MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
March 21, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:08 a.m., on Wednesday, March 21, 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 James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Oceguera (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Danielle Mayabb, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Kristin Erickson, representing the Nevada District Attorneys Association; Chief Deputy District Attorney, Washoe County
Karl Hall, Chief Deputy District Attorney, Washoe County
Bill Uffelman, President and CEO, Nevada Bankers Association
Josh Martinez, representing Las Vegas Metropolitan Police Department
Carol Sala, Administrator, Aging Services Division, Department of Health and Human Services
Ken Retterath, Division Director, Adult Services, Department of Social Services, Washoe County
W. J. Birkmann, Vice President, Chief Organizer, Nevada Alliance for Retired Americans
Bill Bradley, representing the Nevada Trial Lawyers Association
Dennis Flannigan, Executive Vice President, Great Basin Federal Credit Union
Keri Bailey, representing the Nevada Credit Union League
Randy Robinson, representing the Nevada Credit Union League
Joseph Turco, representing the American Civil Liberties Union
The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court
The Honorable Kathy A. Hardcastle, Chief Judge, Eighth Judicial District, Clark County
The Honorable T. Arthur Ritchie, Judge, Eighth Judicial District, Clark County
The Honorable Frances M. Doherty, Judge, Second Judicial District, Washoe County
The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court
Arthur E. Mallory, District Attorney, Churchill County
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County
Lisa A. Gianoli, representing Washoe County

Chairman Anderson:
[Meeting called to order. Roll called.] Let us turn to Assembly Bill 87.

Assembly Bill 87: Revises certain provisions governing persons who are required to report the abuse, neglect, exploitation or isolation of older persons and vulnerable persons. (BDR 15-157)

Assemblywoman Sheila Leslie, Assembly District No. 27:
Ms. Pierce and I are sponsoring this bill. We know that financial abuse of our elderly population is a problem in both urban and rural areas in Nevada. The need for this bill was brought to my attention last year by a district attorney in Washoe County, Karl Hall. All of us Baby Boomers with aging parents are becoming more aware of the potential abuse of our elderly. My own mother lives in Reno. My sister and I are able to assist her with her finances and make sure that she is protected. I can only imagine how difficult it is for families who have their parents living out of state. Those parents are open to the type of abuse where somebody other than a family member, looking to exploit older persons, comes into the picture. The elderly have to depend on strangers or false friends to help them with their finances and provide this type of support.

I want to thank the banking industry that has come forward to work with the district attorneys on an amendment they will present to you. Representatives from the credit unions were also involved in the discussions that have been going on. They have not yet signed off on the amendment and you will hear some of their objections. Other states have moved forward with similar legislation in recent years, and it is my hope that Nevada will join them in doing all we can to protect our vulnerable seniors from financial abuse.

Assemblywoman Peggy Pierce, Assembly District No. 3:
The zip code I live in has one of the highest concentrations of seniors in the Las Vegas valley. In talking to my constituents, I see seniors all the time. When I was campaigning last summer, one of my constituents had a story about having been fleeced of a great deal of money by a combination of people, some of them relatives and supposed friends. It is heartbreaking. There is no way to fix it. This is a great approach to putting more protections out there for the seniors.

Chairman Anderson:
The Committee has a piece of legislation that is going to be coming up that deals with some of these issues. We are hopefully going to solve some of these problems. This is a very important issue and one we will spend time on.

Kristin Erickson, representing the Nevada District Attorneys Association; Chief Deputy District Attorney, Washoe County:
Financial abuse of our seniors is a growing concern, not only in the State of Nevada, but across the country. This piece of legislation is one step in addressing this problem. With me is Chief Deputy District Attorney Karl Hall, who has been working on this bill with Ms. Leslie.

Karl Hall, Chief Deputy District Attorney, Washoe County:
I have worked with Bill Uffelman of the Nevada Bankers Association in amending *Nevada Revised Statutes* (NRS) 200.5092 and NRS 200.5093 (Exhibit C). The purpose of the bill is to identify financial abuse of older persons at an early stage so we can investigate possible crime and take appropriate action. Specifically, NRS 200.5092 defines financial abuse and financial products; it defines what a financial entity is—banks, credit unions—and we have also included real estate and securities brokers. NRS 200.5093 is the reporting portion of the law. The amendments we have made to that section require that a financial reporter—or a person required to report a financial abuse—is to report within one business day. That is a little different than the other required reporters who have to report within 24 hours. In light of the fact that there may be more time required for a teller to check with their manager to determine whether or not there is evidence of financial abuse, we agreed to allow banks to report within one business day. We have also described who is required to report and what is to be reported. We have included some language that would protect banks regarding confidentiality laws and protect them from civil lawsuits as a result of reporting. We have implemented a civil penalty as opposed to a misdemeanor. That would be a $1,000–$5,000 fine, which would be imposed or prosecuted by the district attorney's office or the Attorney General's office. Those are the main amendments that we have made to those two provisions.

Chairman Anderson:
Being mandatory reporters of child abuse as school teachers, we do not check with the school principal or the school counselor or anybody else. If you believe abuse is taking place, you have the mandatory requirement of reporting right away. Why a full business day? If something happens Friday midday, does that mean they do not have to report until Monday?

Karl Hall:
The amendment says that they should report as soon as possible, but if it takes one business day in order for them to get the reports and check the business records to make sure there is a pattern of abuse, it gives them a little additional time. Many times you have younger people at a teller station and they may not

be as sophisticated as a bank manager or other people higher up in the bank. That is why we agreed to give them one business day.

Bill Uffelman, President and CEO, Nevada Bankers Association:
The amendment is based on a California law enacted in 2005. It became operationally effective January 1 this year. We have taken the substance of that law and found a place in Nevada law to put it. This amendment needs a little more work, but this is a start. We have found that we have misidentified a couple of organizations that we brought into the financial entity reporting requirement.

Chairman Anderson:
We do not have a lot of time, and this is an important piece of legislation. It is important to get something to us as quickly as possible.

We are trying to make sure financial institutions do the proper reporting. Are we putting a delay date into this for when it becomes effective? Is that what part of your amendment is going to deal with?

Bill Uffelman:
Page 6 of the bill as introduced to the Committee talks about how a teller needs to have six months of training or be permitted to have a time period to have training—that language needs to be back in the bill. The document that has my name on it speaks to the immunity from civil actions (Exhibit D). Federal banking law requires confidentiality. If I blurt out to a third party that I think Mrs. X is being abused and it turns out Mrs. X is not being abused, my bank could be sued without that immunity. That is the reason for that extra paragraph we are suggesting.

[Chairman Anderson leaves the room.]

Assemblyman Segerblom:
The penalty that would be assessed would have to be paid by the financial institution, not the employee?

Bill Uffelman:
As written in this, the financial penalty is to be paid by the financial institution.

Assemblyman Segerblom:
I am unclear about the difference between the $1,000 and $5,000 penalties. The $1,000 penalty section says "knowingly and willfully," and the $5,000 penalty section says "willful." I am not sure what the distinction is there.

Bill Uffelman:
I allowed the district attorney's office to write that language. I would have written it differently, where the willfulness would have gotten you to the $5,000 penalty. The knowing and willful failure would have gotten you to the $1,000 penalty.

Assemblyman Segerblom:
What would be the distinction between "knowingly and willfully" and "willful?"

Karl Hall:
We are looking for somebody who is aware that there is financial abuse going on, as opposed to someone who is neglectful of the abuse. If a person is aware there is financial abuse and they fail to do anything when they should have known and should have had training, then the higher penalty would be imposed.

Assemblyman Segerblom:
I do not see a different standard in the two.

Bill Uffelman:
The California language is that "failure to report financial abuse under this section shall be subject to a civil penalty not exceeding $1,000 or, if the failure to report is willful, a civil penalty not exceeding $5,000 which shall be paid by the financial entity." This is what the language should have said.

Vice Chairman Horne:
Look at the next paragraph:

> The civil penalty provided for in the subsection shall be recovered only in a civil action brought against a financial institution by the Attorney General or district attorney. No action shall be brought under this section by any person other than the Attorney General or district attorney.

If we have knowing and willful conduct—fraud—why would we limit liability to $5,000? Could there not be potential for a much greater loss?

Bill Uffelman:
If there was fraud, that is a separate issue. This is the civil penalty for the failure of the bank to report the activity that they should have known or knew was going on. This is not related to any other crime. The crime of financial abuse is a separate crime from this. We are confining it to the Attorney General and the district attorney rather than a private right-of-action of a third party.

Vice Chairman Horne:
If these failures to report get to such an egregious level to where someone is being bilked out of her life savings and each transaction should have been reported and the person at the bank continually does not report, the remedy that my mother has from your institution would only be $5,000? That is how I am reading this.

[Chairman Anderson returns.]

Bill Uffelman:
The removal of funds is unrelated to the failure to report. The claims are separate.

Vice Chairman Horne:
That claim would still be a tort financial...

Bill Uffelman:
That would still be your tort claim of being complicit in the defrauding of the elderly person. It is not our intention, through this language, to cut off the claim you are speaking of.

Assemblyman Carpenter:
Are the training requirements still in the legislation?

Bill Uffelman:
It falls in the compliance category for a financial entity. We train to detect fraud and counterfeit money. This is additional training. The piece we want to put in is that we do not want to fault somebody for failure to report if they have not received the training in how to do it.

Assemblyman Carpenter:
Does it or does it not remain in the bill?

Bill Uffelman:
The training will remain in the bill.

Assemblyman Carpenter:
In the amendment where you describe financial abuse, it is hard for me to understand what it is trying to say. It says "appears to a reasonable person to be uncharacteristic for the customer based upon..." whatever. What is that supposed to mean?

Bill Uffelman:
You for example, come into the bank every week and withdraw $50, and then suddenly one day a party not known to the bank comes in with a $9,999 check from your account and wants to cash it. The bank may call you to inquire about why this person is here with a $9,999 check from the account, and ask if you are okay with that. It raises the issue that maybe $9,999 is uncharacteristic. There are patterns. If you look at your own bank account, you will see that you do the same things at the same time of month routinely. When there is a succession of $500 checks to several people, it does not look right. Maybe you have maintained your stock account for years and then they start getting calls about moving the money into something very speculative. That should trigger suspicion. At a minimum, they should talk to you and figure out what is going on. One of my bankers related that a customer he has had for a long time—a retired gentleman who travels a lot and always has $1,000 cash to carry—came in one day and took out $80,000. He was doing it in person. The banker asked if there was a problem. It turned out someone was suing him and he was trying to keep money out of their hands. He was back three weeks later putting his money back in. It is an issue of awareness and that this is not the way you normally behave.

Assemblyman Carpenter:
I understand what you are trying to do, but I am not sure the bill actually says that or not.

Bill Uffelman:
These are some of the things we can work on.

Chairman Anderson:
We will let Mr. Carpenter consort with Legal on some of the language.

Assemblyman Cobb:
I am perplexed why this immunity amendment was not part of the original proposed language. If we are going to require—with threats of fines—that financial institutions report, we should provide some type of immunity from civil liability for breaching that confidentiality. Do you agree?

Karl Hall:
Yes. There is already an immunity statute in place. We also added additional language which would grant immunity to financial institutions.

Assemblyman Cobb:
Could you point out which section that is in so we could review it?

Karl Hall:
It is NRS 200.5096 entitled "Immunity from civil or criminal liability for reporting, investigating, or submitting information."

Assemblyman Cobb:
So, is the intent of the drafters of this legislation that immunity is and should be provided to people who are required to report, whether a financial institution or otherwise?

Karl Hall:
Absolutely. We want to provide an incentive for people to report, and we want to protect them for reporting.

Assemblyman Mortenson:
Is there a legal difference between the terms "knowingly" and "willingly?"

Karl Hall:
Yes, there is a difference. It is a term of art. If it is a specific-intent crime, we have to show that a person did it on purpose and had the intent to commit a crime. For a general-intent crime, if a person does it willingly, then there does not have to be specific intent to commit a crime, but just the intent to do the act.

Assemblyman Mortenson:
So "knowingly" is worse than "willingly?" Is that what you are saying?

Karl Hall:
When you know you are doing something wrong, that is worse. That is where we are trying to impose the higher penalty.

Kristin Erickson:
In response to Mr. Carpenter's concern regarding reasonableness or something out of the ordinary, Mr. Hall does have an example he could provide which would indicate where a bell or whistle should have gone off, and the person should have reported that something out of the ordinary was occurring in certain bank accounts.

Karl Hall:
We just had a case in our office where a Mrs. Colby befriended the cab driver who was providing transportation for her elderly husband suffering from Alzheimer's. After the husband passed away, the cab driver became friends with Mrs. Colby. Between September and December of 2006, he talked her into giving him over $33,000. Over a two-year period, he was given over

$100,000. This was an 80-year-old woman on a fixed income. If this had been reported by a financial institution early on, an investigation could have been conducted. It was not until her grandsons came to town to visit that they realized what was going on and reported it. There is a need for this legislation. I have talked to Sally Ramm, who has indicated the numbers for financial abuse are going up steadily each year.

Chairman Anderson:
If there has been a tragedy, the death of a family member, it would not be unusual that the funeral expenses and other family expense at that time go up. You would withdraw money for the funeral, living arrangements of other people, and to close out medical bills. There might be a larger expenditure at that time than there normally is. How would the average bank teller know this is out of the ordinary? It is the cumulative effect of the $100,000, not the day-to-day or week-to-week transactions. Maybe they decide they are going to repaint the house. There are some events that might occur after the death of a family member that you may have put off because of accommodations that have to be made. Someone has to raise suspicion in the beginning or the bank is not going to know of these tragic circumstances. How would this happen other than a family member actually sitting down with the bank records. I hesitate to think of how many bank statements that would be. I have never had the luxury of a bank statement balancing the first time out. Tell me, how is this going to happen?

Karl Hall:
What we are going to see is a spike in bank account activity. If I start using my credit card uncharacteristically, I will get a call from someone wondering what is going on. That is what we are asking for here. Many old people go to the bank and talk to these tellers and establish a relationship. Once the tellers see activity or other people being involved with the elderly person, all they have to do is make a report. Then it is up to law enforcement, adult protective services, and social services to enquire if something is going on.

Bill Uffelman:
You have highlighted the difficulty with this kind of law and that is where the training comes in. That is where the reluctance comes in when you are referring someone's personal information to a third party because of what you perceive to be a difficulty. Maybe you do not know if they suffered a loss in the family.

Assemblyman Cobb:
I agree with the Chairman. Perhaps reasonable cause could be better defined just for financial institutions. I share the concern about the average teller who

may have contact with this person periodically and whether or not that person should know that $400 is out of line with the usual $50 that individual might withdraw. Perhaps we could further define the standard of reasonable cause for financial institutions

Chairman Anderson:
I am still waiting for the answer to the question I first asked relating to waiting a business day. If it is Friday activity or a bank holiday, it could be four days before a report is filed. If teachers, bus drivers, and school employees can do it instantaneously, why cannot the bank do it?

Bill Uffelman:
With respect to the teachers, you are probably talking about physical abuse and there is probably some physical evidence. There may be five tellers and each of them may get a suspicious check. At the end of the day when you realize there have been multiple checks on the same account cashed by separate individuals, that is the business day we are talking about, so that we can run it through the compliance officer and manager of the bank.

Chairman Anderson:
So, it is within the same business day the transaction took place?

Bill Uffelman:
The way banking is set up, the transactions you do while the bank is open carry over to the after-hours. If something happens on Friday, I do not necessarily have the people or the system that allows me to verify those transactions because of the way banking operates.

Chairman Anderson:
With ATMs you are open 24 hours a day and seven days a week.

Bill Uffelman:
If you go to a store and run your debit card, those transactions will all show up as pending. Until the next business day, those are not resolved.

Chairman Anderson:
Are there any other questions for these folks? [There were none.]

Josh Martinez, representing Las Vegas Metropolitan Police Department:
We support the bill.

Carol Sala, Administrator, Aging Services Division, Department of Health and Human Services:
I have submitted testimony (Exhibit E), but I will not go through the whole thing. We are in support of A.B. 87. The Division for Aging Services regards this bill as very important to our efforts in investigating elder abuse and providing information for possible prosecution of perpetrators in financial exploitation.

Chairman Anderson:
Have you had an opportunity to work with the people who put together the amendment?

Carol Sala:
We have not seen the amendment.

Chairman Anderson:
Questions for Ms. Sala? [There were none.] Anyone else speaking in support?

Ken Retterath, Division Director, Adult Services, Department of Social Services, Washoe County:
I will also defer my testimony and give it to the clerk (Exhibit F). We would like to go on record as supporting this legislation.

W. J. Birkmann, Vice President, Chief Organizer, Nevada Alliance for Retired Americans:
We are in support.

Chairman Anderson:
Is there any opposition?

Bill Bradley, representing the Nevada Trial Lawyers Association:
We endorse the bill, but we have some serious concerns that have been expressed by Mr. Horne and Mr. Carpenter regarding the language. You have one of the most sophisticated industries in the world and one of the most vulnerable aspects of our society in this bill. We feel the benefit of the doubt should be given to the vulnerable side of this equation. Limiting the civil liability to a civil fine for negligence and failing to report troubles me. I understand Mr. Cobb's concern on the confidentiality, but this bill can serve as a springboard for an excellent program to be passed through the banking institutions where there is a program set up for reporting and the customer waives any confidentiality when abuse is suspected. There is a way to accomplish this to meet the goals of Ms. Leslie and Ms. Pierce without giving up valuable rights.

Chairman Anderson:
I was surprised that we were not doing a little more in terms of the punishment. The question is how we are going to punish the individuals in the banking industry not the person who is committing the crime. We want to hold them responsible and we want bank employees to be trained. The financial institutions do more than teach them how to turn on the cash register and stamp the passbook correctly. The reality is how we make sure that they are doing their duties with due diligence and acting responsibly and hold them to the standard we expect. Have you had an opportunity to share your concerns with Ms. Leslie and Ms. Pierce?

Bill Bradley:
I have. We just got the amendment, so these are cursory remarks based on an initial review. We are happy to work with the sponsors as well as the district attorneys on the amendment. We are reluctant to see any rights given up.

Assemblyman Horne:
In that portion of the amendment, I assume you heard my question to Mr. Uffelman and his suggestion other remedies would still be available. I take it you disagree with that. Could you clarify why you do not think those other remedies are available?

Bill Bradley:
I appreciate Mr. Uffelman's statement that it is not the intent to do away with the civil remedy, but the language as proposed in the original bill on page 5, line 35, is talking about not only the teller who has direct contact with the individual, but also the person who reviews or approves the financial documents. Now you are moving up that chain. One of the claims that the victim would have is that the bank negligently failed to identify and report the abuse. Any of that reporting is going to be subject to the limited civil fine on a willful and knowing violation. That is troubling. I understand the intent, but the language "persons responsible for reporting suspected financial abuse who knowingly and willfully fail to report financial abuse" can be easily misinterpreted when you read it. That is the only civil remedy. I see that as an open opportunity for the attorneys defending the banks to say there is nothing else that can be done against the financial supervisor who failed to do his job.

I also received this single-page amendment that I am not sure about. It says, "reporting by any reporting person in good faith as set forth in this Section shall render the reporting person and financial entity full immune from civil liability." I would love to understand the explanation of "good faith."

Chairman Anderson:
Are you available to work this out?

Bill Bradley:
Of course.

Chairman Anderson:
Opposition to the bill?

Dennis Flannigan, Executive Vice President, Great Basin Federal Credit Union:
Assembly Bill 87's intent to protect our elder citizens from financial abuse is supported by Nevada Credit Union League (NCLU). With Assemblywoman Leslie's support, our representatives have been working on acceptable amendments to A.B. 87 with the Washoe County district attorneys. The amendments submitted to this Committee were not those acceptable to NCLU. We are in support of mandatory training for our staff to be aware of the issue and how to address it. We support voluntary reporting so our staffs can take appropriate action to protect suspected elder financial abuse. Civil or criminal liability to branch staff, supervisors, or the credit union itself for failure to report suspected incidents of elder financial abuse would generate thousands of unwarranted filings monthly, rendering the intent of A.B. 87 useless. No matter how elder financial abuse is defined, when every staff member of a credit union is directly or indirectly at risk for civil or criminal action, everyone over 40 is going to be reported. From a management perspective, I spend much of my time instructing staff on the importance of doing the right thing for our members for the right reason and helping staff improve the members' financial situation by treating them like real people who need us and are valued owners of the credit union. To institute a punitive environment would be to change the members from the object of our service to the object of our suspicion.

Chairman Anderson:
I do not see any questions. Ms. Bailey?

Keri Bailey, representing the Nevada Credit Union League:
We have been working with the author and other interested parties. We do not think the language is acceptable yet. We have concerns about liability and setting up an adversarial relationship with folks that we otherwise have great relationships with. We would ask the Committee's indulgence in letting us continue to work with the author to reach a productive solution. We are also concerned about the rising incidents of elder financial abuse, and would like to find a productive way to help deal with that situation.

Chairman Anderson:
I know there was great fear about reporting requirements when they first went into educational institutions because of the potential for situations dealing with abuse. You hear stories in school that you do not know whether to believe or not, yet you have the reporting requirement. The school district was reluctant about the kind of liability that was going to fall to people for taking up this kind of issue. It has proven not to be true. It has only increased public awareness of child abuse. I know the credit unions pride themselves on being smaller institutions that service their members actively. That is probably why credit unions do the job they do that these larger financial institutions seem to have forgotten about. I want to make sure the senior citizens who are vulnerable to financial abuse to take a higher priority than they are currently receiving. That is what we are trying to accomplish with this piece of legislation.

Dennis Flannigan:
You expressed one of my major concerns. That is having an 18-year-old teller who has been on the job six months. They have received the training to be able to identify the circumstance, the intent, and the age of the people. That is my concern. How do you still put the credit union in a situation where they can be held criminally or civilly responsible for the ability to do that? In the last six months, my mother-in-law had to go through surgery. Because my wife was not on her accounts, it was difficult to go through the process of supporting my mother-in-law. My wife and her mother came to the credit union to add my wife to the account. I have instructed my people in these things. My mother-in-law said, "Well, this is what my kids want." My supervisor would not allow my wife to be added to the account. That is the way it should be. You want educated people who make good decisions. How do you get that 18-year-old to make that decision?

Chairman Anderson:
Ms. Bailey, are you going to work with the group to work on this bill?

Keri Bailey:
Yes. We will have one of our attorneys come in.

Randy Robison, representing the Nevada Credit Union League:
We submitted a letter (Exhibit G). We ask that it be entered into the record for today. I have been involved in the discussions with the Washoe County district attorneys on this bill. I want to clarify that, although I have been involved in those discussions, it would be inaccurate to suggest that I am party to those amendments. I was not authorized on behalf of the League to agree to those amendments.

Chairman Anderson:
Will you be the player on the field if we put together a work group?

Randy Robison:
Yes.

Chairman Anderson:
Questions for the NCUL? [There were none.] Anyone else in opposition to the bill?

Joseph Turco, representing the American Civil Liberties Union:
We oppose only one small sliver of the bill, but I want to commend Ms. Leslie and Ms. Pierce on what is otherwise an excellent bill. There is one thing that came up unanimously and immediately when we reviewed it—we do not want to see criminal liability attached to $7-an-hour tellers. That is our single concern on this bill. In my bank, I see very young tellers. Even the branch manager seems young. These are the lowest people on the totem pole. We are concerned about criminal liability, civil liability notwithstanding. Negligence is negligence.

Chairman Anderson:
I believe we can work out some of the concerns about who is going to be responsible here. Did the ACLU wish to be a part of that?

Joseph Turco:
I think everyone understands our issues.

Chairman Anderson:
We will make sure Mr. Bradley is well aware of your concerns. We will close the hearing on A.B. 87 and open the hearing on Assembly Bill 246.

Assembly Bill 246: Increases the number of district judges in the Second and Eighth Judicial Districts. (BDR 1-654)

This was submitted on behalf of the Nevada Supreme Court.

The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court:
We are here to talk about the addition of new judges. In the Eighth Judicial District, they are asking for ten—six family court judges and four general. The Second Judicial District is also asking for two additional judges. The chief judge of the Eighth Judicial District and representatives of the Second will make their case for this augmentation, which we believe is very important to serve the people of the two largest counties in this State. At the end, I will ask that you

amend this bill by agreement of the stakeholders to include a proposal to realign the rural district courts to create a new tenth district. Mr. Mallory from Churchill County will explain the proposal.

Chairman Anderson:
We have had similar pieces of legislation in previous sessions. Everything is going to have to fit into this bill. The amended language must be selected with caution so the whole question is not in danger. We can make some determination as to what we think is a policy issue. The Ways and Means Committee gets to deal with it afterwards. I appreciate the difficulty of trying to carry this in a single piece of legislation. This is going to be a very philosophical and emotional discussion. I appreciate the due diligence the court has already put into looking at this issue.

The Honorable Kathy A. Hardcastle, Chief Judge, Eighth Judicial District, Clark County:
We strongly believe the courts must respond accordingly to the child welfare crisis that has occurred in southern Nevada. With your permission, I will ask Judge Ritchie to review the family division's request.

The Honorable T. Arthur Ritchie, Judge, Eighth Judicial District, Clark County:
I could not help but note the irony of the morning so far in having you struggle over managing meaningful matters and trying to give them the weight they deserve. This is our daily exercise. I certainly empathize with your challenge. The creation of the family division of the district court required a tremendous amount of resolve, commitment, and leadership from the Legislature. From a historical perspective, I am proud of that. It has required support from the citizens of Nevada. This commitment to families and children has continued since 1991. We are here today to support A.B. 246 and to highlight the reason why it is appropriate and necessary. In Clark County, we need the six additional judges to begin hearing cases. That decision you make today could mean they will not hear cases until January 2009.

Legal matters concerning families and children are unique from civil and criminal proceedings by the nature of these disputes and because of the upheaval these matters create in the lives of the citizens. The Legislature and the Nevada voters approved an amendment to the *Nevada Constitution* and a specialized family court to ensure increased public access with consistent management of domestic relations matters. It is a tremendous achievement that in 1987 and 1989, the Nevada Legislature approved resolutions to amend the *Nevada Constitution* to create this specialty court as a division of the district court, and the voters ratified and agreed to this constitutional amendment in the 1990 election. In 1991, the Legislature took that and created the divisions in the

Second and Eighth Judicial Districts. In January 1993, there was one judge dedicated the family law in Washoe County and six in Clark County.

Most people when they think of the family division first think of issues of children and juvenile matters, then divorce and custody. I do not know that, until you drill down into that, you really understand how important this is and the priority that was established in creating this court.

The family division of the district court in the Eighth Judicial District is the model court after these years, and has delivered on the promise to expedite the management and disposition of cases. The jurisdiction covers a wide variety of cases. Your constituents, the citizens of Nevada, are touched by the family division more than the civil or the criminal divisions. We include resolving juvenile delinquency matters, juvenile abuse and neglect matters, adult guardianships, juvenile guardianships, protective orders against domestic violence, divorce and annulment cases, paternity and child custody cases, child support enforcement matters, termination of parental rights, name changes, involuntary mental health matters, adoptions, and a significant portion of what we call post-judgment relief where citizens come to the court to seek modification or enforcement of orders related to support and custody of their children.

The growth of the court is really what this bill is about. It has not kept pace with the growth of the population, certainly in southern Nevada and the corresponding growth in the filing of the cases. The Legislature has dealt with it in some sessions and not others. The original judges in January 1993 were six—one juvenile and other presiding responsibilities, and five civil. Some of you have been around since the 1997 hearings and the work done by the Legislature between 1997 and 1999 to study the court, especially in Clark County, to talk about meeting the goals of the court and what we can do to help families. One of the big issues during that time was the crush of caseloads—some 4,000 cases per judge—which is ironically the number of cases judges are responsible for today.

In January 1998, the district received two judges. In 2000, three more were elected. There were five judges added to the district in 2001. Since 2001, there have only been two family division judges—one in January 2003 and one in January 2007.

When I was appointed to the bench eight years ago, there were 11 judges. With 11 judges, we had one doing the abuse, neglect, and dependency work and ten doing the civil/domestic workload. In 2007, the workload allocation with 13 judges will be three for juvenile—one for delinquency, two for abuse

and neglect—and ten judges handling civil/domestic. The filings in the civil/domestic have increased from 30,000 in 2000 to 43,000 last year. The increase in the caseloads is what is threatening the ability to do what this court was designed to do, which was to allow parties to have access to the courts. When family division matters competed with civil and criminal matters, the family division matters usually came third. They do not come third in the family division.

In your handout, I would like to direct you to the first page and the corresponding charts (Exhibit H). I have tried to be general in the perspective of the growth in caseloads and the lack of corresponding growth in the judicial department.

The civil/criminal division has needs. They received five judges during the same period in which we received two. In 1997, after the court had been in existence for two sessions, five judges were added. That helped between 2001 and 2002. Now we are here five or six years later with the judges that can come on no earlier than January 2009. It is time to make that family division a priority and approve the request that we have made.

I would like to direct you to the first page of the handout and the corresponding first chart. This is what I mentioned as far as the increase from 30,899 in 2000 to 43,173 filings. The juvenile filings have increased by 30 percent from 10,398 in 2000 to 15,587 in 2006. The American Bar Association (ABA) issues guidelines on what the optimum workloads and time to disposition are for judges. We use these to gauge how we are doing. If you look at the second chart, only 83 percent of the cases are resolved within that recommended 12-month period of time. The guideline is 100 percent. We are doing worse than we were doing a year or two ago. The other aspect of this is showing that we are falling behind in the early disposition of cases. Family domestic caseloads show significant and very concerning time disposition deterioration, not just in the endgame, but in the disposition within the first 90 days. Thirty-four percent—which is in contrast to the ABA standard of 75 percent—are resolved within that 90-day period of time. We are looking at the threat of gridlock—the inability of parties to get timely hearings.

There are over 4,294 cases per family court judge, as shown in chart 3. We are forced to balance the needs of families, children, and parents, with the timely disposition of cases. As a result, abused and neglected children may not have the proper judicial oversight and fall through the cracks. Parents seeking divorces may experience long delays. You learned from our Chief Justice that this is a top priority. Less than a month ago, the judges in the Eighth Judicial District voted unanimously to support a transfer of one of their judges to

juvenile abuse and neglect. They did this knowing that their civil/domestic caseloads with the remaining judges would increase by approximately 10 percent.

Under funded courts decrease the quality of life for these families and their children. The abilities to properly hear cases and tend to the needs of the abused and abandoned children are at risk. We have a smart and aggressive plan. The number of judges selected was based on an analysis of the growth and population, and the growth of filings. It is within guidelines of needs, but it is significantly lower than what guideline caseloads would be for ABA standards. The addition of six family court judges will assist us in achieving resolution of cases within 12 months in civil matters. It will allow us to dedicate the resources related to our priorities and needs in the juvenile area. It is a management concern, just looking ahead over the next 19 or 20 months and trying to figure out how the judges are going to manage until January 2009. If we do not address the acute need, like you did at the end of the 1990s, and these judges do not come on board in 2009, we are going to have serious problems related to disposition. If the Legislature directs money into the treatment for parents and families, we have other plans we have used in addition to the judges. We have included an aggressive program of using senior judges to help with the disposition of cases. If we get funding, then we will use judges for the families who have dependent children whose parents are suffering the addiction to methamphetamine.

In closing, I cannot stress how critical it is. The expansion of our ability to handle civil courts is dependent on what happens this session. On behalf of all judges in the family division of the Eighth Judicial District, I want to thank you for allowing me to provide this information. We have a great and dedicated group of hardworking jurists in the family division. I hope the Legislature will lead the way in providing these services for the citizens of Clark County.

Chairman Anderson:
I am a big fan of the family court system. The family court system in the Eighth Judicial District has always troubled me in terms of the relationship between the general court and the family court.

Kathy A. Hardcastle:
Before I go on to discuss the needs of the criminal/civil division of the Eighth Judicial District, you should hear from the presiding family court judge of the Second Judicial District about their needs.

The Honorable Frances M. Doherty, Judge, Second Judicial District, Washoe County:

We are here to talk about A.B. 246 in relation to the Second Judicial District, and we appreciate the opportunity to request two additional judges to meet our ever-growing workload and demand (Exhibit I). Nationally and locally, domestic relation cases are the fastest growing cases in civil court. Throughout Washoe County, those seeking assistance in ending their legal relationships; those victimized by domestic violence; child abuse, neglect, and methamphetamine use; and helping our frail, aged, and disabled individuals address their legal needs and challenges is the work of the family court on a daily basis. Our court symbolizes and mirrors our communities—communities with which you are all familiar with respect to the social and legal challenges that are brought to you on a regular basis during the session.

We in family court do not merely adjudicate cases and civil matters, we apply law to an overlay of social, medical, emotional, and economic problems that families bring to our doorsteps, and we inject social insight and a level of problem solving skills in addition to our legal expertise on a daily basis.

In Washoe County, as in Clark County, we are a unified family court. We are also a model court. We provide cohesive and comprehensive responses to a multitude of legal problems. We partner with as many entities as we can in our communities—the school district, grant funders, volunteers, social service agencies—to effectively and efficiently deliver our legal services to our families in need.

Our family court is a therapeutic or problem solving court, as that term is used by the National Center for State Courts. The judicial process involved in a therapeutic court takes more time than our sister courts in civil/criminal. More time is needed to address cases even before they reach our courtrooms. We utilize mediation, service coordination, and other matters to assist families in their resolution before we interact on a judicial basis in a formal courtroom environment.

Our court seeks to protect and promote safety, ensure accountability, and enhance well-informed decision-making. We collaborate with our partners to address the entire community's response to our challenges involving victimization of families, juveniles, and the elderly.

It is a humbling responsibility to serve as a judge in our Second Judicial District, as it is statewide, and it is a privilege. The family court of the Second Judicial District is serving a community that is ever-changing and growing. We are seeing more individuals who choose, primarily out of poverty, not to hire the

services of an attorney. Our percentage of pro per representation is between 65 and 72 percent. The surge in methamphetamine affects you as much as it affects our family courts. We see it at every entrance to every courtroom. In Washoe County, we are overseeing approximately 900 children in the care of social services. We stretch the time of a full-time equivalent judge to oversee the handling of such critical cases. More time is necessary to ensure that timely permanency for our most vulnerable children is achieved, and judicial oversight is critical to that accomplishment. Federal and state laws mandate that oversight. The court's burden in the foster care arena has increased in recent years. We have added appropriately, as a state, the provision of NRS 432B.6075 requiring our courts to conduct juvenile mental health hearings for placements of children in certain therapeutic environments. We are mandated to participate in all federal Child and Family Services Review processes.

On the other end of the life spectrum, and what has been discussed here in detail this morning with respect to A.B. 87, are our frail and disabled elderly community. That population is ever growing in Washoe County. There were 1,600 complaints of abuse in Washoe County last year involving the elderly. Almost 60,000 of our residents right now are above the age of 60 years. That is expected to grow by 40 percent in the next ten years. We, in the family court, are the first line of defense for the aged, abused, and neglected senior citizens that we serve.

When family court seeks to attend to the needs of the families with the various challenges I have identified, our judicial time with or without the assistance of counsel on the case is greatly extended to ensure that such families obtain justice.

Throughout the United States, juvenile and family courts are faced with these increasing caseload demands. The ABA has identified defects in our ability to serve those cases, which include the following: Judges with excessive caseloads cannot carefully review their files to adequately prepare for hearings; judges with such caseloads have to rush to the hearings and cannot take the time to reasonably explain the proceedings to the parties; after hearings, judges with excessive caseloads have limited time to prepare detailed findings and thoughtful decisions; overburdened judges have to delay or continue hearings when there is not enough time on the calendar to finish; and when there are too many cases per judge, it takes months to allow a case to proceed to a scheduled calendar.

My colleagues and I handle over 2,785 family court cases each year. The number is higher than that which we presented to you in 2001, requesting what

is now Department 12. We are looking towards the outcome of a caseload assessment study commissioned by our court, with the support of the County, and we will provide that to you later this session. We have objective criteria to support our request. The National Center for State Courts identifies various states in which such caseloads have been performed. In West Virginia, family court judges have an average of 1,500 cases per judge. That study recommends 960 family cases for those judges. In Hawaii, family court judges carry approximately 1,500 cases. In Montgomery, Maryland, such judges carry 1,099 cases.

In Washoe County, our cases have increased in the area of support and custody by 28 percent. Our mental health cases have increased by 12 percent. Our child abuse and neglect cases are also on the rise. Last year, our clearance disposition rate for cases with a three-month lifespan was 64 percent. The ABA standards were 90 percent. Our six-month dispositions were at 76 percent. The ABA standard is 98 percent. Our 12-month closing rate was 87 percent. The ABA standard is 100 percent. We judges are committed to maintaining a high disposition and clearance rate, but it is at considerable expense of judges and staff in the county.

When we were here in 2001, we had three sitting judges and a caseload of 2,500 cases per judge. Today, we have four judges with a caseload of more than 2,700. We are proactive in attempting to address our increase in workload. We have a self-help center, the forms of which we consistently review and ensure efficiencies are met for the litigants who are unrepresented. We mandate family mediation, and we have implemented an early case management system to get families into our courts within 45 to 60 days. That time frame is not being met because of the crush of the workload we currently face; however, with those families, we are able to sort through their problems, complete their case often on the day of that first meeting, and work to manage the higher litigation and caseload that is unresolved at initial point of meeting. We do not calendar our trials until we know the cases are not settled after a settlement conference. We are very stingy with our docket time because it is so difficult to have cases wait for final disposition. We have a family juvenile and drug court, and we address a family's immediate and long-term needs in those cases. We work with court administration to oversee our workload on a monthly basis to ensure that our efficiencies are being addressed. With these we continue to work harder and longer than we have ever worked in our district in the family division.

We are not coming to you because we do not like hard work. We are here because we are privileged to do it. We are coming to you to tell you that despite our hard work, we are unable to respond to the number of litigants

deserving effective and efficient judicial management by the family court. There is a fiscal impact associated with our bill request in the Second Judicial District. There is a point of dispute with respect to the amount of resources demanded, but our partners in the district attorney's, the public defender's, and the County manager's offices are working together to resolve those disagreements, which are easily resolved. Last year, the Administrative Office of the Courts (AOC) reported our numbers as 11,139 filings in family court compared to 9,862 in 2003 when you added Department 12. The number of cases per judge from 2003 was 2,466 after adding the new department, and we are now up over 2,700. Our mission in family court is to provide fair, efficient, accessible justice under the law, which encourages alternative and non adversarial dispute resolution in a manner that serves the public and sustains confidence in the judicial branch of government. We are asking for your support of A.B. 246 in both the Second and Eighth Judicial Districts, so that we may meet obligations to all the citizens of our State in Washoe and Clark Counties.

Chairman Anderson:
I have questions for both of you. There is no question that I value the family court system. In the documents that the AOC supplied to this Committee, one of the statistics that struck me was the 11,139 cases filed in family court, and the 2,720 juvenile non traffic cases. I would presume that both of those end up in your court. That gives us a larger number. When I look at those that were disposed of, I see that, in 2005 there were 9,565 while in 2006, there were 9,226. I realize the judges are overworked, but is that drop because of the tragedy at the courthouse? Was there not another judge available to settle some of those cases, or was there some other extenuating circumstance that may have caused that anomaly?

Frances M. Doherty:
Is your question why has there been a 300-case drop in case disposition? We are dancing as fast as we can in family court. There is rarely a moment in the evening or weekends that one will visit the family court and not find one of the judges sitting at his desk, working on his caseload. The disposition rate is higher than one may expect based on the volume of work we are facing on a regular basis. If it has dropped, it is to our chagrin because we do consider, despite our workload, case disposition to be the most important component of our work because families deserve and are entitled to closure of their challenges. Why we have dropped 300 cases between last fiscal year and the most recent fiscal year would only be indicative of the volume of work that we are trying to press through the system. We certainly have had the challenge of the tragedy of last summer impacting our work.

Chairman Anderson:
I would note that there is a 300-case increase in the juvenile non traffic cases. I consider the document put out from the AOC key to our understanding about both caseload and disposition.

There is huge volume in Clark County, and there must be a burnout factor for people who are in the family court. It seems to be such a heart-wrenching day-to-day difficult issue to deal with—the family, the traumas, the heartfelt emotions on display. I have mentioned to the judges before that if any of your brethren should be put up on a pedestal, it should be family court judges. Why do you not, at least in such a large district, take an opportunity to rotate through family court, then back to general jurisdiction, so that you would not be burned out?

T. Arthur Ritchie:
This was debated before the court was created. There was a report in 1991 and also asked again in 1997 if burnout was a factor in some of the problems of the family court. The specialized interest and knowledge and the commitment to that area of the law outweighs that burnout factor. You do see an issue of fatigue and it might be seen in illnesses or absences because these are very difficult matters. The judges you get in this division of the court seek appointment to that job because they are interested in that area of work. If you are asking for my personal opinion, I have been asked whether or not I was interested in being a district court judge in the civil/criminal division, and I value what I do as much or more than those jobs. I feel my talents and interests are better served in family court. I would suppose if a judge decided he was not interested in that anymore, he could either retire or run for a position in the civil/criminal division.

There are some issues that need to be sorted out as to what the creation by amendment of the *Constitution* would mean as it relates to the ability to reassign those judges. We get people from around the country wanting to know why Nevada is able to move the type of cases we have. They come to Las Vegas and meet with us about these issues. One of the things a judge from Sacramento pointed out was that we protect our resources in the family division. In a superior court in California, the chief judge might say, "We have incredible needs from our trial lawyers and our criminal cases, so we are going to have five family judges for next year rather than 13." We are entitled to 13 family court judges handling the business of our families in Clark County. What I would be worried about is that if you can allocate resources, then you are going to be able to justify, perhaps, having short thrift. This is one of the reasons why the family division was created in the first place, so we would have a priority system of adjudication of these cases with sufficient resources.

When we have been through a two-day trial where we are deciding the facts and the law, some of us might be envious of our colleagues because they can turn and say, "Thank you, ladies and gentlemen of the jury for making that factual determination that I had to make." There are some aspects of the work that are appealing.

The people I work with are committed to that division. The concerns of burnout have been debated around the country, but the specialized knowledge and the commitment to the court has outweighed that consideration.

Assemblyman Carpenter:
What about the courtroom facilities? Do you have them? Does the county have time to get them up before the 2009? What is the situation there?

T. Arthur Ritchie:
We have child support collection and adult guardianship masters who are sitting in a courtroom. Those could be redeployed to either the Regional Justice Center (RJC). I know the district attorney in the Child Support Enforcement Division is looking for a place. We also have an area where we can build maybe two more hearing rooms with the Jefferson Audio Visual (JAV) system, so four judges could probably be accommodated at the family division complex in the next 18-20 months. We are also building a floor that will be ready in May at the RJC, which has hearing rooms—non jury rooms—designed to handle matters in the family division. The district attorney is working to, perhaps, vacate the RJC. Space is a problem I can solve. As we have added judges, we have added courtrooms. We have had times in the last five years where we have had to organize the calendars—for instance, protective orders shared a courtroom, where we had them float. Then it would free up a courtroom. We are reaching a point where planning for space is a real problem. I do not think anybody contests, even the county, that we have this acute need. The issue is the fiscal cost, especially to the county. The biggest cost related to this is outgrowing the space we have available and having to build additional space. I believe we could accommodate what we are asking for.

Frances M. Doherty:
The issue of facilities is a challenging one. In the Second Judicial District we have begun to evaluate the potential locations for housing the judges. In our district right now, we have maximized every square inch of our family court. We have people working out of closets. We have people working in double spaces. We have identified the possibility of two locations within our court complex to be utilized most efficiently to address the new judges. We are continuing to work with the county, our partners, to determine which is the

most cost effective. We are not looking for luxurious courtrooms. We are looking for accommodation to address the needs of the litigants.

Chairman Anderson:
Space will be a problem.

Kathy A. Hardcastle:
You have heard from the family court judges that our family courts are approaching crisis level because of the huge caseloads they are dealing with. Some of our judges feel they are often being placed in the position of having to choose between equity and expediency in order to handle these high numbers. We are also addressing that same issue in our criminal and civil divisions in the Eighth Judicial District. Because our population continues to grow, the needs of our business community are becoming more complex. We have the new COPS initiative that was passed in Clark County. Our judges are juggling court dates, struggling to bring cases to trial, and trying to ensure access to justice, but we are falling further and further behind. You will see on page 2, chart number 4 of the handout (Exhibit I) that our civil division is considerably behind. We are 21 percent lower in time to disposition than the ABA standard of 100 percent resolution in 24 months. While the Eighth Judicial District Court should be commended for pushing new and innovative civil case law management strategies—our short trial program and semi-annual medical malpractice status checks, where we give firm trial settings to those cases—when a court directs judicial resources to quickly adjudicate certain types of civil cases, other cases must wait. Currently, litigants cannot proceed to trial for approximately 39 months from the time of filing. Due to the caseload growth in our civil division, it was necessary in 2006 for me to redeploy a judicial position. Fortunately, the loss of the one judicial position for civil cases was offset by no changes in the number of new civil cases that were filed in the last two years. The civil case time to disposition does show some slight improvement. In the civil division, as noted in the insert of the handout, we have already assigned two judges to business court because we share the common value of ensuring a positive business litigation climate for our business community.

This brings me to the criminal division. Although we will direct the least amount of judicial resources to the criminal division despite the news COPS initiative, we—like many of you—were forced to prioritize. We fall 18 percent below the ABA standards as indicated in chart 5. For high-profile cases, it takes even longer. It takes at least 12 months for them to get a trial date. I redeployed a judge from the civil division to the criminal division. That reassignment and the addition of the criminal arraignment master have dramatically improved our criminal case time to disposition despite the significant growth in criminal cases during this period. Based upon the

improvement, we can revise the district's time to disposition goals and bring them closer to the ABA standard of 100 percent within a year of filing. I would also like to echo what Judge Ritchie spoke about earlier—enhancement of our specialty courts, especially in our criminal division. Your commitment will assist us to substantially increase the specialty court funding, which will then help us tremendously in dealing with the anticipated increases in workload we will see. We have some of the hardest working judges in the western region. We have the highest caseloads of any court in Nevada. Our judges handle more cases than any of the other surveyed group of the six western states, as shown in chart 6. You will see that, in Clark County, our ratio of judges per 100,000 people was 1.7. We have, as of the first of this year, added four new judges. That increases the ratio from 1.7 to 1.9 per 100,000, which is still below the ratio of judges in the rest of the State. We have the lowest ratio anywhere in the western United States, and any place else in the country. The Eighth Judicial District has made a strong case for additional judges, not only in the family division, but in the civil and criminal divisions.

As elected officials in this Body, our court is faced with prioritizing the allocation of additional judges. Creating greater attention, access, and protection for our children and families is most critical. We also need to hold the line for business and civil matters, especially criminal cases. We cannot afford a lack of justice for abused and neglected children. Our communities suffer when we have inadequate judicial resources to resolve divorces, and this gives rise to violence and financial waste. We cannot continue to expect businesses and civil litigants to resolve matters in 39 months. We need more judges to facilitate public safety as a result of the vote to increase the number of cops on the street.

Inadequately funding courts directly impacts the quality of life in our communities. We must reassure our community they can depend on the rule of law and its finality. It is incumbent upon the Judiciary to render timely and quality decisions. It is also incumbent upon the Executive Branch and the Legislative Branch to ensure an adequately funded Judiciary. This partnership is critical in that issues such as freedom, victim justice, protection of children, and building a favorable business climate are at stake when courts are unable to manage their caseloads in a timely manner.

Chairman Anderson:
The creation of the specialty courts is something I am proud to have been a part of, especially the drug courts. There used to be someone dedicated to drug issues out of the criminal division. In another committee, in discussing this issue, I often hear that we are not utilizing more of the senior judges. Is the

senior judge program not a priority for the court? Are they not meeting the need?

Kathy A. Hardcastle:
The use of senior judges was never intended to substitute for the need for additional general jurisdiction judges, either in criminal or family. The specialty courts have been a tremendous asset, not only to the courts, but to the community. Because of the workload we have, we have to prioritize where to put our resources because our resources are severely limited. Having those senior judges there—especially those who are dedicated and specialized in areas like the drug court—has been an aid to us, so that we can continue to give priority to those specialty courts. If we do not get additional judges, we are going to have to continue to utilize senior judges to help out in those specialty courts. If we can get more resources—while not giving up on disposition of those cases coming before us—then I would be able to reallocate some of those resources of the general jurisdiction judges to the specialty courts. Currently, I cannot do that.

Chairman Anderson:
With all due respect, that is the same promise that was made the last time we expanded the court system. If we gave you more resources, then you would be able to make accommodations, but that does not seem to be part of the accommodation that is being made. In the Second Judicial District, the only way things can happen is if we allow the senior judge program to carry the weight of programs. Their personal dedication is keeping those programs alive. Therefore, I am beginning to doubt whether there is a real dedication from the bench to make sure those programs work. You know that we care about the alternative sentencing programs, the drug and driving under the influence (DUI) program, and other programs. Where is the dedication to those kinds of things from the court? I do not see it reflected in the statistical gathering documents.

Kathy A. Hardcastle:
With all due respect, Mr. Chairman, I do believe the judges have a commitment to the specialty courts. This is one way for us to be able to handle some of the caseload, but also allow some of the individuals coming before us to avoid having to be brought into the criminal division. It helps these people avoid the felony conviction, as in drug court, but also to get treatment for the problem. The mental health court, where we have a judge and a senior judge who are committed to that court, has been an asset to everyone. We have the support of the other judges to be able to continue that support. The problem is that no one really anticipated that the growth in Clark County was going to continue the way it has over a large number of years. It has continually strained the resources we have been able to commit here. I am not saying that if we do not

get additional judges, we may have to cut the specialty courts. They have shown their value to the system to such an extent that we would have to find a way to cut services in another area so we could maintain them. There is a commitment from the Judiciary to maintain the specialty courts because they are important to us.

A. William Maupin:
What we have right now is a nonrenewable resource of senior judges handling the specialty courts—Judge Lehman, Judge Blake, and Judge Breen. They all have great experience and talent to bring to this. There is a resource allocation problem that continues to exist, based upon the growth in the caseloads. The question of whether the court system is committed to the specialty court concept is a good one. We have to not only renew the commitment we have made, but make a new commitment. We have to eventually have dedicated judges ready to serve in these courts. There can be a transition. We, in the court system, need to make a commitment today—if we are going to ask for these judges—that at some point we have to transition away from using senior judges; they are going to want to retire at some point.

The family division is a specialty court, of sorts. It is the first therapeutic court we enacted here. The National Conference of Chief Justices, in the late 1990s and the early part of this century had a great debate over whether there should even be such a thing. That debate continued while I was the Chief Justice, but there is not debate over it anymore. We are moving ahead, I hope.

Make no mistake, there is a considerable commitment. We have to recognize if we are going to deal with the issue that you are considering this session about prison overcrowding, there has to be a comprehensive change in the role of specialty court judges in the State. That is going to be a culture change, away from just general jurisdiction judges.

I was only going to talk about the family division, but I heard some discussion here today that is very important that reminds me of a couple things in regard to the Eighth Judicial District's request for general jurisdiction judges, as well. I speak as a Chief Justice, but also as a member of the community of Clark County. I have lived in Clark County since 1960. Over the 22 years I was a lawyer, until 1993, there was an interesting development that occurred in the Eighth Judicial District. There were increasing caseloads in the criminal area. It got to the point—and I think Assemblyman Segerblom can agree with me on this—that civil lawyers, in the early 1990s, were literally unable to do business in the Clark County Courthouse. It was incredibly difficult to get trial dates. I did not say it then, but I will say it now: we could not do business in the Eighth Judicial District. In the mid-1990s, a bunch of us on the court

lobbied to reconfigure the court to have specialization. Then there were civil and criminal divisions. The judges would rotate. The first year of that specialization program, the trial rate for civil cases doubled. Case management works. Since that time, construction defect legislation and medical malpractice reform came about. In 2000, the Legislature came to Justice Rose and myself and asked if we could create a model business court based on the chancery court in Delaware. What we have done in the civil area is prioritized three major components of the courts' caseload. When you do that, it creates a dynamic tension that puts pressure on the existing resources.

The paradigm I saw in 1993 that has been dealt with over the last 13 years leads me to believe we need additional resources. We have tried to implement these priorities you have set—construction defect, medical malpractice, business court—because they were important statements of your public policy.

The family division judges in this State have the hardest job of any judge in the system. Everything from child support to divorce to juvenile justice are heard. If we were talking to you as a court, we would talk about the notion of judicial notice. You can judicially notice the fact of the crisis in the Clark County child dependency system The family division of the Eighth Judicial District unanimously agreed to a redeployment of one of their members to handle dependency cases—in response to those reports, our interaction with the court improvement project that provides grants for dependency issues, and our interaction with the judges. The Nevada Supreme Court unanimously signed the order redeploying that judge, effective July 1 through the end of the year, so they can be ready to deal with the influx of cases that will mirror the new resources that Clark County has committed in the investigation into the foster care area. That redeployment further compresses the basic function of the Eighth Judicial District family division. There is nothing worse than to have a family or children in limbo. When we discussed this redeployment, they are unanimously committed and personally committed to the betterment of families in this State.

Finally, for the last two and a half years we have been trying to build a case management model statewide in the Nevada Rules of Civil Procedure under Rule 16. We had to build a model that will work for family division cases because the current rules relate to regular civil litigation, but not this. We could not enact a uniform rule for this State because of the caseloads in the Second and Eighth Judicial Districts. There is a model the Second Judicial District has been using called "early case management conference with a judge." We have drafted a rule that makes it required in the rural districts, but the Second and Eighth Judicial Districts could not agree to this because of the caseloads. Everyone agrees that the cases that would best benefit would be the ordinary,

smaller divorce cases. Because of the caseloads, we can only make that rule apply to the larger cases in the two big districts. It is our hope that we could have this case management model with a judge in place to provide earlier settlement potential and early case management potential. We would like to have that be a uniform rule. We cannot do that without more judges.

Assemblyman Conklin:
There is no doubt about the need for judges to keep our judicial system moving. I am concerned that we are adding at the bottom level—the district court level. We have not addressed the issue that if we grow at the bottom level, what is there to capture those that are on appeal at the top level? The Supreme Court is not growing. I would imagine the caseload is. At what time do we begin to address that issue? When is it time for a growing state, such as Nevada, to introduce the idea of an appellate court to give speedier access to justice for those things that can be dealt with at that level? It is important to ask now because something of that nature would require a constitutional amendment, which is a six-year process. If that were something we were to start today, you would still be looking at 2013. If it is something you are waiting on a session for, that is 2016.

A. William Maupin:
We have just completed a statutorily mandated study of the prospect of having an intermediate appeals court. That report was delivered last week. Our long-term plan for dealing with the growth of the caseload has to be an intermediate appeals court. The Supreme Court was expanded effective 1999 from five to seven justices so that we could constitutionally sit in panels. During the 1997 Legislature that enlarged the Court, we were also given staff lawyers. That enabled us to deal with the ordinary error correction cases and sometimes assist us with the periodic ballot questions that come on. Our long-term plan—and we are going to ask for the first part of the resolution this session—is to ask you to start the process of getting an intermediate appellate court on the ballot. One of the reasons we have not been able to do that until now is that, when we asked for these resources, back in 1997 the court's caseload was 2,500 cases, and it is now something like 1,400. We have been the victim of our own efficiency. What we have done is used internal case management to deal with increases in caseloads. We have the most successful civil settlement program in the country. It resolves something in excess of 50 percent of the appeals. We thought it would be successful at 20 percent. It has been enormously successful, particularly in ordinary error correction civil cases. We have put in fast-track criminal systems, as well as for cases involving children. We have also developed specialization within the central staff to handle certain kinds of cases where there are administrative appeals and workers' compensation, divorce, and commercial cases. That is what we have

had to do to deal with this. In the long run, until we can get an intermediate appeals court, we will have to deal with this influx using case management and resources. We have asked for some additional resources this session as part of our budget.

Assemblyman Conklin:
If I could get a copy of that report, it would be helpful.

The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court:
It is important when you are making the policy decision to make an assessment between cause and effect. It is important for you to keep in mind that six of the judges are in family court in the Eighth Judicial District, two are from the Second Judicial District, so the vast majority of judges you would be considering are family court judges. The effect, generally speaking, on the Nevada Supreme Court has been that less than 5 percent of our caseload comes from the family division. While the vast majority of cases filed at the district court level are in the family court division, the least number of cases appealed are from the judges you will be approving here today, or soon. The cause and effect is not as great as one might otherwise be concerned about.

I wanted to follow up on the Chairman's comment regarding the senior judge program. I do not believe, nor do I sense, that there is any lack of commitment on the part of our colleagues in the district courts towards specialty courts. The fact that the senior judges are being employed to cover those courts is not an illustration of the lack of commitment; it is an illustration of how bad off we are off in the number of judges available. You can say, "I want to make a commitment to a particular court, project, or priority," but if you do not have the judges to do it, saying it does not make it so. What is important in this instance is having additional judges to deal with this problem; therefore, the Nevada Supreme Court conducted a case management discussion with the chief judges and court administrators on September 16, 2006. One of the issues the Supreme Court asked them to address is how they plan to handle the ultimate time when Judges Breen, Lehman, and Blake finally retire, or age catches up to all of us. Those plans are in place and are being discussed. A key component to that is having sufficient judges to put into the specialty courts when that day comes. This is for 2009. That is not that far off, but, in terms of how we are handling senior judges, we are going to have to address this issue soon. If we do not have the resources to do it, much of this will be academic.

I would remind the Committee that there are certain problems that result from priorities that are set under the constitution and by the Legislature. At some point, specialty courts become secondary to those priorities. The Committee and the Legislature rightly have a continuing obligation to pass laws. As you do

so, that has a cause and effect on the Judiciary. The complexity of these cases and the time for disposition are exacerbated by the more laws we have to deal with.

I wanted to mention specifically the Second Judicial District's family court.

Chairman Anderson:
I know there is another issue you need to get in front of us. I want to make sure there is that opportunity. We are running short on time.

James W. Hardesty:
I will not make that point, but I will make this one: you have heard a lot of reference to the ABA standards. As all of us sit here, we probably do not know a lot about how that is generated. Fundamentally, as the Legislature, you have to make this policy decision. If you were getting a divorce, seeking a guardianship for your parents, seeking custody as a grandparent for a child, participating in the determination of parental rights, is it acceptable to you as a litigant to have to wait six months, one year, 18 months, three years for your case, your family, and your children to be put on hold? That is where we are. That is what the ABA standards mean. None of our courts, particularly our urban courts, are capable of coming close to handling a case in those time periods.

Chairman Anderson:
I think we have heard this side of the discussion. I have a legitimate question relative to the standard that is set by the ABA as to what would be an optimal number for the workload. There used to be an accrediting standard that said I should not see more than 150 students a day. I taught American History and Government, and it was rare, when I was teaching five classes a day, that I had a class of less than 32 students. How then does the ABA standard fit to realistic standards from state to state?

James W. Hardesty:
If the ABA were serving in an accreditation capacity, we would not be accredited nor would be even be close. You do not need to look at the ABA, though. You can look at other courts in other states. What you find, as these judges have pointed out, is that the State of Nevada is not even close to most of the states in the United States, let alone on the West Coast. Their caseloads in the family division in other states range from 900–1,300. Our judges are off the charts at 2,700–4,000. This is not justice. This is not an emotional appeal, this is a fact.

Chairman Anderson:
I did not consider it to be an emotional appeal relative to the numbers. I just want to know how the number is established by the ABA.

James W. Hardesty:
It is a thorough study of optimal resources and uses. That study could be provided to the Committee, if you would like to see it. It is not as simple as taking the number of cases and dividing by five. It is measured by time to disposition and...

Chairman Anderson:
Questions for Justice Hardesty? [There were none.]

A. William Maupin:
There is one last matter that we wanted to bring up on behalf of the Supreme Court. The judges in the Second and the Eighth Judicial Districts have kindly agreed to allow A.B. 246 to be amended to create a Tenth Judicial District (Exhibit J) and realign the rural districts. Art Mallory from the district attorney of Churchill County is here to discuss this proposal. Mineral County would be brought into a single district with Churchill. Lyon County would become its own district. That would leave Esmeralda and Nye Counties in the Fifth District. This would involve an additional judge. Mineral, Churchill, and Lyon Counties have been asked about this proposal, in terms of the fiscal impact on them. There are letters that have been provided to you (Exhibit K) that show they are all in agreement. In fairness to the process, I contacted Judge Davis in Nye County and told him we would advise him of this hearing. He is not in favor of this proposal. A letter was sent to Assemblyman Goedhart to that effect (Exhibit L).

Chairman Anderson:
Am I to understand that the judges of the Second and Eighth Judicial Districts have equally agreed to the amendment?

Kathy A. Hardcastle:
On behalf of the Eighth Judicial District, we are in agreement.

Chairman Anderson:
Even though it may endanger the bill?

Kathy A. Hardcastle:
It is my understanding that if it gets to the point where it does endanger the bill, it will be pulled. We support the amendment.

A. William Maupin:
If it does not endanger the major part of the bill—that has always been the understanding. I was under the impression that the Second Judicial District had been consulted. In fairness to them, they have not taken a vote on this.

Arthur E. Mallory, District Attorney, Churchill County:
[Submitted (Exhibit M).] Lyon and Churchill Counties compose one circuit. Esmeralda, Nye, and Mineral Counties compose another judicial district. Lyon County is the fourth largest county in the State of Nevada, and it is the only county in the top six who have to share judicial resources with another county. By the year 2012, our State will grow about 40 percent according to publications out there, and a substantial part of that growth will be in northern Nevada in the vicinity of Lyon and Churchill Counties. The proposal we have presented by making Lyon County its own circuit will be consistent with what has happened in Douglas, Carson, Washoe, Clark, and Elko Counties. There will be no cost as far as infrastructure, building, or staff. There will be increased bench time for the existing judges. The fact that a judge would no longer have to drive five and a half hours from Pahrump to Hawthorne to hold court. The furthest distance in the new Tenth District would be one hour from Fallon to Hawthorne. Lyon County would save no time. There is no increase in caseload. They would even out with this distribution, according to the numbers we received from the AOC. Most importantly all people within two to five counties would have access to judges within an hour's time instead of having to travel for a longer time. We are able to accomplish something without additional cost to the counties, which will greatly increase the efficiency of the judicial system. Our judges cover family law, juvenile law, civil law, and criminal law.

Chairman Anderson:
Thank you for making such a brief presentation, considering the size of the document and the complexities of the issue. I am concerned about shifting responsibilities and what that is going to mean to a county. Once upon a time, I am sure it would have been easier to have one district judge in every county, then we would only have 17. That is not the world we live in anymore. The net effect of redrawing these lines will be that there will be speedier justice? Why is the question being posed at the eleventh hour, rather than early on? Why was this not brought to an individual legislator rather than endangering one of the more important issues?

Arthur E. Mallory:
This was something people did not think about a year or two ago because they did not realize how much growth we would be having.

Chairman Anderson:
This was dropped on my desk yesterday. I want to study this carefully and weigh it against the overall importance of the bill. I have not been convinced about the amendment from what I have seen so far. I do not want to make this step or recommend making this step if it is going to endanger the bill.

Arthur E. Mallory:
We would not want to do that, either, Mr. Chairman.

Chairman Anderson:
So, you are hoping to put the passenger in this boat that is already floating?

Arthur E. Mallory:
We would like to, as long as it does not sink the boat.

Chairman Anderson:
I will ask the members of the Committee to give due consideration to the document. I have a feeling there is going to be more discussion about this.

Arthur E. Mallory:
The AOC can be contacted, and we will be here to answer any questions you may have.

Chairman Anderson:
Those who need to speak in opposition?

Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County:
As you know, Clark County is required to fund all of the costs of the additional judges minus the actual salary cost of each judge. The bill, as written, would have a significant fiscal impact on Clark County. Additional support staff will be needed in the district court, family court, district attorney's office, and public defender's office. Clark County will be required to build additional facilities to accommodate the additional judges. Although the bill states that the judges will begin in Fiscal Year (FY) 2009, Clark County will be incurring costs in early FY 2008 due to the build-out requirements. I have prepared a handout for each of you (Exhibit N) which provides the cost of an additional civil, criminal, and family judge. As you can see, the first half-year cost of a civil judge is roughly $2.3 million. A criminal judge is $3.5 million. A family judge is $2.3 million. Those costs include the build-out costs as well as the salaries. In the second year, each civil judge costs $881,000; each criminal judge costs $3 million; each family judge costs $785,000. The total fiscal impact to Clark County of A.B. 246, which proposes one civil, three criminal, and six family judges in FY 2009 is over $26.6 million. The FY 2010 impact would be over

$14.6 million. That brings a grand total cost of over $41.2 million. Traditionally, Clark County and the judges have been able to come together to this table and agree on a certain number of additional judges. Unfortunately, that is not the case at this time. As a regional entity responsible for public works, as well as public justice, we must take a larger view of the needs of our community. John F. Kennedy said, "To whom much is given, much is required." These days, it seems that quote is no more evidenced than in Clark County. You may have read in our newspapers recently about the commitment of $60 million to University Medical Center (UMC) to cover the cost of indigent care and uncompensated care. Or you may have heard of our recent commitment of up to $7 million annually for child welfare costs on the front end of the child welfare system. There is also the statewide crisis in prison and detention center capacity, a problem from which Clark County is not immune. Just as the Legislature reviews all department budgets before closing or recommending funding for any of them, we are currently in the middle of our budgeting process. On April 11, we will have our budget workshop before the Clark County Commissioners. The needs of the judges will be considered along with the needs of other important services, and we hope to provide a compromise after that date.

Chairman Anderson:
It is a curiosity for me that a criminal courtroom costs $3 million and a family courtroom only costs $2 million. Why is there a $1 million difference?

Sabra Smith-Newby:
I am not an expert in courtrooms and their construction, but I understand that it is due to the function.

Chairman Anderson:
Please note for the record that the Speaker has entered.

Lisa A. Gianoli, representing Washoe County:
In the interest of time, Washoe County is currently neutral on this bill. As stated by Judge Doherty, we are working with the courts and have over the past several months on some specific issues. They are in the process of providing us a weighted caseload study, which we want to get the results from, as well as working on some of the fiscal impacts that are being fine-tuned at this point.

[Senate Bill 66, listed on the Agenda, was not heard.]

Chairman Anderson:
Are there any questions from the Committee? [There were none.] We are adjourned [at 11:13 a.m.].

RESPECTFULLY SUBMITTED:

_____
Danielle Mayabb
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 21, 2007 Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*******	Agenda
	B	*******	Attendance Roster
AB 87	C	Karl Hall, Nevada District Attorneys Association	Proposed Amendment
AB 87	D	Bill Uffelman, Nevada Bankers Association	Proposed Amendment
AB 87	E	Carol Sala, Division of Aging Services	Testimony on AB 87
AB 87	F	Ken Retterath, Washoe County Adult Services	Testimony on AB 87
AB 87	G	Randy Robison and Keri Bailey, Nevada Credit Union League	Testimony on AB 87
AB 246	H	T. Arthur Ritchie, Eighth Judicial District	Pamphlet, "A Need for Judges"
AB 246	I	Frances Doherty, Second Judicial District	Testimony on AB 246
AB 246	J	A. William Maupin, Supreme Court	Proposed amendment to AB 246
AB 246	K	A. William Maupin, Supreme Court	Letters in support of AB 246
AB 246	L	A. William Maupin, Supreme Court	Letter in opposition to AB 246
AB 246	M	Arthur Mallory, Churchill County	Information packet
AB 246	N	Sabra Smith-Newby, Clark County	Fiscal impact of AB 246