

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

**Seventy-Fifth Session
February 3, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:05 a.m. on Tuesday, February 3, 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

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Ben Graham, Judiciary Government Relations Advisor,
Administrative Office of the Courts

[Roll called]

Chairman Anderson:

I encourage testimony from lobbyists and concerned persons to help legislators make informed decisions. If you plan on testifying in front of the Committee, please sign in on the attendance roster in the back of the room and check the box to speak. I would ask everyone to sign in so we can keep track of who is here in case you change your mind and decide you would like to testify. Please present a business card or some other form of identification to the Committee Secretary after you speak.

I want to remind everyone that our meetings are audio recorded and broadcast on the Internet. Judge Bunch, in Battle Mountain, reminds me people are listening in real time. He takes his time to listen to us, so we should be mindful that we are here for all of the people of the State of Nevada, regardless of where they live, large community or small.

I am Assemblyman Bernie Anderson of Sparks. I represent Washoe County Assembly District 31, which includes parts of Reno. I have served on this Committee since my first session in 1991, and it has been my honor and privilege to be its Chairman for the past 12 years. I would like to welcome back the returning members and extend a particular welcome to our new members.

My Vice Chair, Tick Segerblom, is serving his second session. His mother is here, a former member of the Assembly. He is the fourth generation to have served, similar to Assemblyman Cobb. Assemblyman Horne, who has served as the Vice Chair of this Committee for the past two sessions, is an extremely valuable member, and I am looking forward to his leadership as Chairman of Corrections, Parole, and Probation (CPP). I would be remiss if I did not recognize the service of the Committee's ranking member, Assemblyman John Carpenter, from Elko. He was on this Committee when I arrived and has been in the back row as long as I can recall. He began serving in 1987.

My former Vice Chair, Assemblyman Mark Manendo, is returning in his seventh session, as is Assemblyman Harry Mortenson. Assemblyman Gustavson served four sessions on the Committee, from 1997 to 2003, and has returned this session. Assemblyman Ohrenschall also has the distinction of following in his mother's footsteps into the Assembly. Next are Assemblyman Cobb and

Assemblywoman Bonnie Parnell. I finally convinced her to come to this Committee. Next is Assemblyman Ruben Kihuen, whom I recruited. He initially said no, so I went to the Speaker and then he said yes. Thank you for being a good sport about coming off Government Affairs.

I spoke with Assemblywoman Dondero Loop shortly after she won her position and tried to explain to her why serving on the Judiciary Committee was the best choice for her, and she listened to me. Assemblyman John Hambrick and Assemblyman Richard McArthur are coming from distinguished law backgrounds. I am enthused that we have people of your character, with backgrounds in law enforcement and years of experience on the other side of the fence. Mr. McArthur served with the Federal Bureau of Investigation (FBI), and Mr. Hambrick with the Secret Service.

I think you all will find that serving on the Judiciary Committee is one of the most challenging and rewarding Committees in the Legislature. Our meetings will be facilitated by the legislative staff. Jennifer Chisel, the Committee Policy Analyst, is on my left. She is returning for her second session. She graduated from the University of Nevada, Reno, with a criminal justice degree and received her law degree from Baylor Law School. Her previous work experience includes eminent domain and gaming issues. She has been with the Research Division of the Legislative Counsel Bureau (LCB) since 2006.

My personal attaché is Laurel Armbrust. She keeps me on track, and I do not think I could do my job without her. She lives in Gardnerville with her husband and two sons. She is back for her third session, all of which she served with me. I appreciate you.

I want the Committee members to understand that we share our Committee manager, secretaries, and assistant with CPP. Please be courteous to them as they help us conduct our business.

The Committee members should find a blue folder at their desks for the Committee on Judiciary. You may want to take these folders back with you to your offices. The brown file folders will be changed for the different committees, so you can keep track separately of the things that are of importance from one committee to the next. You all should expect that in every committee that you attend.

It is critical to notify the Chairman if you are going to be absent. Leadership of either the majority or minority will ask us sometimes if a particular member was in Committee today, because we keep track of each other. We recognize that

things happen, like flat tires or snow, but please try to let us know as soon as possible.

We need to turn our attention to the business of the day. Assembly Committee on Judiciary is one of the busiest in the Legislature. In the 2007 Session, 168 measures were referred to our Committee. After much consideration, 112 were passed out of Committee, and 82 of those were signed into law.

As part of the process, some bills may die, in part due to the 120-day schedule and the volume of the workload. Judiciary typically met five days a week in order to process the workload, but this session, we have the same workload and will meet three days a week. In the 2007 Session, this Committee had 72 regular meetings for a total of 155 hours, more than any other committee other than Ways and Means, which starts two weeks before session and runs a week and a half after other committees end.

Prior to the April 10 deadline to pass bills out of the first House, our Committee will have only 28 regularly-scheduled meeting days. Tomorrow will be our first meeting. We need to hear an average of four bills a meeting, as contrasted with two bills a meeting last session.

The jurisdiction of this Committee ranges from before birth until after death. The broad array of topics includes: criminal justice, domestic relations, wills and estates, and incorporations. We are also privileged to handle laws relating to the courts and the state's most important industry, gaming. The work we do is important not only to the daily lives of our constituents but also to the vitality of the entire state and Nevada's future generations. I hope that you will enjoy your time on the Committee, but please recognize the important responsibilities you have been given.

One of my favorite historians, C. Northcote Parkinson, once noted, "Because work can be endlessly elastic, nothing would ever get done without deadlines." Our meetings will begin promptly at 8 a.m. every Monday, Wednesday, and Friday. In past sessions, we started late on Mondays to accommodate our members traveling back from southern Nevada, but we may not have that luxury this session. In addition, this Committee needs to be aware that Saturdays and Monday evenings are a very real possibility, especially in the first 45 days.

We may also meet Tuesdays and Thursdays if Chairman Horne's Committee has open time. We will see as we did today. We will do this little transformation during a necessary 15-minute recess to reset the room. Judiciary is a separate Committee, and we are not trying to rush CPP because their topics are

important and were once under the jurisdiction of this Committee. We had a select committee last session, but people on Judiciary felt that they would have liked to have been more involved in the discussion. So, this session, it will be a full committee with the same members as Judiciary, but with a different Chair.

Assemblyman Carpenter, Assemblyman Horne, and I served on the Select Committee last session, and the great advantage of such a setup was that it allowed interaction with Ways and Means, which deals with the money side of our questions. Judiciary only deals with the policy side of issues.

We have Floor Session at eleven, so we try to accommodate the Speaker, because if you do not, the Chairs change.

Bills that get referred to the Committee belong to the Committee. I only serve as the functionary Chair of the Committee. It is your work responsibility that we are dealing with here. When witnesses testify in front of the Committee, please give them your attention. Eye to eye contact is important. I recognize that emails are important too, which is why we allow laptops to be in Committee.

Courtesy is essential when dealing with other members. I expect us to respect other people, even if we do not agree with their position. I also want to emphasize the importance of holding fair hearings and the importance of public testimony. We must remember that we are here to serve the public.

I want to remind the members of the public of the importance of paying attention, not being redundant with remarks or questions, and not being argumentative with witnesses or Committee members.

Jennifer Chisel will be reminding us of session deadlines during her presentation, but I want to discuss my own limits and deadlines for the Committee.

As soon as bills get referred to us, I have the committee manager send out a letter to the bills' sponsors, indicating we would like the bills to be heard. The Committee needs to know how much time will be needed to present the bill. Forty-five minutes is the usual amount of time allocated, which includes five to ten minutes for presentation and a question and answer session with the members of the Committee. To facilitate the 45-minute time limit, I have a timer at my desk, which displays the time limit on the witness table.

I will remind people in the mornings: if you have heard someone already make your point, please do not assume the Committee did not catch it the first time. We come from a varied range of experiences, and those experiences serve us

well. There will be people who are passionate about their issue, so we do have the timer. It is okay to come to the witness table and say, "Ditto."

Because of the time limit of 120 days, the Chairman must schedule several bills every hearing. I have already signed for 25 bills. I have a big board in my room on which I schedule and track the status of bills.

The conference committees are appointed. Those are important to us. The results should be related to the Chair.

The green sheet is the upcoming calendar of what will be happening in Judiciary and CPP. I ask Ms. Chisel, the Committee Policy Analyst, to hand this out on Thursday or Friday showing the previous and upcoming week. This is not a public document; it is a planning tool only. Please read and retain this information because it covers issues that will arise much later in session, like: timing and scheduling of bills, the number of bills heard each meeting, timing for committees to receive committee reports, timing for conference committee reports, and notification of when members are ready to vote.

I look forward to working with all of you this session, and I thank you in advance for your cooperation and courtesy. Please help the committee secretaries by cleaning up any trash at your seat at the end of each meeting. Coffee and hot water for tea are supplied each morning by the Legislature.

Finally, each legislator has a brown committee folder where the secretaries will place your materials for the meetings. The folders will be placed in the cubicles in the back of the room, and occasionally, we will ask your attaché to come and clean it out when it gets stuffed. If you have something confidential or valuable, you should take those items with you when you leave.

You will find a red binder at your desk in the Assembly Chamber in which Floor Statements are placed. Every member of the Committee gets the same Floor Statement. It is the official explanation and statement to be read on the floor that has been prepared by Research for the bill. The person to whom the bill and Floor Statement is assigned has primary responsibility. I will assign you to represent the Committee to the full Assembly. I will keep track of who will be making those presentations. It is part of the Committee's work.

We have the same system for recognition and speaking as on the floor of the Assembly. If you want to speak, please push your button and I will take you in turn.

Assemblyman Carpenter:

[Speaking to Chairman Anderson.] We have been through a lot of rodeos together, and I really appreciate you as a Chairman. I think that you learn more on this Committee than any other, which is why I have stayed even though I have been asked to go to Ways and Means. I think this Committee does the business of the people, especially the people that really have no voice. I am glad to be back on this Committee. It is my last term, so this will be our last time together.

Chairman Anderson:

I cannot imagine being in the rodeo without you. You will be missed.

Assemblyman Segerblom:

[Speaking to Chairman Anderson.] I want to say what an honor it is to be in this position because you have the institutional knowledge of the procedures and the way things used to be. Your practices are still followed here, but in other places, they are not followed or have evolved. I hope to carry on the best of your attributes. I want to ask you to remind us how we ask questions.

Chairman Anderson:

To ask questions: you push your blue speak button, and the computer tells me in what order the requests were made. Every member of the Committee gets to ask a question before any member gets to ask a second. If there is a follow-up to your question or you want to inform me that you have two or three questions about the bill, you can ask them. I do not usually allow more than three.

One of the subtleties of *Mason's Manual of Legislative Procedure* versus *Robert's Rules of Order* is that, until the chairman of the committee makes the statement asking for a motion and then restates it, it is not a motion before the committee. The reason is that the chairman may know that other people have questions or are still not comfortable, the discussion is incomplete, or the committee is waiting for more information. When we adopt our standing rules, we will talk about it further.

Assemblyman Segerblom:

There is also the practice of asking a question through the chairman and the reply going through the chairman.

Chairman Anderson:

I probably hold this practice a little closer than some of the other chairs who allow answers to the person asking directly. I find that can become argumentative. Focusing the discussion through the chair tones it down. If the

witness has not answered the question, try not to become belligerent, but rather, simply refocus the question.

Assemblyman Ohrenschall:

[Speaking to Chairman Anderson.] When I was a freshman last session, you brought me into your office and showed me the wonderful collection of photographs of the old Nevada courthouses. I respect the tradition you have and how you feel about Nevada courts and justice. My mother had the privilege of serving with you on this Committee for 12 years, and she continues to serve with Assemblyman Segerblom and Assemblyman Horne as a Uniform Law Commissioner. I respect you, and it is a pleasure to serve with you again.

Chairman Anderson:

For those of you who have not yet been to my office, that room is called the "Wood Shed." It is not an unpleasant experience. It was named that several sessions ago by some people who had to spend time in there in discussions, and they bought the placard that hangs above the door.

Assemblyman Kihuen:

[Speaking to Chairman Anderson.] I would like to echo Assemblyman Segerblom's remarks. It is really an honor to be serving on this Committee and to have been recruited to serve on this Committee really means a lot. Everyone in Nevada has respect for you, and you are a legend in the Nevada Legislature. I consider you one of my mentors, and I look forward to learning more from you and everyone on this Committee.

Chairman Anderson:

I want to also mention that my health problems have not changed over the last two sessions. As a result, my Vice Chair is going to have a great deal of responsibility, and I am confident that he will be up to that task. I am pleased to have two of my former Vice Chairs, Assemblyman Manendo and Assemblyman Horne, here, and Assemblywoman Parnell has chaired a committee. Therefore, do not be surprised if I ask one of you to chair this Committee at a moment's notice because the Vice Chair is out of the room and I need to excuse myself.

You should see in front of you a set of the Standing Rules ([Exhibit C](#)). Assemblyman Horne has already gone through them. The only real difference is the "custom, usage" addition in Rule 1, subsection d. The rest is standard. One thing that was added a few sessions ago was Rule 15, which addresses when electronic exhibits are submitted to the Committee. If an exhibit is not to us by 2 p.m. on the day prior to the Committee meeting, there can be no reasonable expectation that the material will be included, and I may require more information before I allow it to be included in the minutes. As a matter of

fairness, we need to try to get the information disseminated to the members of the Committee as early as we can so you, the Committee members, are not in the position of making a decision at the last second.

This Committee works as a group. In the Standing Rules, Rule 11 states that we expect you to vote on the Floor the same as in Committee. As a courtesy to the Committee, if you come across a new piece of information that had not been presented in Committee and which would change your vote, please come to me. If I feel it is of sufficient value, I can put the bill on the desk, and I may refer it back to Committee. We do not want to take away the privilege to change your mind. You can reserve your right to change your vote on the Floor in order to get a bill out of Committee, recognizing that you have no intention to vote that way on the Floor. This is another subtlety, but be sure to go on record, here, reserving your right to change your vote so it is not a surprise when the bill comes to the Floor about two days later for the second reading and up to a week later in session. Because of the large volume of bills we hear, you may want to keep notes as to how you voted. I do.

We are fortunate that this Committee rarely has partisan issues. I will now entertain a motion to adopt the Standing Rules.

ASSEMBLYMAN HORNE MOVED TO ADOPT THE STANDING RULES.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will ask Ms. Chisel to make a staff presentation.

Jennifer M. Chisel, Committee Policy Analyst:

Some of the information is the same as the presentation that was made in CPP, so I will just cover the new parts. I am the Committee Policy Analyst for the Assembly Judiciary Committee. As a staff member of the Legislative Counsel Bureau (LCB), I serve in a non-partisan manner, and my role is to provide policy analysis to the Committee and its members. I also provide information and assistance to individual legislators on a confidential basis.

The Committee Brief ([Exhibit D](#)) is a reference tool which provides an overview of this Committee, its jurisdiction, and the topics that may be covered this session. Chairman Anderson asked me to provide an overview of this document, and I will then answer any questions you may have.

On the first page ([Exhibit D](#)), the support staff is listed for your information. Other than Mrs. Combs, the Committee Policy Analyst for CPP, the rest of the staff is the same. Page two has a list of the jurisdiction that this Committee has typically had, which includes criminal law and procedure, victims of crime, driving under the influence (DUI), juvenile justice, domestic relations, homeland security, gaming and problem gambling, the judiciary, civil law and procedure, business organizations, commercial and security instruments, trusts and estates, guardianships, eminent domain, and real property issues, including estates, sales, homestead, and common-interest communities.

As you heard in the previous Committee, this Committee typically had jurisdiction over the corrections, parole, probation, and sex offender issues, but you will be hearing testimony on those bills in CPP.

Page three ([Exhibit D](#)) contains a chart. One hundred sixty-eight measures were considered last session by this Committee, 112 measures passed out of Committee, and 82 became law. The bottom of the page contains a list of topics that are anticipated for the 2009 Session, which list continues to page five. Mrs. Combs already went over the session deadlines, which are listed on page five, so I will not repeat them. Pages six and seven have a more extensive list of Judiciary contacts, but keep in mind it is still a basic list.

Chairman Anderson:

The staff is often put in the position of serving many masters. If the Committee members will look at Standing Rule 16 ([Exhibit C](#)), it states that all questions having to do with Committee work should come through me. Ms. Chisel's primary responsibility is to keep this Committee on track. You may ask Ms. Chisel questions, personally, but her priority is the Committee.

Jennifer M. Chisel:

I also passed out LCB Bulletin No. 09-03 ([Exhibit E](#)) from the Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada. The study was conducted during this past interim and looked at the business courts and whether Nevada should adopt Chancery courts separate from what is already in place in Washoe and Clark Counties. Senate Bill 5 came out of that study and is currently in Senate Judiciary and has the potential to come to this Committee.

Chairman Anderson:

Just as a note to the Committee members, we are not bound by what took place in the previous legislative session or by what takes place in the Senate. We still respect them, but we try to refrain from discussing their actions in our

Committee to avoid their influencing our decisions. We will now hear from Nick Anthony, our Committee Counsel.

Nick Anthony, Committee Counsel:

The Chairman asked me to give the Committee a brief overview of any court decisions, whether they be Supreme Court or federal court decisions, that came down during this past interim. In front of you is a handout which references seven cases ([Exhibit F](#)) and additional background information ([Exhibit G](#)). Daphne Edwards from the Legal Division was a tremendous help and is on loan from her clerk position with a federal appeals court judge, Proctor Hug, in Reno.

The first case is *Gibbons v. Gibbons*, which is a district court case currently pending in Washoe County before Judge Frances Doherty. This was a decision that came down dealing with the matter of divorce proceedings and whether the records in proceedings could be sealed. In current law, under *Nevada Revised Statutes* (NRS) 125.080 and NRS 125.110, upon motion of any party in divorce proceedings, the court must seal the records. Judge Doherty found that these two statutes were unconstitutional in violation of the First Amendment Right of Access under the *United States Constitution*.

The current state of the law is that this is a district court case, and Governor Gibbons has 60 days from January 9, 2009, to appeal this decision to the Nevada Supreme Court, so it is still unsettled. The decision is not binding as of this moment, but should the Committee decide to look at those two statutes, it may wish to provide some clarifying language. From the ruling it looks like the issue is whether the parties have a right to a hearing and whether the court has any power to exercise discretion before closing the hearing or the records.

Chairman Anderson:

The exercise of this law only applies to divorce cases: meaning that if either party says, "We want to seal the records," the judge has no choice?

Nick Anthony:

That is correct.

Chairman Anderson:

So we are clear: it is not the individuals we are talking about, but the overall question of sealing court records.

Nick Anthony:

The next case is *In re William M.*, which is a Nevada Supreme Court decision that was handed down in 2008. The issue concerns juvenile certification statutes under NRS 62B.390. Under subsections 2 and 3, a juvenile can be

presumptively certified to a court unless he rebuts the evidence by showing that he was developmentally or mentally incompetent to understand his situation or his criminal conduct was substantially the result of substance abuse or emotional or behavioral problems, which could be treated under the jurisdiction of the court. The court found that this statutory scheme was unconstitutional in violation of the Fifth Amendment of the *United States Constitution* because it required a juvenile to admit to his underlying actions in open court; therefore, it is a violation of his right against self-incrimination. The Committee has requested a bill draft request (BDR 825) to address this issue.

The next case is *Gallegos v. State*, which is also a Nevada Supreme Court case, where the Nevada Supreme Court struck down paragraph (b) of subsection 1 of NRS 202.360 as an unconstitutional violation of the Due Process Clause of the Fourteenth Amendment of the *United States Constitution*. The court's decision here centered around three words: "fugitive from justice." The court found those words were not defined in the statute and, therefore, were unconstitutionally vague, because Mr. Gallegos was not aware of what conduct would be proscribed by the statute.

Unless this case is appealed to the United States Supreme Court, it currently stands that paragraph (b) of subsection 1 of NRS 202.360 is unenforceable. Thus the Legislature may wish to take a look at that language and define "fugitive from justice" to further clarify that statute.

In *Countrywide Home Loans v. Thitchener*, which is also a Nevada Supreme Court case, the court did not strike down a statute as unconstitutional but rather gave an interpretation which the Committee may wish to consider this Session. The issue dealt with NRS 40.170, which relates to treble damages in actions for trespass against property. There were some plaintiffs who owned a condominium in southern Nevada, which was mistakenly foreclosed against by Countrywide Mortgage while the owners were out of town, and all of the plaintiff's possessions were taken and discarded. Therefore the plaintiff sued for trespass both to real property and personal property. The court ruled that under NRS 40.170, treble damages only applied to trespass to real property and not personal property. If the Legislature wants to make any changes to that statute, you could clarify whether it is your intent that this statute relating to treble damages should apply to both real and personal property.

State Dep't of Motor Vehicles v. Terracin is also a Nevada Supreme Court decision that provided an interpretation that may be of interest to this Committee. The two defendants in this case, Ms. Terracin and Mr. Casey, were charged with second offense driving under the influence (DUI), which is

punishable under NRS 484.3792; however, they were each sentenced for a first offense DUI. However, the Nevada Department of Motor Vehicles (DMV) suspended their licenses under NRS 483.460 for a second offense, not a first. The issue is whether, if the defendants were convicted under one statute for a first violation can the DMV suspend their licenses under a second statute for a second violation. The DMV has submitted Senate Bill 100, which would allow it to count the number of convictions, not what the defendant was convicted of, to determine the appropriate punishment.

Chairman Anderson:

Does the DMV's bill only apply to DUI?

Nick Anthony:

My understanding is that this bill will only deal with DUI questions and the revocation of a driver's license upon conviction of a DUI offense.

Assemblyman Carpenter:

How important is the clarification of the language "fugitive from justice"?

Nick Anthony:

That may be a policy question. Currently, the law is unsettled. The Nevada Supreme Court has stated that the definition of "fugitive from justice" is unconstitutionally vague. If you want to charge a defendant for a violation of that statute, it would need to be clarified in order for it to be enforceable.

Assemblyman Carpenter:

Then maybe the District Attorneys will come forward with something.

Nick Anthony:

We are now looking at the federal court decisions. *Coyote Publishing, Inc. v. Heller* deals with two statutes, NRS 201.430 and 201.440, relating to the regulation of advertising of brothels. In this case the federal district court held that the Nevada statutes were unconstitutional restraints on commercial speech as protected by the First Amendment of the *United States Constitution*. Currently, the case has not been appealed to the Ninth Circuit Court of Appeals, so it stands as a federal court decision. There is a Nevada Supreme Court case, *Princess Sea Indus., Inc. v. State*, decided in 1981, which address a very similar question regarding these two statutes, and the Nevada Supreme Court upheld the statutes on a First Amendment challenge. The law is unsettled between the federal and the Nevada state courts.

The last case before the Committee is *ACLU of Nevada v. Masto*. This case received a great deal of attention in the press. In this case, the American Civil

Liberties Union (ACLU), on behalf of nine plaintiff sex offenders, filed a suit to enjoin the enforcement of Assembly Bill No. 579 of the 74th Session and Senate Bill No. 471 of the 74th Session, which were two lengthy sex offender bills that were brought into law as part of the Adam Walsh federal law changes. The federal court found that the plaintiffs met their burden and, therefore, enjoined the enforcement of these two bills as a whole. This case has been appealed to the Ninth Circuit Court of Appeals and is currently pending. The Attorney General's Office is handling the litigation. The Committee may wish to wait for the resolution of that litigation or could choose to redraft those bills, A. B. No. 579 and S. B. No. 471, in a way that would not be an unreasonable retroactive application to sex offenders.

Chairman Anderson:

The Attorney General has been working with several different groups to come up with a common solution to this. I do not think this will be the domain of the Judiciary Committee, but rather the Corrections, Parole, and Probation Committee. No matter, it will be addressed.

We are all a little chagrined about the unintended consequences of the Adam Walsh Act. We were one of the few states that fully implemented it early, and now, we need to deal with whether the Act is a realistic view of what has happened.

Part of the issue is the stringent laws relative to indecent exposure and other misdemeanor sexual offenses which, because of the Act, are going to cause an individual to be treated differently. I am hoping that the issue can be resolved before it gets to us.

Assemblyman Hambrick:

As you know, I have a particular interest in this legislation. I am the Chairman of the Nevada State Juvenile Justice Commission, and the Adam Walsh Act as it stands now, under appeal, causes us some particular problems. I look forward to working with the Chairman regarding several of these issues.

Chairman Anderson:

I want to make sure that you disclose when it comes up again. We want to be careful, so please disclose anytime you feel you should.

I want to take this opportunity to introduce Mr. Anthony. He was one of our researchers. In his first term with the LCB, he was on our Committee, then went to the Senate, and now is back as the Committee Legal Counsel. Judiciary is the first Committee that had a Legal Counsel, which was occupied by Risa Lang from 1997 to 2007.

I will ask that Ben Graham make his presentation. He has been making this presentation to the Judiciary Committee since I was a freshman. He instructs a class in southern Nevada on Criminal Law Jurisdiction & Procedure and has had a distinguished career in the District Attorney's Office in Clark County. He works now as an advisor to the Administrative Office of the Courts.

Ben Graham, Judiciary Government Relations Advisor, Administrative Office of the Courts:

We are exposed to what the Legislature does in this Committee. We heard a little about wills and trusts and estates, but you are going to hear a lot about traffic enforcement and criminal law and procedure, which is what I am going to talk about today.

I was with the District Attorney's Office for 31 years, and I have taught at the University of Nevada, Las Vegas for 30 years. I worked in criminal defense for a number of years before that, in Oregon.

I make a note on the handout ([Exhibit H](#)): "Make a friend of your statutes." I want to walk through the information here a little. A tip that I always give is that if you are driving between here and anywhere, do not go over 79 miles per hour (mph), and in Lund, Ely, and Goldfield, where it says 25 mph, go 25 mph.

The first item on the first page ([Exhibit H](#)) defines "arrest." The law enforcement community has the ability to take a person into custody for what you or I might think are minor items. Remember that, in Nevada, traffic offenses are criminal offenses.

Arrest is the most significant thing a law enforcement officer can do. If you commit a crime, you are subject to arrest, trial, conviction, and punishment. An arrest without a warrant may be made for a misdemeanor or upon probable cause for a felony.

We have three major courts in the state. Most of us will have some experience in municipal court, which is the court for the cities. They have jurisdiction for misdemeanor offenses only committed within the city or town, up to first and second DUI's, and domestic violence.

Justice courts are where you go for offenses committed outside the city. That, most frequently, is a traffic citation. They also hear preliminary hearings, which happen after a person is arrested, usually for a felony. A preliminary hearing is where the defendant will hear the evidence against him presented by the state.

The most obvious recent example was the preliminary hearing for O.J. Simpson. There is no jury in justice court.

In district court, a defendant has the right to an attorney and a jury trial. After a preliminary hearing or a grand jury indictment, persons may find themselves there. Here, one can file for the right to suppress evidence, and constitutional issues are raised. A jury in Nevada is composed of 12 people, and the verdict must be unanimous.

In many other states, the punishment for misdemeanors is more severe than in Nevada, where the maximum sentence is six months and the misdemeanant does not have the right to a jury trial. This has been appealed all the way to the United States Supreme Court, and it has been held that these are petty offenses, so no jury is mandated.

Gross misdemeanors are handled as traditional misdemeanors as they are in other states, with sentences ranging from a day to a year in jail. A defendant is automatically entitled to an attorney, a preliminary hearing, and a jury trial. I was with the District Attorney's Office for 31 years and do not remember anyone ever going to trial on a gross misdemeanor. It is a tool for plea bargaining.

Remember that 96 to 97 percent of all cases are plea bargained along the way. That, too, is a controversial issue.

In 1995, all felonies were categorized as A to E felonies. When the categorization was done, it was anticipated that there would be a review of the law and the changes. It really has not happened. An advisory committee will be coming out with a report soon, which will ask you to review and take a look at the punishment and the scheme for sentencing. For example, an E felony is automatic probation; one would not go to prison for a first conviction.

If a statute says a person could be sentenced to prison, it is a felony. Sentencing can range from one year to the death penalty. Defendants are entitled to jury trial, et cetera, and go to district court after a preliminary hearing or a grand jury indictment. Convictions of felonies are always appealable to the state Supreme Court, and death penalty cases are automatically appealed.

The next page [page 4] deals with the habitual criminals and felons.

The next page [page 5] has procedure which covers the preliminary hearing versus grand jury. If you are in jail, you get a preliminary hearing quickly; if you are released, there is less of a hurry. At the preliminary hearing in justice court,

the state has the burden of proving probable cause, which is only that a crime may have been committed and that the defendant probably committed the crime. Probable cause can cause one to be arrested and held to answer to district court, and can cause one's house or self to be searched.

At the preliminary hearing in justice court, rarely will the defendant make a statement or present evidence. It is a tool for the defendant to get a better idea of what is going on and who is going to testify against him. If probable cause is found, the defendant will be held to answer in district court.

There is another option, the grand jury, which hands down indictments. Grand juries meet in secret and are constitutionally based, where the preliminary hearing is statutory in form. Whether to take a case to a grand jury, or not, is entirely up to the prosecutor. Some of the cases he or she may take to a grand jury may involve undercover officers, who do not wish to be revealed, or youth who have been victimized. Neither the defendant nor defense counsel usually attends the grand jury hearing, unlike a preliminary hearing where the defense counsel may cross-examine all the witnesses.

At the grand jury, the state presents evidence to 15 to 16 people, 12 of whom have to agree that there is probable cause. Traditionally, one will not know what has happened in the grand jury. One will only get a notice that he or she will be the subject of a grand jury.

On page 6, the burden of proof for the prosecution at trial is "beyond a reasonable doubt," and all trials, whether for jaywalking or homicide, have "beyond a reasonable doubt" as the burden of proof. This is not "all doubt," or "beyond a shadow of a doubt," but "reasonable doubt." This is a high burden of proof compared to probable cause. Also, the state has to prove each and every element of the offense beyond a reasonable doubt; otherwise, the presumption of innocence remains with you.

Attached to the handout ([Exhibit H](#)) is more information about juvenile court and a flow chart which covers procedure from crime to arrest, and so on.

Please never hesitate to ask me any questions.

Chairman Anderson:

We take it as bedrock that a defendant is innocent until proven guilty. Those we will see on our tour of the Nevada State Prison and Warm Springs Prison have been found guilty, but they still have their Constitutional rights.

I recommend Mr. Graham at the highest level as a resource. His integrity is beyond reproach.

Are there any questions for Mr. Graham? [There were none.]

Are there BDRs to be introduced? [There were none.]

Is there anyone who would like to address the Committee who is not on the agenda? [There were none.]

One of the difficulties we had last session, regarding the Select Committee on Corrections, Parole, and Probation and the Judiciary Committee, was the jurisdictional question of what is rightfully in the jurisdiction of each committee. Hopefully, this solution will resolve it. One of the criticisms that the Judiciary Committee has taken, and I take it seriously, is that there did not seem to be enough focus on the unique problems of corrections. Again, hopefully, with days dedicated to corrections, under the Chairmanship of Assemblyman Horne, it will no longer be the case. We will not shortchange the issue because Judiciary has a large workload, but we will make every moment count.

[Meeting adjourned 10:41 a.m.]

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 3, 2009

Time of Meeting: 9:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Chairman Anderson	Standing Rules for the 75th Session, Assembly Judiciary
	D	Jennifer Chisel, Committee Policy Analyst	Committee Brief
	E	Jennifer Chisel, Committee Policy Analyst	LCB Bulletin No. 09-03, January 2009, <u>Implementation of Courts of Chancery</u>
	F	Nick Anthony, Committee Counsel	Prepared Remarks
	G	Nick Anthony, Committee Counsel	Summary of Court Decisions Related to Judiciary
	H	Ben Graham, Judiciary Government Relations Advisor, Administrative Office of the Courts	Handout: Criminal Law, Jurisdiction & Procedure