

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

**Seventy-Fifth Session
March 9, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:13 a.m. on Monday, March 9, 2009, 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/75th2009/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 Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Kyle McAfee, Committee Secretary
Sean McDonald, Committee Assistant

OTHERS PRESENT:

Sandy Heverly, Executive Director, STOP DUI, Las Vegas, Nevada
Judge John Tatro, representing the Nevada Judges of Limited Jurisdiction, Carson City, Nevada
Laurel Stadler, State Director, Mothers Against Drunk Driving, Dayton, Nevada
Judge Stephen Dahl, Justice of the Peace, North Las Vegas, Nevada
Zachary Larson, representing LRS Systems, Las Vegas, Nevada
Ben R. Graham, Las Vegas, Nevada representing the Administrative Office of the Courts, Carson City, Nevada
Mark D. Taylor, Assistant Controller, Office of the State Controller, Carson City, Nevada
John R. Johansen, Highway Safety Representative, Office of Traffic Safety, Department of Public Safety

Chairman Anderson:

[Roll call taken. The Committee standing rules were stated.]

We have a Committee introduction. This is Bill Draft Request (BDR) 11-961.

BDR 11-961—Makes various changes concerning the issuance of marriage licenses. (Later introduced as [Assembly Bill 262](#).)

It is for people who remarry each other in a formal ceremony, to be able to get a license to do that, if they so desire.

ASSEMBLYMAN HORNE MOVED TO INTRODUCE
BDR 11-961.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Jennifer Chisel, Committee Policy Analyst:

The material I have is from our Committee Counsel ([Exhibit C](#)). He was observing the Committee last Thursday when we heard Assemblyman Ocegüera's Assembly Bill 182, the explosives bill.

The Committee Counsel was concerned that there was some confusion among Committee members as to what the bill did, so he wanted to provide some additional information, particularly which sections are being repealed and the fact that those sections are in other areas of the statute. It was a way to avoid duplication within the statute and provide clarification on what that bill is intended to do.

Chairman Anderson:

We are going to hear Assembly Bill 209.

Assembly Bill 209: Revises provisions governing the attendance of certain offenders at meetings of panels of victims of crimes relating to driving under the influence. (BDR 43-872)

Assemblyman Mark A. Manendo, Clark County Assembly District No. 18:

I bring forth Assembly Bill 209 on behalf of STOP DUI. I know there have been some concerns with one particular area of this legislation. On page 2, lines 32 through 34, the bill deleted the 60-mile radius. We request that that language be put back in. That request came from Mr. Carpenter, and we are agreeable to that. It was really not my intent to have that language stricken from the statute. We are okay with that language being left in the bill. The intent of this bill is to make sure that offenders, who are inside the 60-mile radius, attend a live victim impact panel. That is our intent, but I am not sure if this bill does that. We are probably going to need some help. We want to make sure that somebody attends a live panel. On page 2, lines 20 and 21, it says, "Attend in person, at the defendant's expense, a meeting of a panel of persons...." I am not sure that this language does what was intended, because somebody mentioned to me that you could attend in person and still watch it on video. Our intent is to make them attend a live panel. We have some handouts ([Exhibit D](#)) from Mr. Callaghan, who wrote a nice article. I have been to these

panels. I know how powerful and effective they really are; they change people's attitudes. We would like to see people attend a live panel.

Sandy Heverly, Executive Director, STOP DUI, Las Vegas, Nevada:

[Spoke in part from prepared testimony ([Exhibit E](#)). Made reference to ([Exhibit F](#)).]

I would like to give you a quick example of one of the things that was quite unique in terms of what we were able to do with some of these fees. A young lady, Katrina Strasberg, four years old, was killed by a drunk driver. She was buried in Las Vegas at one of the Palm Mortuaries. Her mother, brother, and sister lived in Las Vegas for a number of years, and they decided to move to California. A few years passed, and I received a call from Katrina's mother. She wanted to know if there was any way we could bring Katrina to California. The STOP DUI organization made those arrangements with Palm Mortuary, and it was the first time that they had ever exhumed the casket of a child. The casket was exhumed, and it was transported to California. That little girl is now near her family.

Chairman Anderson:

Mr. Manendo, let me make sure that I get this straight: you have two suggestions. First, on page 2, section 1, subsection 2 of the bill, you want to restore the language "The court may, but is not required to, order the defendant to attend such a meeting if one is not available within 60-miles of the defendant's residence." Second, there is a clarification you feel is necessary, but you do not have suggested language.

Assemblyman Manendo:

Correct, Mr. Chairman.

Judge John Tatro, representing the Nevada Judges of Limited Jurisdiction, Carson City, Nevada:

The removal of the 60-mile requirement was our concern. Since that is being added back in, our association does not oppose the bill.

Chairman Anderson:

Of the programs you run here in Carson City, are they all live?

John Tatro:

Yes. In fact, Laurel Stadler runs the Mothers Against Drunk Driving (MADD) program here. We have it every other month at the state library, I believe. Our alternative sentencing department provides the security, which Ms. Heverly was talking about. Together with the Nevada Highway Patrol (NHP), they perform

preliminary breath tests and get people checked in. We are very involved in that.

Chairman Anderson:

The return of the language regarding the 60-miles makes the bill acceptable?

John Tatro:

We would not oppose that.

Laurel Stadler, State Director, Mothers Against Drunk Driving, Dayton, Nevada:

We provide the rural victim impact panels. We provide eight panels a year in Carson City, and we travel as far as Battle Mountain. We will be presenting the victim impact panel in Battle Mountain at the end of this month. When this statute was passed back in 1993, Judge Bunch asked us to provide the panel in Battle Mountain. We have been providing panels in the rural areas for many years, to get more areas covered within that 60-mile radius, because this is such an important program. We travel to Yerington, Fernley, and all of the rural northern Nevada areas because it is important to have a live panel available for the offenders. We are very much in support of this legislation, and we agree with the reinsertion of lines 32 through 34 to keep that 60-mile radius in place. It does provide a live panel for the great majority of the offenders in the state. We have been providing this rural panel since 1993 and have talked to thousands of victims and offenders in that period of time. Our victims are more than willing to travel these long distances in order to provide a live panel for the offenders.

Chairman Anderson:

Do you not use video tapes in your presentation?

Laurel Stadler:

We have four to five live victims at every panel, and we augment that with slides and a couple of short videos.

Judge Stephen Dahl, Justice of the Peace, North Las Vegas, Nevada:

Judge Tatro addressed the main concern. When the bill first came out, it said anyone in the State of Nevada has to attend a live panel, which would mean hundreds of miles of driving for some people. We oppose that. We also want to make sure that the language of the bill is clear that if they fall outside of that 60-mile area, the courts are still free to try to come up with other ways of delivering some kind of victim impact panel. We have two or three rural courts that use a video provided by MADD. They show a video presentation, they still do the breath screening, and they charge a fee. That is how they get it done. Even with the panels that are provided, there are still significant mileage issues.

For example, someone in Ely would have a 430-mile round-trip if they had to go to Battle Mountain. There has got to be another way to allow them to participate in a victim impact panel, whether it is online or a video or something else. We want to make sure that the language of the statute is clear that if it is not in person or nothing, that the courts can still explore the alternatives. The online option is still in its early phases. I think it has only been out there for about a year or so. It is just getting developed and presented, but it is something that I think has real potential. Online learning and online classes are used in all kinds of areas, including getting a college degree. I do not think victim impact panels should necessarily be excluded in this area. The driving under the influence (DUI) school can be completed online. We want to make sure that it is available to the rural areas. I do not think this is the time to debate what is good or bad about live or online programs. There are concerns in Las Vegas because people get turned away from the live victim impact panels. A couple of judges were there recently and saw 50 people get turned away. People were told that if they wanted to make sure they got in they had to show up five hours early to wait in line. That is a concern to the courts. It is a once-a-month presentation; it has been an once-a-month presentation for 20 years, and we probably need more than that. I do not want to get into that debate. All I want to do is make sure that the rural areas in the state are free to try and come up with other ways and develop other means and methods for a person to get the kind of education that someone would get in a live panel, even if they live so far away that a live panel is not practical.

Chairman Anderson:

Judge Dahl, I think this is the time and place to debate whether or not the panels are serving the community in a large enough forum. The size of the audience, in a victim impact panel, makes a huge difference in terms of whether you are actively engaged with the individual or not. You could obviously get the Thomas & Mack Center to bring a group in and do a presentation there with a few thousand people, but what would be the point? How would they feel the impact? Obviously, you would want to have some interaction within a small enough group so that it is of value. If you have enough time to drink, one would think you might have enough time to come to one of these impact panels and make arrangements for it. Of course, you have quite a few courts in Clark County. The rural areas were able to do it once a month.

Stephen Dahl:

I think it would help if it was offered more frequently. Personally, I send everyone to the live victim impact panel. I do not offer the online option in my court, but I am getting more and more people coming back saying, "I need another month or two because I could not get in this time." Like I said, two judges just told me that they went to one panel recently, and they watched

people get turned away. It is a concern when people go and try to comply, but they cannot. What do you do at that point? Do you send them back for another go-around, or do you tell them to forget about it?

Chairman Anderson:

Judge, do you give people a warning that they have to appear in your court ahead of time? Usually, they know what day they have to come. If they do not show up, you issue a warrant, right?

Stephen Dahl:

Yes, but I do not tell them they have to show up at four in the morning to make sure they get a place in line to appear in front of me that day. That would be five hours early. Apparently, these people were told that if they wanted to make sure they got in, they had to show up five hours early and wait in line. It is a concern to me when the availability is so limited. People have to wait in line that long to get into the program, or they have to come back and tell me they could not do it.

Chairman Anderson:

How long do you give them to attend one of these panels? Is it within a month?

Stephen Dahl:

I usually give them several months because they are doing other things. They are going to DUI school, they are paying a fine, and they are doing community service. There is a whole process of things you do in the course of a DUI sentence. Sometime, during the course of fulfilling those other obligations, they need to get to the victim impact panel. I will not tell them they have to do it this month, but they have to do it before we close the case.

Chairman Anderson:

With the reinsertion of lines 32 through 34 on page 2 of the bill, are part of your concerns answered?

Stephen Dahl:

Yes.

Zachary Larson, representing LRS Systems, Las Vegas, Nevada:

I am with LRS Systems. We were originally contacted by the rural judges to help create an option for them. We are the creators of the victim impact panel in question, the <nevadadui.org> website. We are an education company. We provide domestic violence and drug abuse classes in the Las Vegas area. As appropriate, we do live classes or offer online training for people. We often

work with the rural courts to come up with solutions for the education of their offenders. We were approached by a group of judges who had a DVD that was a copy of a VHS tape. That was all they had available for their victim impact panel. They asked if we could come up with something better to offer. Obviously, they had the option to waive the requirement per statute, but, instead, they chose to have the option for people to experience this, to see this, to have the opportunity to participate in the victim impact panel. We went to work, we read the statute, we reviewed different options with judges, we looked at victim impact panels throughout the country, and this was the solution we came up with, an interactive online course. You watch one video in the program. It is in vignettes because we wanted to have security questions in between. Ms. Heverly stated that these questions could be answered by a first grader. My question would be: could it be answered by a first grader who did not watch the video? The purpose is not to test the knowledge of the participants but to make sure people are participating in the panel, to make sure they are watching and seeing what is happening in the video so they are able to experience it.

We created the online interactive victim impact panel that is now being used by some of the rural area judges. When you look at the frequently asked questions about the course ([Exhibit G](#)), you see that it specifically states that people need to check with their judges to make sure that this course is appropriate in their cases. It is not something that is supposed to be used for every case. It is supposed to be a tool for the judges when nothing else works or when they deem it appropriate to be used in that instance. For the most part, that is what we see. I cannot speak for everything the judges do. The intent and the purpose of developing this was to open it up to more people, not to infringe upon what is happening with the live classes. I do not think there is a doubt as to whether live classes are effective or a good thing. I think we are all in agreement on that. The entire purpose behind this course was to open up the online option in appropriate cases. I think Judge Dahl got to the heart of the matter. We do not want to take away this option from the rural judges who are using it to bring this panel to people who were not seeing it before. I think the argument that having them do nothing is better than having them do this holds no weight. It is a backwards move to take away an option that can be effective for people.

One of the accusations made was that we are in this for financial benefit, to make a quick buck. While we created this panel, we have actually set it up to be run through a local nonprofit group. There is no question as to where this money is going, it is going to victims, it is going to help people. It is not meant to be a profitable enterprise for anybody. The statute says it should not be run for profit, and I think that requirement should stay in the law. I think it is a

wonderful thing that this money goes to victims. I find the accusation amusing. Nobody in my company draws any monetary benefit from this. We do this to maintain a working relationship with the judges. We do not do this for money. These online panels are a very small part of what we do.

Assemblyman Mortenson:

I do not understand why someone has to stand in line for five hours to see one of these sessions. Can it be held in a larger venue so that everyone can get in?

Zachary Larson:

When you present in an auditorium that seats 300 to 400 people, you have 300 or 400 distractions in the room that divert your attention from the presentation. I think that as you grow the auditorium size, you actually diminish the impact. They probably do not want to increase the size of the panels. As an educator, I would say that is something you would want to avoid; it would diminish the impact of what they do.

Chairman Anderson:

How do you monitor people, and how long do they have to spend in the program? Can they do it in pieces?

Zachary Larson:

They can do it in pieces. The course takes just over an hour. After each session, they have to answer randomly-generated test questions with 100 percent accuracy, or they have to retake it. The time varies from person to person. If they are not in a mental state to comprehend the material, obviously, they are not going to be able to pass the session. They would have to come back when they are able to comprehend it. If all of the questions are answered correctly going straight through it, it would take just over an hour.

Chairman Anderson:

How do you verify the identity of the person taking the test?

Zachary Larson:

We have a couple of options for that. We do use the same security methods prescribed by the Department of Motor Vehicles (DMV) for any online course. On top of that, we inform the judges that they should familiarize themselves with the course, so if there is ever any question whether someone participated, they can easily say, "Please explain this to me. Tell me about this." Within seconds, they would be able to verify whether or not somebody actually saw what was presented. Those are the measures in place at this point.

Chairman Anderson:

How much does it cost?

Zachary Larson:

The online fee is \$50, but that money goes through the nonprofit group to benefit victims and fund DUI education.

Chairman Anderson:

That is the tracking method for you?

Zachary Larson:

Yes, they do all of that online.

Chairman Anderson:

Ms. Heverly, Judge Dahl was concerned about the fact that people are turned away. How large of a venue do you have for your monthly presentation? What is the seating capacity?

Sandy Heverly:

We seat approximately 500 people a month. We use the Flamingo Library. We are in the theater that seats approximately 400 people. There is another English presentation that is given in a classroom right down the hall. We also have another classroom that is presented in Spanish by our Spanish speaking victims. We also present the panel, on a quarterly basis, in Henderson. There are a number of places where these folks can attend. We have only turned away people one time. We know that these offenders will go back to court and say they were turned away. Last December, when we were in Las Vegas to do the panel, there was a snow storm. We were there, everybody was ready to go, and we were notified by the library that we had to be out of there in 45 minutes, so the panel was canceled. Therefore, all of those people who were there in December, that were supposed to attend, had to be filtered through the next few months. We do not turn people away; we have room for these folks.

Chairman Anderson:

The Flamingo Library has a capacity of 400 people. In addition, you have a simultaneous presentation down the hall for Spanish speakers.

Sandy Heverly:

There is an English presentation as well. There are three rooms being used.

Chairman Anderson:

How do you make the determination as to who goes to the smaller venue or the larger venue? I have spoken to large groups, and I have spoken to classroom groups, which are generally 25 to 40 students. I know the difference that size makes in terms of interacting with people. I realize that you are dealing with a panel of people, and, thus, it has a different kind of format. Do you think it would be a benefit to have two a month, or is that possible?

Sandy Heverly:

I think we are accommodating the volume of people we currently have. I know it is hard to imagine, if you are standing in front of 400 people in an auditorium, that you are actually connecting. I will tell you that you can hear a pin drop. It is because of the presentation. It is because of that content. It is because of that human interaction and the intensity of it. I would invite everybody on this Committee to attend a presentation.

Chairman Anderson:

Is it not possible to sign up in advance and guarantee a seat?

Sandy Heverly:

No. We start checking people in at 5:30.

Chairman Anderson:

Why is that?

Sandy Heverly:

It is not necessary because we are not turning anybody away. There is room for everybody. We start checking people in at 5:30, the program starts at 7:00, and it concludes at 8:30. They probably arrive somewhere between 4:00 and 4:30.

Assemblyman Manendo:

It is my understanding that the offenders have between three to six months to complete the program. We would love to have Judge Dahl come out to see us.

Chairman Anderson:

I will close the hearing on A.B. 209.

Let us turn to Assembly Bill 156.

Assembly Bill 156: Requires certain courts to use collection agencies to collect certain debts. (BDR 1-292)

Assemblyman Ty Cobb, Washoe County Assembly District No. 26:

I bring Assembly Bill 156 before you today to provide a specific, effective, and unified method for the judiciary in Nevada to collect fines, fees, and administrative assessments owed by defendants who break the laws of the State of Nevada. Despite the fact that this is a policy Committee, we have heard a lot about a lack of resources throughout the justice system. During this past Interim, in the Advisory Commission on the Administration of Justice, Chief Justice Jim Hardesty indicated that a major factor in developing alternatives in the criminal justice system is the lack of resources. He specifically identified a significant underpayment of fines and fees by offenders, a number that approaches \$30 million over the past decade in the Second Judicial District alone. Chief Justice Hardesty concluded that there is a need to centralize the collection of those funds by utilizing the authority to contract with collection agencies for these services.

Assembly Bill 156 does not raise fees or fines, and it will not cost anything to implement. Instead, the bill provides a much needed tool to collect money that is already owed to state and local governments. Currently, the collection of fines and fees by the various courts throughout the state is inconsistent, ineffective, and, in many courts, nonexistent. In general, courts are not designed to be effective debt collectors. This bill authorizes district courts, justice courts, and municipal courts to contract with a private debt collector to assign-out the responsibility to collect fines, fees, and administrative assessments. The court must determine, first, that using a private debt collector will generate more revenue than if the court used its own statutory authorization and efforts to collect the debt. There is a prohibition on assigning the debt collection if the debtor has contested the debt. The bill outlines which party pays the cost and fees of collecting the debt, and the court administrator has the final authority to approve a contract with a debt collector. This bill is patterned exactly after *Nevada Revised Statutes* (NRS) 353C.200, which authorizes state agencies, with approval from the director of the Department of Administration and the State Controller, to contract with a private debt collector. Upon consultation with the Chief Justice, I had intended to seek an amendment to this bill requiring that the debt collection of all courts be centralized within the Administrative Office of the Courts. However, our Committee has subsequently requested a bill to achieve this goal. I urge this Committee's passage of A.B. 156.

Chairman Anderson:

The question of debts is one of those issues that we have been dealing with for quite a few years. The judge himself is not the person who goes out and picks up the fine. That is a function of his officers, the clerk, and other people who are responsible. The executive branch of the government is supposed to have

responsibility for the penalties, considering the fine is part of the penalty for committing the crime. There is the fine, and, of course, there are administrative assessments which are a big part of this overall fiscal question. Particularly, if you are at the lower end of the economic spectrum, it is often very difficult to pay the fine itself. The administrative assessments that come along with it become an additional burden. Our existing law did a pretty good job, at least at the district court level, so this may be expanding it to the municipal court level. Is that your hope?

Assemblyman Cobb:

It would expand it to the justice court and municipal court as well. It also requires that there be a review performed by the judicial districts themselves to see how effective they are in collecting these debts, currently, and whether it would be more effective to use outside collection agencies and, therefore, contract with one to provide this service to them.

Assemblyman Horne:

Mr. Cobb, who would be responsible for making that determination? I am not sure how you envision it working. Would it be the court clerk who says: "John Doe owes us \$500. It would cost us \$200 to collect it, but if we hire a debt collector, it would only cost us \$100. Therefore, we will use the debt collector in this instance."

Assemblyman Cobb:

The current system allows for individual collections, judge by judge. This would require a review by the court. Probably, the chief judge of each court, looking at the evidence they have as to collections that are not coming in versus what they could do with collection agencies, would make that determination. In current statutory law, the authority already exists to charge an individual a fee up to \$100 for up to a \$500 fine. It is a tiered system, depending upon the amount of the fine. The chief judges could then set their own fees for the use of the collection agency so there would be no cost to the courts, but they would have an efficient collection agency handling it instead of the courts.

Assemblyman Horne:

The bill says that the courts would make the determination as to whether the assignment is likely to generate net revenue and the assessment will not compromise future collections. Somebody has to make that determination. Are you saying the chief judge is going to make that determination?

Assemblyman Cobb:

Generally, the chief judge makes most administrative decisions regarding policy for each judicial district. I would imagine the chief judge would be the one who

makes the final decision; although, I also imagine the chief judge would want to consult with the clerks in making that decision.

Assemblyman Horne:

Have you spoken with the chief judges in Washoe and Clark counties on the format of how that would be done? Initially, you said each individual court had been doing it.

Assemblyman Cobb:

I spoke with Chief Justice Hardesty about this legislation. I referenced, toward the end of my testimony, the idea of centralizing all collections through the Administrative Office of the Courts. The concept here is that the Chief Justice is looking for uniformity in the entire judicial system, not each individual judicial district. He speaks on behalf of every judicial district, on behalf of the judicial system. It was his opinion that all of this should be one uniform system that goes through his administrative office. The concept being that they would have one debt collector at a very low rate. If he determined, in consultation with the chief judges, that it would be worthwhile to have collections done for each district, the chief judge of the district would then farm the hiring of the debt collector out to the State Controller's office, who handles contracting for the state.

Assemblyman Carpenter:

What kind of success have these other state agencies had, because we know there were millions of dollars owed to the state in regard to the Department of Taxation?

Assemblyman Cobb:

In discussions with the State Controller's Office, they were very excited about this concept, especially that all of this would be a uniform system and farmed out to the State Controller's office. They believe they have a good system in place to collect more from people who owe assessments, fees, and fines. I am not familiar with their success rate, but they were very much interested in having this uniform system.

Chairman Anderson:

A complaint we hear is that some of these collection agencies are very aggressive. I hate to compare them to the pay day loan companies in terms of the interest rate they charge or the continuing escalation of their charge. Even though the statute indicates what the rate is supposed to be, this seems to be a problem. Did those issues come forward from any one you talked to?

Assemblyman Cobb:

That issue was not brought to my attention in discussions with the State Controller and the Chief Justice of the Supreme Court. However, if everything was put together in a uniform system, I believe that our policy makers, such as the Chief Justice and the State Controller, could best control what kind of fees and fines could be charged by the collection agencies. There exists, in statute, the authority to charge a collection fee, in a tiered system, to an offender who does not pay these fees and fines.

Ben R. Graham, Las Vegas, Nevada, representing the Administrative Office of the Courts, Carson City, Nevada:

I appreciate the energy that Mr. Cobb and this Committee have brought in focusing on the significant sums of money owed to a laundry list of state and local entities. I think Mr. Cobb discussed that approximately \$30 million was owed in the Second Judicial District, and I suspect it would be \$100 million, statewide. In affect, the average taxpayer is subsidizing other folks who have skipped on their obligations. I think this legislation is an effort to focus on what seems to be a lack of any coordination, locally and statewide, and to pool the resources of the courts and the comptroller in order to resolve this collection issue. Mr. Cobb and others really have no intention of interfering with or replacing the efforts of local entities that are successfully collecting through a system of their own. I think this is an effort to focus on and tie into a coordinated system. I think this is a work in progress. I am here on behalf of the courts to emphasize the importance of trying to reach a coordinated agreement, not to terminate successful operations, but to try to bring in some revenue.

Chairman Anderson:

I think that there are a couple of different things we are talking about. Number one, the judge considers his fine to be part of the penalty for the crime, and, therefore, the punishment should be applied, it just happens to be a monetary one. The second part is the administrative assessments which are imposed simultaneously and then used for a wide variety of programs, not the least of which is the development of the tools necessary to carry on the judicial system, such as computers, the physical plant, training for judges, and other similar resources. What percentage of fines do you think remain uncollected?

Ben Graham:

I do not have an answer for that. We are not talking about huge fines imposed for felony convictions or the related assessments, but we are looking at day-to-day matters. I would have to ask to find out the percentage, but I believe it is fairly significant.

Chairman Anderson:

I am concerned about two things here: out of the total number of cases, what percentage are fines and assessments not collected, and do the collection problems tend to occur only in the cases where large fines and assessments are imposed?

Assemblyman Segerblom:

Does the collection agency get a percentage of what they collect? Do they have the ability to accept less from the offender than what is owed?

Ben Graham:

I think the whole thing here is a work in progress. I think the court's obligation is to try to be fair and equitable while providing for collection. I am not sure how the ultimate percentage would be arrived at.

Chairman Anderson:

Am I to understand that the Administrative Office of the Courts has a bill that will be brought forward? We may need to hang on to this for a while to make a determination as to how we are going to take a comprehensive approach to these issues.

Ben Graham:

That is an accurate representation. I will try to get some information on percentages before this matter comes up again.

Chairman Anderson:

Mr. Cobb, is that your understanding as well? I want to make sure that we all understand that we may have more bill drafts coming on this general issue.

Assemblyman Cobb:

It is my understanding that there are several different bill drafts involving the types of issues, in different facets, that have been discussed today. In reference to the question that was asked by my colleague, a great amount of discretion is left to the courts to determine what the best collection system is for them. The State Controller's Office is very much interested in being involved as a proxy for the courts, so the courts can handle the business of the judiciary and allow things like collections to be handled by professionals in that area. There was also discussion of a different bill draft that pertains to the equity involved in who pays what fines. That is a very relevant question these days. But regarding collection, who pays and who does not pay is not necessarily based upon their ability to pay. This system proposed in A.B. 156 would make the collections process more uniform. It is up to us, perhaps in another bill draft, as policy makers, to decide whether or not we want to

provide some type of more equitable way to levy these fines, fees, and assessments.

Mark D. Taylor, Assistant Controller, Office of the State Controller, Las Vegas, Nevada:

Controller Kim Wallin asked me to listen to today's proceedings. We are essentially neutral. As Assemblyman Cobb indicated, we have a desire to assist the court. There have been some preliminary conversations relating to debt collection. We currently have collection efforts in place for some agencies that we do on their behalf. There are three debt collection agencies we have contracted with. We have gone through the request for proposal (RFP) process. We utilize their help in collecting debts for the various state agencies. We are in support of having some kind of centralized operation. We are not familiar with the courts' current debt collection processes, but we would be willing to assist the courts, if they decided to assign the debts over to us, to help them do that collection.

Chairman Anderson:

Mr. Taylor, one of the concerns you heard me express earlier was that some of the debt collection services have become almost like the high-interest payroll check lending institutions in that, if the debt is not paid, they keep adding interest. As a result, the debt becomes insurmountable. Has the Controller's Office looked at this issue?

Mark Taylor:

As I mentioned, we did go through the RFP process. The current agencies we use charge for their services a percentage of the debt that can go from 11 to 35 percent, depending on the type and size of the debt and the amount of legal efforts that might take place, including filing judgments, liens, and so forth. The way the contracts are currently structured, a majority of that charge is tacked on to the original amount of the debt, which is why, as Assemblyman Cobb indicated, there is no additional cost to the state. It is not meant to be additive in that it can turn into 100 or 200 percent of the original amount of the debt. The intent is to only add the amount of the collection agency's charge, either the base amount that has been indicated in the contract or any amount that might be added on because of the legal proceedings that might be taking place in order to try to collect the debt.

Chairman Anderson:

This bill could easily end up in Commerce or Government Affairs. Regarding the court system, I would have no problem if the percentage charged by the collection agency was based only on the fine levied by the court, rather than the total of fines, fees, and other assessments.

Mark Taylor:

Mr. Chairman, in Chapter 353C of NRS there is a provision to address the smaller debts, that is, anything under \$200. We are not allowed to add the collection charge. It comes out of the original amount of the debt. It was put in there two or three sessions ago to make sure that a \$100 debt does not turn into a \$1000 debt.

Chairman Anderson:

That was our concern, Mr. Taylor. Some of us still have the same concern. We do not want to lose sight of that issue.

Assemblyman Carpenter:

What kind of results are you having with this practice? Do you have any statistics? Is it working or not working? What is happening?

Mark Taylor:

Within the last six months, we recently contracted with three new debt collection companies. I do not have any specific statistics I can present to you at this moment, but I can tell you that within the first several months we have collected 50 percent more than what we collected under our old contract because of the accelerated amount of attention that has been paid. Our previous debt collector mainly did letters, phone calls, and "credit dinging." The agencies we have now are more aggressive, but they follow the Fair Debt Collection Practices Act (FDCPA), so there are no violations, such as calls in the middle of the night and those kinds of things. Although we have seen a 50 percent increase just within the first three to six months of our new contract, we still have a long way to go.

A lot of the debt that we have been collecting is with the Department of Motor Vehicles (DMV), because they have a very big hammer. You cannot have your car registered, you cannot have a driver's license unless you pay those fines, so we have been pretty successful in collecting for them. We are becoming more successful in regard to the Department of Business and Industry and some of the other existing large debts. We have had relatively low success rates with the really big debts, because the longer the debt takes to collect, the likelihood of collecting it drops dramatically. We have a very large backlog because, until now, the agencies have not been required to turn their debts over to us. It has always been a "may," not a "shall," within Chapter 353C of NRS. We currently have a bill in the Assembly Government Affairs Committee, Assembly Bill 87, in which we are trying to tighten up the language to require the agencies to turn their debts over to us within 60 days.

Until that happens, they still have the option to hold onto the debt for as long as they like. So we are trying to get that old debt in and get it collected. We suspect that, for at least the short-term, there might be a relatively low collection percentage until we can work through that old debt.

Chairman Anderson:

I will bring A.B. 156 back to Committee.

[Recessed.]

Vice Chairman Segerblom:

[Assumed Chairmanship for the Committee and reconvened.]

We have a hearing on Assembly Bill 210.

Assembly Bill 210: Revises provisions governing driving under the influence.
(BDR 43-871)

Assemblyman Mark A. Manendo, Clark County Assembly District No. 18:

I have John Johansen with me from the Office of Traffic Safety. I am bringing forth a piece of legislation on his behalf. I have a couple of quick remarks. When the legal level for the blood alcohol content (BAC) was reduced to 0.08 from 0.10, the definition of high BAC was not changed. It remains at 0.18. A reduction to 0.15 would be in line with most of the country and equates to the level that is normally defined as high by studies. It is an average BAC of 0.16 in fatal crashes. A reduction to 0.15 would cover the majority of arrest crashes, with enhanced penalties. The reduction to 0.15 will only apply to first and second time DUI penalties.

**John R. Johansen, Highway Safety Representative, Office of Traffic Safety,
Department of Public Safety:**

My program areas are, in fact, trying to make reductions in impaired driving. I will go through a quick overview on the extent of the impaired driving problem in our state, and I will go through a very brief presentation on moving the legal definition of high BAC to 0.15.

From 2003 to 2006, we had a gradually increasing fatality rate in Nevada. Starting in 2007, we began to see that go down. Unfortunately, the percentage of fatalities related to impaired driving has stayed almost flat, right at 33 percent. One third of our fatalities involved a motor vehicle operator or a motorcycle rider who was at or above the legal limit of 0.08. To combat impaired driving, we use several different tactics, one of which is extra enforcement. We spend a lot of money on overtime for officers to add to

impaired driving enforcement. We are purchasing paid media to help get the message out to the general public. We are working on reductions in recidivism, to get it from one out of three coming back into the court system to the 8 to 10 percent range. The driving under the influence (DUI) courts and their treatment programs have a great deal to do with that. We are working on education and prevention with other partners throughout the state, including Child and Family Services, programs for underage drinking, and so forth. An indicator I use to give me an idea of how well we are doing in our enforcement efforts is the ratio of number of arrests to licensed drivers. While it is not precise, it is a good indicator because the number of licensed drivers tracks the population growth very well. We have the total number of arrests that we can capture. We do not have the 2008 data yet, but in 2007, we arrested 18,235 individuals for impaired driving.

Vice Chair Segerblom:
Is that just in Nevada?

John Johansen:
That is just in Nevada in 2007.

In 2007, we had 1,705,313 licensed drivers in the state. Simple math, divide the licensed drivers by the number of arrests: it is 1 in 94. It makes you stop and think about whether you want to drive around too much. That is not necessarily unusual.

The first two pages ([Exhibit H](#)) are definitions of high BAC drivers. The first is from the National Transportation Safety Board. To paraphrase, high BAC drivers have a BAC of 0.15 or greater or multiple DUI arrests. Why is the National Transportation Safety Board even in the business? They are the people who investigate the plane and train crashes. This Board investigated the worst impaired-driving crash in United States history. In 1988, an impaired driver, driving his pickup truck the wrong way on an interstate, hit a church bus and killed 24 and injured 37.

The Century Counsel is an independent body sponsored and funded by distillers. To work for the Century Counsel, you must never have worked for a distiller; they are completely independent. They have put a great deal of effort into combating impaired driving, and their research results in the same definition: a BAC of 0.15 or multiple arrests.

Curiously, in Nevada, the average BAC for an impaired driver is 0.16. Arrests are also at 0.16. These are averages that may move one point or more, but it seems to hang right at 0.16. Why is it important to find the level where we

must pay strict attention to impaired drivers? From 2004 to 2007, 96 percent of the impaired drivers involved in fatal crashes in Nevada did not have a previous DUI conviction. If, in fact, we had found them, it would have been their first DUI. It is critical to get a handle on recidivism and prevent the problem from reoccurring if we use a trigger, which has been defined at 0.15. At that level, we are fairly confident that that person needs to be looked at very carefully to make sure that they are not in that group that is going to be the hard-core driver. One of the key points is if your first DUI is at 0.15 or above, you will likely have a second DUI within 10 years, even though Nevada only has a 7-year look back. To give you an idea, the Las Vegas justice court, the misdemeanor court for DUI first and DUI second, as part of the evaluation required to allow offenders to enter a treatment program, found 60 percent to be dependent on alcohol—sixty percent were already alcoholic. Forty percent were abusers of alcohol. That is the value of the court evaluation. A study of felony level offenders in Ohio found 75 percent to be dependent on alcohol.

That is the rationale for lowering the definition of high BAC to 0.15, which has been the accepted level to identify and take a closer look at impaired drivers, and which would require an evaluation so we can make a fairly good decision on what we should do with these individuals.

Vice Chair Segerblom:

So, the penalty itself is no greater if you are caught driving with 0.15 or greater BAC?

John Johansen:

There is an increase in penalty for DUI first if you are at 0.15 or above.

Vice Chair Segerblom:

What is that increase?

John Johansen:

It is roughly equivalent to the DUI second, an increase in the fine and an increase in jail time, et cetera.

Vice Chair Segerblom:

What is the purpose of punishing the person more harshly on the first offense for having a higher BAC?

John Johansen:

It is, hopefully, a deterrent. More importantly, in our statutes there already exists a requirement for an evaluation before sentencing for a DUI first that is identified as a high BAC. That evaluation gives us the information needed to

make the determination of whether this person is dependent. Are they an abuser? A dependent person is probably not going to quit drinking or drinking and driving without additional intervention in the form of some type of treatment for the addiction.

Vice Chair Segerblom:

So, if someone shows up with this high BAC level, and it turns out that the evaluator believes they are an alcoholic, do they have to go into some kind of a treatment program before they are allowed to have their license back?

John Johansen:

The current statute provides for an optional treatment program in lieu of the increased jail time. You can get the minimum sentence if you successfully complete a one-year treatment program.

Vice Chair Segerblom:

Are we changing that?

John Johansen:

No, that is currently in the statute. All we are doing is changing the definition of high BAC for a DUI first.

Assemblyman Carpenter:

I do not have any problem with lowering it to 0.15, but what kind of success are we having with the others at 0.18?

John Johansen:

The information I have, from the DUI courts that have people in treatment for a DUI first with a high BAC or a DUI second, is that our recidivism rates are ranging from 8 to 10 percent for a period of two years after completing the treatment program. Compare that to the 25 to 35 percent recidivism for the people that do not go through a treatment program. The treatment option is extremely successful and cost effective because we are not seeing people in court again and again. We have helped them overcome their addiction problem in most of the cases. It has been quite successful.

Assemblyman Carpenter:

Are these treatment programs universal throughout the state, or do just certain areas have them?

John Johansen:

The treatment options are currently limited to Clark County and Washoe County because the treatment options at the misdemeanor level are relatively new. We

are interested in seeing them expand to other parts of the state. Our office, the Office of Traffic Safety, has funded one of the key positions to be a coordinator for the courts that are using the treatment program. These programs, typically in the larger areas, can become self-sustaining in that they will support the coordinator. It is problematic in some of the rural areas as to whether or not they have enough volume to have a full-time individual who is sustained by the population and treatment. We are exploring different methods. Quite frankly, we are hoping that by sharing treatment options with some different jurisdictions, we might be able to make it work better in the rural areas. Most rural areas have many of the resources needed, such as counselors or treatment providers of some type. The issue is getting it into a formal program that gives the court another option.

Assemblyman Carpenter:

Can the treatment be going to drug court? Does that happen very often?

John Johansen:

For impaired drivers, drug courts are usually not the option. The difference is that the drug court is typically a diversion court. The successful completion of a drug court typically means the original charge disappears; it is simply withdrawn. In a DUI court, it is critical that, because of the nature of the effects, which are driving impaired and endangering the general public, after successful completion of a DUI court or treatment program, which may be very similar to a drug court, the charge does not go away. We need to be able to see whether or not there has been a repetition of that particular crime because of the safety issues. Our statutes require additional penalties for repeat behavior. Typically, the minimum penalties are given at the end of the treatment program instead of the maximum fines or sentences. The DUI courts do, in fact, work a lot like a drug court, with the one exception.

Assemblywoman Parnell:

I think going into the program is extremely important because of the required evaluation. It bothers me that it is optional. You have just said that those who go through the treatment program have much less likelihood of driving under the influence again. I would personally like to see treatment programs mandated. I think this section of the law has far too many options and far too many "mays" in the language. I support it, but I would like to see the treatment program mandated.

John Johansen:

I would happen to agree with you, however, at this point in time, this bill is an attempt to address the definition of high BAC, only, because that will bring in a few more people who are required to get the evaluation. Currently, the only

people who are not required to be evaluated are people who are convicted of DUI firsts with a BAC that is below the definition of high. This will at least bring individuals that test at 0.15, 0.16, and 0.17 into the fold. The evaluation will be there for them, and the chance of giving them the appropriate sentence is greater.

Sandy Heverly, Executive Director, STOP DUI, Las Vegas, Nevada:

I would like to say that we are in full support of A.B. 210. We strongly advocate early intervention, and we would much rather be proactive than reactive. If we have an opportunity to get people in and see the extent of what their alcohol and drug abuse problems may be; I think that is going to serve all of us very well.

Laurel Stadler, State Director, Mothers Against Drunk Driving, Dayton, Nevada:

We are also in support of this bill, to get the definition of high BAC at 0.15 in our statute. I wanted to clarify one thing: I do not see in this bill that we would increase the fine for this first time offender, as was mentioned earlier. The only thing that this would do is mandate the evaluation for the first time DUI offender at 0.15 or above. That would allow the courts to get this person into the appropriate treatment under all of these other statutes that are mentioned. We are in support of this legislation.

Vice Chair Segerblom:

We will close the hearing on Assembly Bill 210 and bring it back to the Committee.

We will close the hearing for today.

[The Committee adjourned at 10:09 a.m.]

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 9, 2009

Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance roster.
A.B. 182	C	Jennifer Chisel, Committee Policy Analyst	Summary of A.B. 182
A.B. 209	D	Assemblyman Mark Manendo	<i>Las Vegas Sun</i> article in support of A.B. 209.
A.B. 209	E	Sandy Heverly	Prepared testimony in opposition to the use of online victim impact panels.
A.B. 209	F	Sandy Heverly	Online victim impact panel application.
A.B. 209	G	Zachary Larson	Fact sheet about LRS Systems.
A.B. 210	H	John R. Johansen	PowerPoint presentation on high BAC.