

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

**Seventy-Fourth Session
March 23, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:11 a.m., on Friday, March 23, 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 Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegura
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblywoman Susan Gerhardt (Excused)

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst

Minutes ID: 580



Risa Lang, Committee Counsel
Janie Novi, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Elizabeth Neighbors, Director, Lake's Crossing Center, Reno, Nevada
Jackie Glass, Judge, Eighth Judicial District Court, Clark County, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Ben Graham, Legislative Representative, Clark County District Attorneys Office, Las Vegas, Nevada
Jason Frierson, Attorney, Office of the Public Defender, Nevada
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Elizabeth Kolkoski, Judge, Municipal Court, Department 2, Las Vegas, Nevada
George Assad, Judge, Municipal Court, Department 3, Las Vegas, Nevada
Paul Page, President, Police Managers and Supervisors Association, Metropolitan Police Department, Las Vegas, Nevada

Chairman Anderson:

[Meeting called to order. Roll was called]

Before we turn to the agenda for today, I have a few introductions of bill draft requests (BDR). The first is BDR1-1404 (later introduced as Assembly Bill 519). The topic is the sealing of certain court documents. This bill came about as a result of some news stories in Clark County and other stories in the State. We have not had a legislative solution to this problem in a long time.

BDR 13-1343 (later introduced as Assembly Bill 522) provides for the licensure of private and professional guardians. The prospective guardians must pass a certain level of examination and accountability. This should help with some of the problems of senior citizen abuse.

The third is BDR 15-500 (later introduced as Assembly Bill 521). This revises the provisions within the crime of fraud and racketeering. It is from the Attorney General's office. We would be introducing this one as an agency bill.

Finally, there is BDR 38-1401 (later introduced as Assembly Bill 520) which makes various changes regarding paternity and child support. This is part of the discussion from the Blue Ribbon Task Force.

ASSEMBLYMAN OCEGUERA MOVED TO INTRODUCE THE AFOREMENTIONED BILLS.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN GERHARDT WAS ABSENT FOR THE VOTE.)

Chairman Anderson:

Let us now turn our attention to the agenda of the day. We will begin with Assembly Bill 347.

Assembly Bill 347: Makes various changes concerning tort actions. (BDR 3-707)

I have a note here from Assemblyman Marvel, asking that A.B. 347 be removed from the agenda of the Assembly Committee on Judiciary. He requests that the bill be indefinitely postponed due to the fact that he could not get appropriate witnesses to testify.

Is there anyone present that feels the necessity to testify on A.B. 347? Close the hearing on A.B. 347.

ASSEMBLYMAN OCEGUERA MOTIONED TO INDEFINITELY POSTPONE ASSEMBLY BILL 347.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN GERHARDT WAS ABSENT FOR THE VOTE.)

Chairman Anderson:

Assemblyman Goedhart received a letter dated March 19, 2007 ([Exhibit C](#)). The letter was from Judge John P. Davis regarding Assembly Bill 246. He felt that the realignment of the districts should not include an increase in the number of the judges in the Second and the Eighth Districts. He feels that the amendment should not be added.

Moving on, we have a work session document in front of us. Ms. Chisel will guide us through it.

Jennifer Chisel, Committee Policy Analyst:

We are going to go a little bit out of order to get some of the less complicated issues out of the way. I would like to start with Assembly Bill 100 ([Exhibit D](#)).

Assembly Bill 100: Eliminates the requirement that a certified court reporter be appointed as a notary public to administer oaths and affirmations. (BDR 54-572)

A.B. 100 was proposed by the Certified Court Reporters Board. This measure would allow a certified court reporter to administer oaths and affirmations without being a notary public. Many of the requirements for a notary are similar to the certification of a court reporter. During the hearing, there were no proposed amendments to this measure and no opposing testimony.

Chairman Anderson:

Are there any questions involving this bill? Many of you have indicated a do pass motion.

ASSEMBLYMAN HORNE MOTIONED TO DO PASS ASSEMBLY BILL 100.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN GERHARDT WAS ABSENT FOR THE VOTE.)

Chairman Anderson:

Mr. Goedhart, would you please present A.B. 100 on the floor?

Assemblyman Goedhart:

Yes.

Jennifer Chisel:

We will now move to Assembly Bill 117.

Assembly Bill 117: Revises provisions relating to the exclusion of certain persons from divorce proceedings. (BDR 11-217)

This bill (Exhibit E) was presented by Assemblyman Carpenter regarding divorce proceedings. During the hearing, an amendment mockup was presented. That mockup is attached for your reference. There are two additional amendments proposed. The first is on page 2 of the mockup at the end of the first line. It would change the word "may" to "shall." This amendment was recommended by Assemblyman Horne. The second proposal is to add witnesses to the group that may be excluded upon good cause shown. This is also discussed in subsection 3 of the mockup.

Chairman Anderson:

Is there any discussion on these amendments?

Assemblyman Horne:

I was looking at the proposed mockup and I have a question on the type of motion that must be made by the parties. We were going to clarify that to be an oral or written motion. This is in paragraph 3 of Section 1 of the proposed amendment.

Chairman Anderson:

Let me ask the bill drafter. Ms Lang, in using the general term, "upon motion," is it understood that either a written or oral motion must be made? Does it have to be specified if the motion is anything other than written?

Risa Lang, Committee Counsel:

I think that it is not limited by using motion. You may clarify so that it is not interpreted differently. I would be happy to put that terminology into the amendment.

Chairman Anderson:

Assemblyman Carpenter, is there any problem with the proposed amendments?

Assemblyman Carpenter:

I have no problem with the amendments.

Chairman Anderson:

Assemblyman Segerblom, this is your area of expertise. Do you have any problems with the amendments?

Assemblyman Segerblom:

I have no problems with the amendments.

Chairman Anderson:

Chair will entertain an amend and do pass motion on A.B. 117, the amendments being those outlined in the mockup.

ASSEMBLYMAN HORNE MOTIONED TO AMEND AND DO PASS
ASSEMBLY BILL 117.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN GERHARDT WAS ABSENT
FOR THE VOTE.)

Chairman Anderson:

We are going to let Assemblyman Carpenter take care of his own bill on the floor. The amendments will be handled by Assemblyman Horne and myself.

Jennifer Chisel:

We will be moving backwards now to Assembly Bill 77.

Assembly Bill 77: Makes various changes concerning the competency of defendants. (BDR 14-801)

Assembly Bill 77 ([Exhibit F](#)) was presented by Judge Glass to address a defendant's mental competency to understand the nature and purpose of court proceedings in order to stand trial. This measure was heard during our last work session. You have the most recent amendment which is attached at page 2. Essentially, the amended language makes Nevada law consistent with the United States Supreme Court case outlining the competency issue. The proposal changes the term "capacity" to "present ability" to focus on the defendant's mental state at the time of trial. This amendment makes other changes to make the language consistent throughout the statute. The last paragraph requires that if a defendant is found incompetent to proceed to trial, the basis for that determination must be made in writing. Additionally, Judge Glass requested that the term "show cause" be removed and be replaced with something like "provide information."

Chairman Anderson:

We are dealing with a proposed amendment that is not from our legal department, but from the judge. We will try to follow the recommendations. We will be removing certain language. Will this create a lesser standard to show incompetence?

Jennifer Chisel:

"Show cause" is more of a legal term than "provide information." They wanted to make sure that the information had to be provided in writing.

Chairman Anderson:

Ms. Neighbors and Judge Glass are here. Is there anything either of you need to get on the record?

Actually, I have a question for Ms. Neighbors. I know that you were concerned about some of the language. Do you think that these changes will make Lake's Crossing work better or the same? How will you be affected?

Elizabeth Neighbors, Director, Lake's Crossing Center, Reno, Nevada:

We are very comfortable with that language.

Chairman Anderson:

Are there any questions?

Assemblyman Conklin:

In Section 1, line 10, we are deleting "or" and adding "and." What is the end result of this? Is it going to be very difficult for somebody to be deemed incompetent, or very easy? Those one word changes concern me.

Chairman Anderson:

The most difficult change in the book is an "and" to an "or" and a "may" to a "shall." Judge Glass, could you come up here and help answer this?

Jackie Glass, Judge, Eighth Judicial District Court, Clark County, Nevada:

The "and" is a necessary part because the standard is two-fold. The person has the ability to understand the nature of the charges and court proceedings, as well as aid and assist counsel. It is a two pronged standard. We have to have the "and." It can not be "or." Dr. Neighbors agrees that the language is necessary.

Chairman Anderson:

Does this make it more difficult to be deemed incompetent?

Jackie Glass:

It is essentially the same. It does not make it easier or more difficult. It does not affect how difficult or easy it is to be found incompetent to stand trial.

Chairman Anderson:

This is based upon the two-pronged standard. Is this the usual methodology of determining competency? Is it important to recognize that both prongs are there rather than one or the other?

Jackie Glass:

That is correct.

Chairman Anderson:

Does that clarify things for you Mr. Conklin?

Assemblyman Conklin:

Yes, it does. As I read this, I see we had a two-pronged standard before the proposed bill. This standard was the capacity to understand the nature of criminal charges and assist counsel. There was not an "or," it was merely two parts. Now there are three parts. In the original bill, the third part said, "or be able to aid and assist counsel." Now, the bill reads that a defendant is to

understand the nature of the charges, understand the nature of the court proceedings, and aid and assist counsel. When you change that last "and," all three sections become "and."

Jackie Glass:

Yes, they are all "and." They are all together. We have just broken it down. A defendant must understand the nature of criminal charges against him and understand the nature of the court proceedings. These two usually go hand in hand.

Assemblyman Horne:

I will first disclose that Judge Glass is the landlord of my law building. The language seems impractical. You could have a person who understands the nature of the charges, understands the proceedings, but is unable to aid counsel.

Jackie Glass:

That makes them incompetent.

Assemblyman Horne:

If we change the terminology to "and" you would never get to that point. All three parts must be present in order to find incompetency. If we add "and" in subparagraph (b), in order to find them competent, they must have all three.

Jackie Glass:

Yes, if they are missing one, they are incompetent.

Risa Lang:

If you change it to "and," and one is missing, it will not work. I think that you need "or" so that, if any of those circumstances occur, they will be found incompetent.

Jackie Glass:

Any one of them makes them incompetent. Whether the person has the ability to understand the nature of the criminal charges, or understand the nature of the court proceedings, or aid and assist counsel. You want them all to be "or"?

[Chairman Anderson leaves the room.]

Risa Lang:

If any one circumstance can make the defendant incompetent, then you should leave it as an "or." If they need to show all three in order to be competent, then you should change it to "and."

Jackie Glass:

I would like to consult with Dr. Neighbors. We do not have the entire statute in front of us. This makes it difficult to take a global look at the problem.

Now I have the entire statute. If the defendant is going to be competent, it has to be "and." If they are going to be incompetent to stand trial, it has to be "or."

Vice Chairman Horne:

Right, in that section we are trying to define incompetent means.

Jackie Glass:

The sections are different. There is a section that deals with incompetency. It describes a person who does not have the present ability to understand the nature of the criminal charges, and the nature of the court proceedings, and aid and assist counsel. In the other section, if it is to define "competent," it will be "or."

Vice Chairman Horne:

Did we get that clarified? Initially, Assemblyman Conklin asked about the difference between "and" or "or," and whether or not that would make it easier or harder to deem someone incompetent. He was referring to page 2 at line 10. The proposed amendment was to change that to an "and." After reading the bill as it is, that would need to stay "or" because it is defining incompetence. That proposed amendment should not occur.

Are there any other questions?

Assemblyman Conklin:

If that is the case—on page 3, line 17, where we have amended to include all three parts—once we have deemed a person incompetent according to Section 1, we then, in Section 3, send them to Lake's Crossing or another institution. It appears that they must meet all three requirements to be deemed competent. I want to make sure that all of the sections match.

Jackie Glass:

When the defendant returns from Lake's Crossing, they must have the ability to do all three. That section must be "and." In order to be competent and return from Lake's Crossing, they must have the ability to understand the nature of the charges and the proceedings and assist counsel in order to be deemed competent to stand trial.

[Chairman Anderson returns to the room.]

Assemblyman Goedhart:

Does Section 1 remain an "or?"

Assemblyman Horne:

Yes. Are there any other questions or concerns? I will entertain a motion.

CHAIRMAN ANDERSON MOTIONED TO AMEND AND DO PASS THE CONCEPTUAL OUTLINE OF A.B. 77 WITH THE PROPOSED AMENDMENT TO RETAIN THE LANGUAGE OF THE "OR" AT THE APPROPRIATE PLACES.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN GERHARDT WAS ABSENT FOR THE VOTE.)

Assemblyman Horne:

This bill will be defended on the floor by Assemblyman Mabey. The Chairman or myself will take care of the amendments.

Chairman Anderson:

Let us turn to the more controversial topics of the day.

Jennifer Chisel:

We will now discuss Assembly Bill 21.

Assembly Bill 21: Revises certain provisions governing weapons. (BDR 15-326)

Assembly Bill 21 ([Exhibit G](#)) makes changes to the application and renewal process for a permit to carry a concealed weapon. The renewal process would be identical to the original application process, and the fees would be increased to match the cost of that application process. There was a compromise amendment submitted by the Nevada Sheriffs' and Chiefs' Association which would allow for a fee of up to \$60 based on the cost to process both an original and a renewal application. The original bill had requested an application fee of up to \$125. The amendment will bring it back down to \$60.

Chairman Anderson:

Mr. Adams, I have asked you to come in front of the Committee because this amendment will take us back to where we were originally in the law. I was under the impression that, in many other jurisdictions, it costs more than \$60 and was coming out of the county funds. I am concerned that this particular program should pay for itself.

Frank Adams, Executive Director Nevada Sheriffs' and Chiefs' Association:

It does help us because currently the renewal charge is only \$25 and this would raise it up to \$60. You are correct that it does cost more than the \$60 in some counties, but in some it costs less than that. In conversations with all of the concerned parties, as well as the sheriffs who apply this program, I found they were all satisfied with leaving the existing application fee at \$60, and raising the renewal to \$60. This fee increase would help to relieve some of the issues here.

Chairman Anderson:

In the passing of this piece of legislation, we will still be able to proceed as we have in the past.

Frank Adams:

By making these amendments to this bill, we will be in conformance with the requirements from the Bureau of Alcohol, Tobacco, and Firearms (ATF). This way, those who hold a carry concealed weapon (CCW) permit may continue with the Brady exemption.

Assemblywoman Allen:

This is still an official fee increase. At your last testimony, I asked about the Governor and his edict of no additional taxes or fee increases. I do not feel comfortable voting for a fee increase if, in the end, it will be vetoed.

Frank Adams:

I cannot tell you what the Governor is going to do. This is necessary to get this accomplished.

Assemblyman Cobb:

Last time, I asked if you had examined some of the processes that were used in other states to do the background checks and CCW permits. There are some that cost less than what we charge in Nevada. Have you done any research and thought of any way you may be able to make your process more efficient without raising these fees?

Frank Adams:

I did look at a number of the surrounding states. California charges \$125 and Idaho charges \$35. Idaho is currently losing money and has requested a fee increase from the legislature. Utah's fee is \$59, and they are also asking for a fee increase. Arizona is the one state I spoke with that is able to process everything for around the designated fee of \$60.

Assemblyman Cobb:

We actually requested information about Utah, and they said that their fee is \$35, but it actually only costs \$27. I know that there are two separate fees in there so it will eventually be more than \$60. Are you combining the background fee and the permitting process fee?

Frank Adams:

That is correct.

Assemblyman Cobb:

If that is correct, how much do you charge if you combine both of those?

Frank Adams:

I would be happy to go back and look at my notes about Utah. My recollection is that they charge one fee for an initial permit, and a smaller fee for the renewal. I do not know whether that includes the fingerprinting to the Federal Bureau of Investigation (FBI) or not. I would have to go back and look at that. I know they are going back to the legislature to request a fee increase. They get \$80,000 to process their system and they are losing money. I would be happy to share that information with you.

Chairman Anderson:

Mr. Cobb, we are in work session. You should stick to the amendment and not re-explore the entire bill.

Assemblyman Cobb:

How much does it cost in your county when you add both fees that are charged?

Frank Adams:

In Clark County, it is \$60 for an initial, and another \$45 for the repository and the FBI.

Assemblyman Cobb:

So, you are charging \$95 now...

Frank Adams:

We are charging \$105.

Assemblyman Cobb:

You want to increase that in other counties as well because this would make it a mandatory \$60 fee, not just up to \$60?

Chairman Anderson:

Are you referring to renewal?

Assemblyman Cobb:

Yes.

Frank Adams:

The legislation says no more than \$60.

Assemblyman Cobb:

It says, "to cover the cost of issuing and renewing..."

Frank Adams:

Not to exceed \$60.

Assemblyman Cobb:

When it says "actual costs," you have to prove that it actually costs \$60. In this scenario, you can just charge \$60 and it is up to the discretion of the locality.

Frank Adams:

This takes the law back to the way it was except for the increase of the renewal fee. That is the way the law read. It was not to exceed \$60 on the initial application. This amendment makes that \$60 applicable to the renewal. We felt it was more appropriate to show actual cost.

Chairman Anderson:

What happens if we do not pass this legislation?

Frank Adams:

We would have to re-negotiate with the ATF. The law would go back to the way it was in the past. There is a chance that those people who hold a CCW permit will no longer have the exemption from Brady. If a person has a CCW permit and buys a gun, they must have a Brady check, which is \$25.

Chairman Anderson:

Those people who no longer have to meet the Brady requirements would then have to do so each time they came to renew, even though they do not currently have to?

Frank Adams:

That is correct. When they buy a gun, they must have a Brady check.

Chairman Anderson:

The impact would be for those CCW permit holders who are going to buy an additional weapon and currently do not need to have the Brady check. If we do not pass this, the possibility of that exemption would be lost and then they would have to have a Brady check at each gun purchase.

Frank Adams:

That is correct.

Chairman Anderson:

Thank you, Mr. Adams. Assemblywoman Allen has pointed out that she is concerned about a potential veto from the Governor because of the fee increase. Are the other gun lobbying groups in support of this amendment?

Frank Adams:

I have spoken with the National Rifle Association and several of the other gun groups throughout the State, and they feel that this is a good compromise. Governor Gibbons is a proponent of the Second Amendment and has shown support in other concealed weapon bills. I think he will take that into consideration if the bill goes forward.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 21.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ALLEN, COBB, GOEDHART, MABEY, MANENDO, AND MORTENSON VOTED NO. ASSEMBLYMEN CARPENTER AND GERHARDT WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

There are six affirmative votes and six in the negative. The bill fails to move.

Assemblyman Segerblom:

By failure, does that mean the issue about the Brady Bill is going to come up? The established part of the bill, not the amendment, was addressing the inconsistency with aligning our statutes.

Chairman Anderson:

If this bill does not pass, we will potentially be forcing all of those individuals who currently hold CCWs to meet the requirements of the Brady Bill when they go to purchase weapons. We are one of the 16 states that are not required to

meet Brady Bill requirements because of the older statutes dealing with weapons.

Assemblywoman Allen:

Is it possible to bring this bill up in another work session?

Chairman Anderson:

We have other bills that are going to be on the work session document. We have to have eight affirmative votes to get a bill out of here. There are 14 members on this Committee, and two are currently absent. That does not reduce the requirements of the Committee.

Assemblywoman Allen:

Is that a no?

Chairman Anderson:

We can bring it back up anytime we want. Time is growing short for us, and work sessions give us an opportunity to resolve the open ended questions that are there. Now we will move to the next bill.

Jennifer Chisel:

Let us try Assembly Bill 83.

Assembly Bill 83: Revises provisions governing criminal and civil liability for crimes motivated by the actual or perceived status of the victim as a homeless person. (BDR 15-533)

On March 5, 2007, Assemblyman Ohrenschall presented A.B. 83 ([Exhibit H](#)), which addresses hate crimes against the homeless. The attached amendment submitted by Mr. Ohrenschall addresses the concerns that were raised during the hearing. First, the definition of homeless person is amended to more closely reflect the federal definition. Additionally, Section 2 of the bill is deleted so that the status of a homeless person is not added to the list of aggravating factors for first degree murder. Again, this is a conceptual amendment.

Assemblyman Ohrenschall:

Thank you for placing this bill in work session today. At the hearing, we heard compelling testimonies, as well as figures from the National Coalition for the Homeless citing the hate crimes around the country and in Nevada. These crimes against homeless occur because they are there, they are vulnerable, and no one seems to care. This bill will protect those persons and not create a great burden on our treasury. There was testimony that, even under the current hate crime statutes, there are very few prosecutions. This would be a good step for

Nevada. We would be the first state in the country to pass such legislation, although the Maryland legislature is neck-and-neck with us in trying to get this through. I believe the amendment addresses the concerns of the Metropolitan Police Department and the Clark and Washoe County Public Defenders Offices regarding the language of the definition. Also, the aggravators for first degree murder seemed to already be included, making that section unnecessary.

Chairman Anderson:

Ms. Lang, are there any unforeseen problems? Is the definition being changed in some substantive way?

Risa Lang:

There are certain things people had expressed concern about, including the definition of a welfare hotel. The amendment takes out some of those vague terms and makes it easier for folks to understand.

Assemblyman Ohrenschall:

There was also concern about the term "adequate night time residence."

Chairman Anderson:

We are going to be picking up the federal definition of a homeless person: "A person whose primary night time residence is any supervised publicly or privately operated shelter designed to provide temporary living accommodations, including, without limitation, motels, hotels, congregate shelters and transitional housing or any public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings." For example, if a guy is sleeping in a park, he is homeless. What kind of protection are we giving him?

Assemblyman Ohrenschall:

If you look at the verbiage of the bill on page 2 and the existing hate statute, they discuss crimes motivated by the actual or perceived status of another. The burden that the prosecution must meet to seek the enhanced penalty is proving that the alleged perpetrator committed the crime because of the actual or perceived status. If the prosecution can prove a person was killed because he was sleeping in the park and was considered to be homeless and vulnerable—a person that nobody cared about—then the enhancement would apply. If it turns out that a person went out for a jog, got tired, and fell asleep on a park bench, but was killed by someone because he was not liked, that does not qualify. If someone does not know me, thinks I am homeless, and kills me for fun, that would be eligible for the enhancement. The prosecutor must prove that the crime is motivated by animosity, and the hatred of homeless.

Chairman Anderson:

I am concerned about the scenario that Assemblyman Ohrenschall just laid out. In existing statute, is there protection for the homeless person sleeping in the park as well as Mr. Ohrenschall out jogging in the park? Are we making it more difficult for the use of the hate crime statute, or less?

Ben Graham, Legislative Representative, Clark County District Attorneys Office:

We are leaving it the same. As Assemblyman Ohrenschall said, there are currently very few prosecutions based upon the perceived premise of hate crimes. I could see this potentially used if there was a serial pattern of homeless hate crimes.

Chairman Anderson:

Mr. Frierson, you are up next.

Jason Frierson, Clark County Public Defenders Office:

I agree there will be a narrow set of circumstances this would apply to. The state would have to prove the actor's intent was motivated by his perception of the status of this person. This keeps it narrowly focused.

Assemblyman Cobb:

I have in my notes that the Chairman was concerned about the effect on our prison system given the strain that it is currently experiencing. I know that the aggravating factors for murder in the first degree are removed under this amendment. I am curious to know if your concerns were alleviated by the amendment.

Chairman Anderson:

That particular question remains the primary concern of another committee on which I serve. Since this statute is currently used, if we were going to alleviate my concerns, we would have to cut back on the overall hate crime statute itself. By adding this nuance to it, we are recognizing the problem of the language.

It does not raise the punishment to a higher level than we are currently functioning with. I do remain concerned about anything that is going to add even one bed to the already overstrained system. That means we have to then come up with a way of putting people into other programs, which would lead to the perception of being weaker on crime. That is not our intent. Nevada has a tough standard which we are trying to uphold so that the public is protected, particularly the homeless. They are a class of society which may believe that society does not care about them.

Are there any other questions or concerns? [There were none]

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 83.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ALLEN, COBB, GOEDHART, MABEY, AND SEGERBLOM VOTED NO. ASSEMBLYMEN CARPENTER AND GERHARDT WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

The bill has failed having received seven affirmative votes and five in the negative. Eight were needed to pass the committee. It does not mean that it is dead, but it has not passed.

Jennifer Chisel:

We have two left. Should we try Assembly Joint Resolution 3?

Assembly Joint Resolution 3: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Assembly Joint Resolution 3 ([Exhibit I](#)) was presented by Assemblyman Hardy to amend the Nevada Constitution to prohibit the use of eminent domain for the purpose of economic development. This measure is in response to the *Kelo v. City of New London* case [545 U.S. 469 (2005)] and the People's Initiative to Stop the Taking of Our Land (PISTOL) which was approved by the voters for the first time in the 2006 election. During the last work session the Committee voted to amend and do pass Assembly Bill 102, which was Assemblyman Horne's eminent domain bill. The amendments to A.B. 102 would mirror the language in A.J.R. 3. Additional amendments were discussed for A.J.R. 3, including the addition of a definition of "public facility." You can see from the attached conceptual amendment, it proposes three things. The first is to further clarify the term "public facility" to ensure that it serves a governmental or quasi-governmental purpose. Skipping to the third, it also specifies that if the property taken by eminent domain is transferred to another private party, then that taking is deemed to be for a public use. That provision was actually in the mockup presented during the hearing by Assemblyman Hardy. The third amendment has not yet been discussed. That amendment is to ensure that, when private property is taken to gain a right-of-way for the purpose of building

a highway, the property is not subsequently exchanged to another private person if the highway or road is not eventually built on or near that location.

Chairman Anderson:

I would like to point out to the Committee that if we were to proceed with accepting all three amendments, we would have to move to reconsider A.B. 102. We could adopt amendments one and three clarifying the term "public facility" so that it mirrored the language that we have suggested for A.B. 102. The bill drafters are currently dealing with that amendment. When it finally comes forward, we will make sure that they mirror each other. We will then specify the actions to be taken if property taken by eminent domain is transferred to another private party and is deemed for public use, which is also in A.B. 102. Regarding amendment number two, we would need to amend the bill and bring it back to Committee, yet again, for a full hearing on that question. We would have to move to reconsider A.B. 102 to open discussion on A.J.R. 3. What is the pleasure of the Committee? Do you want to delay A.J.R. 3 and then bring back A.B. 102? We are dealing with the first definition of "public facility."

ASSEMBLYMAN GOEDHART MOVED TO AMEND AND DO PASS
ASSEMBLY JOINT RESOLUTION 3 TO REFLECT ITEMS ONE AND
THREE.

ASSEMBLYMAN COBB SECONDED THE MOTION.

Assemblyman Mortenson:

I am a little puzzled by the third amendment. If you take the property for a public use, then transfer it to a private party, what is the property then used for? If a transfer of property to a private party takes place long after the initial eminent domain process, does the original owner have a right to say no? For example, what if the owner of the property decides that a public school is a good use of the land and the property is transferred to a private party down the line. The original owner no longer has a voice in the matter. He can not say that he would not have transferred the property if he had known it was going to private property. This bothers me.

Chairman Anderson:

As I understand it, we have the individual who agrees to the eminent domain transfer. There is the possibility of gaining a tax advantage for the exchange. He wants it to be taken by a public entity. The fact that it may be used later by a private party is not his concern. His advantage gained is the tax write-off and, therefore, he is a disclaimer to the property. He does not want the property to come back to him because then he loses his tax incentive, and it

may divide his property in a way that it no longer has its economic advantage. Does that help?

Assemblyman Mortenson:

I understand that situation, but I also see a case where a person gives up his property for the public good. He believes we need public schools, and they want his land for a public school. He will give it up for a public school. Down the line, the public school never gets built and the property is transferred to a builder of condominiums. The person then says that if he knew condominiums were going up, he never would have agreed to this.

Chairman Anderson:

In that case, the owner would not consent to that. This bill is referring to situations where the owner has consented. This mirrors the language that we already put in A.B. 102.

Assemblyman Mortenson:

I am talking about a situation in which the eminent domain process has already taken place, and the original owner consented because he thought it a good cause. Four years later, after everything is said and done, there is a decision that the land will go to condominiums rather than a public school. Does he have a right, after four years, to go back and object?

Chairman Anderson:

I am under the impression that he would. This specifically says, "With the owner's consent to the taking and the transfer." Ms. Lang, could you help me out with these questions?

Risa Lang:

I think that what Assemblyman Mortenson is talking about is a situation that would happen after the fact. I believe this bill is addressing the original taking, and what is considered a public use for that taking.

Chairman Anderson:

The question that you are suggesting is related to the overall question of eminent domain rather than amendment number three.

Assemblyman Mortenson:

I guess I did not understand Ms. Lang's response.

Risa Lang:

I think that there are other procedures that come into play if the property is not used for the purpose that it was taken for. That issue would come up at a different time. This is for the original taking of the property.

Assemblyman Mortenson:

If the property is not used for public use, it can be returned to the original owner. He can purchase it back for the same amount. Is that still in the bill?

Chairman Anderson:

Yes, that is still part of the bill. We are in no way endangering that. We are trying to bring A.J.R. 3 in line with A.B. 102, and to further clarify the term "public facility". By following the motion of amend and do pass, we would be clarifying the term and specifying property taken by eminent domain.

Assemblyman Mortenson:

I am happy, Mr. Chairman.

THE MOTION PASSED.(ASSEMBLYMEN CARPENTER AND GERHARDT
WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

This bill will be amended on the Floor, than it will be referred to another committee. We will not have the ultimate control of it when it comes to the Floor. It will go to Elections, Procedures, Ethics and Constitutional Amendments. This is amend and do pass and rerefer.

Jennifer Chisel:

We only have one bill left, and that is Assembly Bill 8.

Assembly Bill 8: Prohibits a person from being admitted to bail for at least 12 hours after his arrest for driving a vehicle or operating a vessel under the influence of intoxicating liquor or a controlled substance. (BDR 14-704)

Assembly Bill 8 (Exhibit J) was presented by Assemblyman Manendo on February 16, 2007. This bill provides a mandatory 12-hour hold before a person arrested for driving under the influence (DUI) may be released on bail. In response to concerns raised in the hearing, an amendment was submitted by Frank Adams on behalf of the Sheriffs' and Chiefs' Association. The amended language is found on page 2 of the work session document. If the person arrested is under the influence of alcohol, he may not be released until his breath test is .04 or below. Further, the amendment provides that if the person

arrested is under the influence of a controlled substance, the hold would then be for the full 12-hour period.

Assemblywoman Allen:

Mr. Adams, you testified earlier that there was concern of jail overcrowding. Is your amendment specifically supposed to mitigate that? Could you give some detail as to how you came to this amendment?

Frank Adams:

This amendment came as a result of a meeting with Assemblyman Manendo, Josh Martinez from Las Vegas Metropolitan Police Department, a representative from Stop DUI, a representative from Office of Traffic Safety Alcohol Impaired Drivers Program, and a representative from the Washoe DUI Coalition. We were concerned with jail overcrowding, so we wanted to look at an area where we could legitimately release in a timely fashion a person who is not under the influence. I believe the language actually reads that the standard is below .04. That would mean before being released, the person must take a breath test. That test must be below .04 in breath alcohol before the person may be released. If any type of controlled substance is involved, we felt that the twelve hour hold would be appropriate because we do not have a way of testing those levels. The DUI tolerance levels involving a controlled substance are much less than the DUI alcohol levels.

Chairman Anderson:

The .04 standard is a very low standard. Is this number realistic? Regarding the calibration of the machinery, could a .04 be registered as a .01?

Frank Adams:

We looked at the less than .04 standard because that is the standard used for commercial truck drivers. Although they are not arrested for a level of .04, it does make a difference in their abilities. That level was already established, which is why we chose to go in that direction. As for the calibration of the machinery, Mr. Roshak is more knowledgeable.

Bob Roshak, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

It is my understanding that we would be using portable breath testers versus the formal breathalyzer machines. These machines would be easier for the corrections officers.

Chairman Anderson:

Is the reliability of these portable machines higher, lower, or the same?

Bob Roshak:

I would estimate that they are probably not as reliable as the formal breathalyzer machine used for DUI arrests.

Chairman Anderson:

Hypothetically, I am standing at the front door of a fraternity house. I am trying to make sure that nobody is leaving the fraternity party who might be endangering themselves. What kind of reading could be anticipated from a person who came out the door who had used mouthwash with a high alcohol content?

Bob Roshak:

He could potentially blow a 1.0 to a 1.2 depending upon the alcohol content of the mouthwash and how soon the test was administered.

Assemblyman Horne:

I am still concerned about the level of .04. Hypothetically, if you were on patrol and you pull me over for running a stop sign and then you suspect I am under the influence of alcohol and I blow a .06 or a .07, would you just cite me for running the stop sign, or would you arrest me because I am close to .08?

Bob Roshak:

I would have to weigh all of the factors in the situation. Did you fly through the stop sign? Did you hesitate? I could consider the fact that you have alcohol in your system and your erratic driving and determine whether or not you were impaired. I could then arrest you. It would be a judgment call, weighing many circumstances.

Assemblyman Horne:

Below .04 is such a low standard. You may be holding someone who is not, in fact, impaired. I am concerned. You said before that this was the standard for truck drivers?

Frank Adams:

That was the recommended standard because commercial truck drivers have a standard that .04 is not allowed in their system. This has to do with their actual commercial truck driving license. We were looking for an established standard that was out there already. If a person is at .04, that is indicating that the person is on his way down. He would have been at a .08 or greater when he was brought in. At a .04, we are confident that the person could walk out the door and be in control of himself.

Chairman Anderson:

I had not anticipated the question raised by Assemblyman Horne. I had a certain comfort level when you said that truck drivers had to be held at less than the standard to operate their vehicles. I had not thought about the quandary that the police officers will be placed in. It is always a judgment call whether to take someone in on anything, even a broken tail light. If the person pulled over blows between the .08 level—which you go to jail for—and the .04 level, we are putting a greater burden on police officers and their judgment. Several years ago in Washoe County, an officer pulled somebody over then allowed them to proceed. The person was later involved in a serious accident. The officer believed that the person was capable of getting to their destination. The officer was wrong, and now no longer works in law enforcement. He was found responsible in a law suit.

Frank Adams:

I do not believe this would cause an officer any problems in the field. The purpose of this bill is to ensure that a person is capable of taking care of himself when he is released from custody. Many agencies already do this as practice. We wanted to find a way to alleviate the crowding in the jails while still making sure that the person is not a danger when he walks out the door. There have been a number of those cases that you are referring to, and the liability issue has been resolved in some of those.

Chairman Anderson:

Are there any questions or concerns?

Assemblyman Manendo:

I wanted to thank you and all of the interested parties. About six months ago, I was following a car that was driving erratically. I called the police because this car was physically sideswiping other vehicles. About 15 minutes later, she crashed up onto the sidewalk, blew a tire, and crashed into a bus stop. Finally, Las Vegas Metro was there and pulled her over. She passed every field sobriety test. They did not take her into custody. They used their professional judgment and called somebody to come and pick her up. Had she failed her field sobriety tests she likely would have been arrested. She would have gone into the holding cell, they would have tested her, and, at the time of release, she would have to be at the .04 level. Our intent was to keep dangerous people off the street. Not every person is going to be arrested. In response to Assemblywoman Allen's concern about the jail overcrowding, I have a letter from Judge Assad in Clark County. He sees no problem with the system they currently use. There was also a community meeting in Southern Nevada this week and they have come up with another site for a new jail.

Chairman Anderson:

I have three people in the south who want to be heard on this issue.

Elizabeth Kolkoski, Judge, Municipal Court, Department 2, Las Vegas, Nevada:

This is a public safety issue. We are trying to keep people who drive drunk off the roads. I have been asked to release without bail individuals who are newly arrested on DUI. This is the most uncomfortable position to be placed in. I try to not offend the people who support me by holding the driver for bail, but if they are released it could jeopardize the public safety. I never release before 12 hours, which is the standard in our court. The compromise is excellent because it distinguishes between drugs and alcohol. I am responsible for the DUI court. There are many people who drive repeatedly under the influence. I have some defendants who have four DUIs in the municipal court. This is a serious problem.

Chairman Anderson:

We are not taking testimony. We are trying to work with the amendment. To summarize, you have reviewed the amendment, and you, as a judge, feel that it does not infringe on any rights that we might be concerned about, relative to the mandatory hold?

Elizabeth Kolkoski:

I think that it holds people briefly to ensure that they are safe on the roads. I have no issues.

Chairman Anderson:

Are there any questions for the judge? I note that there are others in the south who want to be heard. I only want to hear on the bill itself, nothing else.

George Assad, Judge Municipal Court, Department 3, Las Vegas, Nevada:

Thank you for allowing me to submit input on the proposed amendment. I am here to answer any questions, and to recognize Lieutenant Paul Page, President of the Police Managers and Supervisors Association for the Metropolitan Police Department. They are in favor of the bill and the amendment as proposed. I have no problem with the .04 level. I think it ensures fairness to people who are deserving of being released and not being held for 12 hours. I think that the 12-hour hold is a good idea for public safety.

Chairman Anderson:

Did you participate in the making of the mockup of the amendment?

George Assad:

No, I did not.

Chairman Anderson:

Are there any questions for Judge Assad? Mr. Page, I see that you also wish to be heard. Please stay specific to the bill and the amendment.

Paul Page, President of the Police Managers and Supervisors Association for the Metropolitan Police Department, Las Vegas, Nevada:

If I just said, "me too", it would be appropriate.

Chairman Anderson:

Are there any questions or testimony on A.B. 8? [There were none.]

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 8.

ASSEMBLYMAN MABEY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND GERHARDT
WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Are there any other bills that we might deal with right now? Senate Bill 66 would be an interesting one. Let us look at S.B. 66.

Senate Bill 66: Increases the amount of damages that may be awarded in certain tort actions brought against a governmental entity or its officers or employees. (BDR 3-120)

It is Senator Care's bill that would raise the tort cap to \$100,000. There were many discussions about other amendments that could be offered, for example a higher tort level or a change in dates. Frankly, I am hesitant to amend this bill in any way for fear that, if it went to the other side, the bill would die. What is the pleasure of the Committee? I am of the opinion that we should do pass S.B. 66 and get it off the board. That way it can move along to the Ways and Means Committee to deal with the dollar questions. We are only looking at the concept. Are there any questions?

Assemblywoman Allen:

Are there any amendments?

Chairman Anderson:

I am not suggesting that there be an amendment. There were amendments offered by the School District, and the University system was concerned about the fiscal impact. While I am sympathetic to the needs of the smaller

governmental entities to meet the demand, we find that they have a \$2 million liability insurance policy already. We had testimony from the Insurance Commissioner at the request of the Attorney General, who was concerned. Are there any more questions?

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS SENATE BILL 66.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GOEDHART, AND MABEY VOTED NO. ASSEMBLYMEN CARPENTER AND GERHARDT WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Assemblyman Horne will take care of this bill on the Floor.
Meeting adjourned [at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

Janie Novi
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 23, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Assembly Committee on Judiciary	Agenda
	B	Assembly Committee on Judiciary	Attendance Roster
A.B. 246	C	Judge John P. Davis	Letter to Mr. Goedhart
A.B. 100	D	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 117	E	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 77	F	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 21	G	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 83	H	Jennifer Chisel, Committee Policy Analyst	Work session document
A.J.R. 3	I	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 8	J	Jennifer Chisel, Committee Policy Analyst	Work session document