \$44 million. The Technology Bureau is the Information Technology (IT) provider, manager, and maintainer for the department's 1,400 or more employees and 16 divisions of mission-related programs. The bureau is also tasked with providing the essential link of communicating criminal justice information to the numerous users at every level from local municipalities, counties, and states to the national connection. For calendar year 2006, there were over 120 million transmissions made over this communication link.

I would like to bring forth to you a few of their major accomplishments during the past biennium. The success of Senate Bill No. 341 of the 73rd Session cannot be understated when one looks at the identifications made by the interface of the Nevada Sexual Offender Registry with the Department of Motor Vehicles (DMV) and the Gaming Control Board. The numbers presented to you speak for themselves. I would also like to bring to your attention that the DMV, in the last 6 months alone, has performed close to 600,000 searches yielding 1,200 identified sexual offenders in which 306 were noncompliant. Because of this action taken in the last legislature, our compliant rate of sex offenders has improved 3 percent in the last six months alone. Additionally, we have an interface with the Gaming Control Board that assists them in identifying gaming control licensees as sex offenders and their compliancy rate. Last but not least, the Technology Bureau has implemented what is referred to as the local Sexual Offenders Registry as a hot file. Whenever a police officer or law enforcement agent comes in contact with an individual, they get back certain information, that now includes the local sex offender registry file, which identifies the person as a sex offender, providing a variety of information ensuring the protection not only of the officer, but of the community in general.

In the upcoming biennium, the Technology Bureau will not be resting on its laurels. It will continue to provide all of its thousands of customers with excellent service and improved capabilities. Some of those I would like to bring to your attention. For the department, the records management system is unifying the Department of Public Safety's various law enforcement reports into a centralized system that would allow the sharing of information in a more dynamic environment. Our disaster recovery system and infrastructure upgrade will be improving our ability to recover the mission critical–Nevada criminal justice information applications–in accurate, timely, efficient, and reliable manner in the event of a disaster. The plan is to make the design the least complex and the most cost-affordable solution, keeping with best technology practices. Additionally, we have a document imaging and scanning system that we would like to develop and deploy, providing a technology solution that will

expedite the transfer of material across the department's geographic boundaries, increasing efficiency with expected cost savings.

The second component or bureau within the Records and Technology Division is our Records Bureau. It is not just your criminal history repository, but has numerous other areas of service and responsibilities to the criminal justice community, and the State as a whole. As you can see, however, all of these programs either stem from or are related to our core component. The essence of our division is the criminal history. Once again, I would like to bring forward to you many accomplishments of the Records Bureau during the last biennium. The Records Bureau has been in a turning point this past year. We have reinstituted the Nevada Criminal Justice Information System Advisory Committee, consisting of nine representatives from each of the following: the Department of Corrections, the Department of Public Safety, the Nevada Sheriff and Chief Association, the Nevada District Attorney's Association, the Administrator of the Courts, the Attorney General's Office, and a Nevada criminal justice information system user. We will now have a member from the Gaming Control Board, and last but not least, we have representatives from the legislature sitting on the committee: Senator Maurice Washington and you Assemblyman Bernie Anderson.

I would also like to talk about the reassessments. The enactment of Senate Bill No. 341 of the 73rd Session required our case investigators and the sex offender unit to reassess all sex offenders that had previously been assessed, plus maintain the incoming load of about 120 new offenders or registrants every month, along with assisting the Technology Bureau in the development of the enhanced sex offender public website. Our Automated Fingerprint Identification System (AFIS) has recently been updated, allowing for more flexibility within our system, enhancing our process in the fingerprint submission. It has been critical in our reduced time for delivery of replies on civil fingerprinting. I would also like to discuss our strategic business plan that was delivered to the Interim Finance Committee in June 2006, given the history of challenges faced in the development of a road map for the division to successfully move forward through to 2011. In the back of your package, at the end of the slides, is an executive copy of the summary of the strategic plan. If any of you would like to have a hard copy, we will be happy to deliver it to you. It is also on our website for your perusal.

Last, but not least, I would like to talk about our conversion project of approximately 36,000 criminal fingerprint cards that have been delayed or neglected since 2003 for a variety of reasons. I am proud to announce today to you that it is back on track with a contract being awarded to *ComnetiXs* for the processing and introduction of these prints into our criminal justice information

system. We expect to have the cards injected back into our system over the next six months, barring any technology challenges.

Chairman Anderson:

Please recognize that this backlog of cases has been a major issue. So we could reasonably expect that there will be no backlog of the backlogged cases? Some that are several years old now will be taken care of within the next six months, give or take a day or two?

P.K. O'Neill:

Yes, we are aggressively attacking those backlogged prints. There are still come challenges that we have to overcome with the juvenile prints, but yes, we are bringing them into the system. It is a large caseload, along with our current loads that come in daily, but I do anticipate it being within six months.

Chairman Anderson:

For members of the Committee who have been down this track with me before, this is such a vital issue. You tripped over the boxes going into the criminal history repository because at one time there was a huge filing system of materials that were there already, but the backlog was so great that it looked like my office here in the Legislature. The last four directors have indicated that this was going to be a major issue and is a high priority for the Department of Public Safety. So am I to understand that this is indeed a major commitment that we are going to be moving toward in part because of increased dollars? The reason this is a concern to me is because it is all the stuff of sex offender registry and several other important things, so I want to make sure to get it in the record.

P.K. O'Neill:

Yes, thank you. You will hear me very often say that I cannot take credit for any of this. I have an excellent staff, and all of the employees are dedicated. I am very proud of the division that I represent here today. It is because of them and their dedication that I feel confident telling you that the fingerprint cards will be interjected into our system.

Chairman Anderson:

I think there are many good reasons why the agency has not been able to accomplish some of the goals that have been set out, not the least of which is trying to retain competent staff. I feel sorry for the Department of Commerce, but feel that the addition to the Department of Public Safety is going to be one from which we will all benefit.

P.K. O'Neill:

I would like to take a moment now to highlight some of our diverse program areas administered by the Record Bureau. First is the Child Trust Account, NRS 179A.310. It was developed from the interest of various civic organizations and concerned citizens interacting with the 1999 Legislature, led by then—Assemblyman Dennis Nolan, now Senator Nolan. A.B. No. 239 of the 70th Session initially established a donation funding, allowing for reduction or free fingerprinting criminal history checks for volunteers dealing with children under the age of 16. The NRS was modified under S.B. No. 341 of the 73rd Session to allow certain non-profit groups to obtain fingerprint-based criminal history background checks for free or at a reduced rate based upon the defined criteria. Using federal guidelines, the Uniform Crime Report (UCR) program collects and compiles crime statistics on a monthly basis from 39 Nevada law enforcement agencies. The information is developed into an annual publication useful to the criminal justice community in their proactive response to crime and justice; the Governor and Legislature for supporting the requests and needs of State agencies and programs; the courts and prosecutors for their business needs; the press for factual reporting; social agencies for identification of problem areas for concentration of remedial activities; and our educational institutions for various studies. The future of UCR lies in technology advancements, evolving federal guidelines, and the users' needs.

Chairman Anderson:

Let me point out something here. I think this statistic is often misunderstood. Quite frankly, all this information is gathered based upon national criteria, and they lay out the rules. It really reflects, more importantly, that the law enforcement in Nevada is doing its job. It is a success rate, not a failure rate, and the fact that we are doing a good job of enforcing the law is reflected statistically, because we are above the national average and the western states average, and it only proves that there are bad people among us.

P.K. O'Neill:

Unfortunately, you are right, Mr. Chairman. The Sexual Offender Registry, or sex offender unit, is currently responsible for over 6,000 active registered sex offenders, some who are compliant and some who are not. Some are under the supervision of Parole and Probation, but all offender information is maintained by the case investigators of the sex offender unit. There is an additional 6,000 inactive offenders. This inactive list can include sex offenders who are currently incarcerated, moved out of state, were visitors here for a short time and have returned home, long-term hospitalized, deceased, or along that line, but they are basically removed from the active part of the registry. All of these 12,000-plus pieces of information are being maintained by this unit. The average case load per investigator is over 600. We have a public website that presents

information of tier two and tier three offenders. The tier-level assessment is based upon the Attorney General's criteria and evaluated by case investigators. Tier three is the most serious offender of which we currently have 149. Tier three is the offender that poses the greatest threat to our community, with tier two being moderate risk, tier one low risk, and tier zeros in which no assessment is required. Prior to S.B. No. 341 of the 73rd Session, the average noncompliance rate was 36 percent of our 6,000 active offenders. Over the last six months, it has been reduced to 34 percent. We project by the end of this fiscal year to be handling just short of 12,000 offenders. We are currently adding about 120 registrants to this file per month.

The next unit I would like to talk about is what we refer to as Brady, the Brady Act, or officially known as our Point of Sale Firearms Program. It has had an ever-increasing demand, not only in Nevada, but across the country as a whole. Now they are open every day of the year except for four holidays: New Year's Day, Fourth of July, Thanksgiving Day, and Christmas Day. Only less than 1 percent of all Brady checks result in a denial. I would like to emphasize the number of calls in one weekend and the number of warrants identified by the unit during a six-month period. Through the weekend of December 16th and 17th, over 977 calls were received. During the seven-month period of May through December of 2006, they identified 293 warrants. Brady is projected to receive over 65,000 calls during 2007. Additionally, they are responsible for temporary protection orders being entered into the registry within eight hours of receipt from the courts. Currently, there are close to 6,000 protection orders on file and accessible to law enforcement. Our Programs Development and Compliance Unit (PD & C) is responsible for ensuring that the users of the Criminal Justice Information System (CJIS) are adhering to the governing board's policies and procedures. They also supply training and certify the users in appropriate dissemination of records and information gained through the CJIS system. They participate and are responsible for the development of new files or modules within CJIS and also within the national CJIS system. Additionally, they provide the Civil Name Check program (CNC), which is a name-based criminal background check for nongaming employment. The demand on this program is expected to increase, as a public expectation for security in their workforce increases. PD & C provides state criminal history only, along with felony warrants on a national basis. The program projects conducting over 98,000 checks this fiscal year.

I would like to call your attention to the drop in our civil applicant response time from over four months to now meeting our statutory requirements of 30 days for the first time, that I am aware of, in the bureau's history. I do need to emphasize, however, that, while this is a great accomplishment, we are meeting this milestone with significant staff overtime and prioritization. We cannot

sustain the current levels of overtime without significant staff burnout in the near future. We are currently working with the State Health Division Bureau of Licensure and Certification, on a pilot program to automate the civil applicant process. While automation will, in the long term, allow us to maintain or reduce response time and further allows us to handle the ever-increasing growth and submissions, full automation is still a year or more out. We currently receive 75 percent of our civil applicant submissions on hard cards and only 25 percent electronically. It is my desire and goal that in 12 to 18 months to anticipate reversing that percentage and receive the great majority electronically.

Chairman Anderson:

I want to point out to the Committee that the reason this is of some significance for the agency, to which I want to commend for cutting down the backlog, is that this is a major part of the solution to the elimination of the backlog in the other areas. By opening up the civil application fingerprint area, we are able to generate additional revenue into the system and, thus, bring the additional people to make the whole thing work, which was a critical element missing from an earlier part of that. So I applaud the agency for solving the problem and the good use of the people. I want you to know that if I need to appear in front of Ways and Means in support of this area of the budget, I will be happy to. Without it we cannot get to the sex offender registry question. So I want you to know that any support that I can link personally to this issue, I will.

P.K. O'Neill:

Mr. Chairman, there may come a time when I do need your support with Ways and Means. There is an ever-increasing demand on our core business product, which is the criminal history. There has been a steady growth since the inception in the late 1980s. Over the past five years, we have experienced a 94 percent increase of civil fingerprint demands. Since FY 2003, a civil card exceeded a criminal card activity. That has maintained every year since then. This is also consistent with the national trend. About the same time, the Federal Bureau of Investigation (FBI) started processing more civil applications for criminal history than criminal cards or arrest cards. It is projected that the civil fingerprint submissions will exceed 187,000 cards this fiscal year alone. Our criminal records and our criminal history records are based upon fingerprints, which are a unique individual identifier and are the heart of our business. It is the foundation of the Nevada criminal justice information system. Our long-term solution to the disposition data entry is a cooperative effort with the Administrative Office of the Courts (AOC) to submit dispositions electronically. I am happy to say that between AOC and the Department of Public Safety we have successfully submitted electronic dispositions from Las Vegas and Carson City justice courts to the criminal history repository. Although significant work remains to add additional disposition data in courts,

the foundation is there, and we are successfully creating the environment. Additionally, to deal with our backlog, we have received a Federal NCHIP (National Criminal History Improvement Program) Grant to enter these backlogged dispositions and are in the process of hiring part-time staff to enter that information. We feel that in the future these efforts will allow us to insure that our criminal history is complete and includes all disposition information submitted to the Bureau. Currently, 98 percent of criminal record cards are received and processed electronically. We project processing over 110,000 arrest cards FY 2007.

In conclusion, my final slide for you is what I like to refer to as the "backgrounding" of Nevada. Civil applicant background checks currently exceed criminal submissions by 2-to-1 in Nevada. By 2011, the projected number of civil applicant background checks processed is expected to top 225,000. These trends in Nevada parallel a national trend of increasing criminal history background checks for noncriminal justice purposes. The national SEARCH consortium and the U.S. Attorney General's office have recently published reports on these trends. On recommended strategies at a national level, the U.S. Attorney General's report is expected to be a focus during current federal legislative session. Additionally, both of these reports can be accessed through our public website. If you would like, you can contact me, and I would supply hard copies to you. In conclusion, I would like to say that while the Department of Public Safety's Records and Technology Division still has room for growth and improvement, there are many accomplishments that I have celebrated with you today. We are optimistic that we can meet any challenges presented to us and look forward to the legislative session and discussion during the budgetary process as we move forward into a bright future of service to the citizens of our State.

Chairman Anderson:

Mr. Horne and I were looking over an issue that is very important: for those of us who are concerned about 1984-mentality, the operability of knowing who people are in a relationship—that we know more about people than we have ever known before. It has increased the public's awareness and expectation of having information that was available for only a limited people. I think this is a great presentation, Mr. O'Neill, and I want to tell you that the only slide that is missing from it is the one that shows all roads lead to you. If you look at Mr. Graham's earlier presentation, it shows a police officer standing there at the start. Actually, Mr. O'Neill starts before the police officer does. When the police officer is coming down the road, he calls in that license plate through DMV, and it goes through the criminal history repository. That goes out so that the officer knows the likelihood of someone carrying a gun or that there are warrants out for that person. There is a profile of that person, if they are

known, and all of that starts with Mr. O'Neill. When a person is arrested, that information goes to him in the central repository. The booking information and any DNA testing will end up being catalogued through Mr. O'Neill, and the track is set in place. The court system, whether he goes to prison, the length of time, the determination, the release, and then back to parole and probation all go through Mr. O'Neill and the criminal history repository. It is absolutely essential. It has been very difficult for this Committee to look at people who are victims of crime, especially sex crimes, who are protecting their children, and tell them that we can not take action because the expectation is that we should be able to. I think that we made a huge change here in the last four years raising our level of expectation from where it was many years ago. I am protective and supportive of this particular group because I have a high level of expectation of them. I am sure that they will be happy to answer any questions you have.

P.K. O'Neill

I would like to thank you for those words; you truly did summarize our division's involvement in criminal justice at every level. I would also like to thank you in the support that you have given to the Division. I think, because of that, the interest shown and the support that you have given to them does help them meet these changes during this turning point and the increasing demands that have been placed upon them. So, thank you very much.

Chairman Anderson:

I only hope that you have the courage sometime in the future to say, "No, we can not do that." That probably is one of the great failings of the Department of Public Safety as a whole: you have a tendency to salute and say, "Yes, sir." Every once in a while, the Legislature needs to be reminded of that. We will be happy to do that after you give us the tools to do it with, instead of just saluting. Are there any questions?

Assemblyman Carpenter:

I am very encouraged to see that your civil fingerprinting is moving back on track. I get a lot of calls over that and just want to ask one question: on the fingerprints that you keep, how many states does that cover? Many questions that I get are along the lines of why they have to go through the FBI when that takes such a long time. Can we get those fingerprints within the western states or something? We may have pretty well covered everything, and we can go on about our business and then give the FBI a chance to come back.

P.K. O'Neill:

In trying to shorten that response, it is a rather intricate answer I could give you. The State of Nevada is part of the Western Identification Network System,

which includes the states of Oregon, Idaho, Washington, and possibly California; I forget the list of each name of the states. However, one of the reasons that we have to go to the FBI is that it is also set up by the National Advisory Policy Board, which administers through the FBI the criminal justice information. Each state has its own criminal history and allows or restricts access to that. Although I can supply and do allow history access to our state records through the civil name check criminal history, I cannot allow access necessarily to other state records. That is the decision by their criminal justice agency, criminal justice officer and their legislature, also. So we go to the bureau, or the FBI, to determine criminal histories of what may have occurred in Missouri, Vermont, Maine, Florida, et cetera. That supplies that information for them. We only have the criminal history that comes from our state. Does that answer for you hopefully, sir?

Assemblyman Carpenter:

Thank you. I was under the false impression that you could get it from all western states.

P.K. O'Neill:

I can gain some access, but it is also that we are using it for civil fingerprints. What I am allowed to disclose or release differs by each state. It has to be based upon fingerprints, that unique identifier. Also, the FBI has actually taken the lead in electronic interfacing and response times, and we are trying to follow their responses. They are down to approximately a week on most civil fingerprints if they are submitted to them electronically.

Chairman Anderson:

I do not want the Speaker to be upset with me on her first day; it is now the hour of 11, so we are about 10 or 15 minutes behind when we should have taken our break.

Please direct any questions to Captain O'Neill. Mr. Galeoto, I am sure that you would like to have said something, and we did not give you that opportunity. Any other issues to come before the Committee? We are adjourned [at 10:56 a.m.]

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Secretary

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Transcribing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 6, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Committee	Agenda
	B		Attendance Roster
	C	Chairman Anderson	Opening Remarks and Introduction
	D	Chairman Anderson	Standing Rules of the Assembly Committee on Judiciary
	E	Jennifer Chisel, Senior Research Analyst	Presentation, Committee Brief
	F	Risa Lang, Committee Counsel	Information concerning cases of interest to the committee that occurred during the interim
	G	Ben Graham, Chief Deputy District Attorney	Crime and Punishment Illustration
	H	Ben Graham, Chief Deputy District Attorney	Criminal Law: Jurisdiction & Procedure
	I	P.K. O'Neill	Nevada Dept. of Public Safety