MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 7, 2009

The Committee on Judiciary was called to order by Vice Chair Tick Segerblom at 09:43 a.m. on Tuesday, April 7, 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
Emilie Reafs, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Morgan Baumgartner, Reno, Nevada, General Counsel, R&R Partners, representing Families Against Mandatory Minimums, Washington, D.C.
Deborah Fleischaker, Director of State Legislative Affairs, Families Against Mandatory Minimums, Washington, D.C.
Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
James Jackson, Las Vegas, representing Nevada Attorneys for Criminal Justice
Rebecca Gasca, Reno, Nevada, American Civil Liberties Union of Nevada
Kristin Erickson, Reno, Nevada, representing Nevada District Attorneys Association
Samuel Bateman, Las Vegas, Nevada, representing Nevada District Attorneys Association
Brett Kandt, Office of the Attorney General and Executive Director of the Advisory Council for Prosecuting Attorneys
Mike Davidson, Chief Deputy City Attorney, Criminal Division, City of North Las Vegas, Nevada
Pat Hines, Private Citizen, Yerington, Nevada
George Flint, Reno, Nevada, representing several wedding chapels

Vice Chair Segerblom:
[Call to order.] There are three bills on the agenda, but we will not hear Assembly Bill 500 today. We will start with Assembly Bill 498.

Assembly Bill 498: Revises provisions relating to sentencing. (BDR 15-1157)

Morgan Baumgartner, Reno, Nevada, General Counsel, R&R Partners, representing Families Against Mandatory Minimums, Washington, D.C.:
I would like to have Ms. Fleischaker from Families Against Mandatory Minimums walk the Committee through the bill, give some background and historical perspective. I would then like to present an amendment to the bill afterwards.

Deborah Fleischaker, Director of State Legislative Affairs, Families Against Mandatory Minimums, Washington, D.C.
Families Against Mandatory Minimums (FAMM) is a national nonprofit, nonpartisan organization based in Washington, D.C., that works on sentencing reform in the United States Congress and around the country. Currently we have campaigns in the United States Congress, Massachusetts, New Jersey, Michigan, and Nevada. We support individualized, cost-effective criminal sentencing policies that also enhance public safety.

The bill will help Nevada move towards fair, rational, and efficient sentencing policies. It provides a sentencing option for a select group of crimes under the default sentencing process already in place in Nevada. It does not remove the mandatory minimums; they will stay in place for these crimes. Instead, the bill will allow the courts to sentence below the mandatory minimum when certain criteria are met. In particular, before the court can go below the mandatory minimum, it has to consider the facts and circumstances of the crime, the offender's criminal history, the impact of the crime on any victim, any mitigating factors, and anything else the court deems relevant. In addition, the prosecution is always allowed to give sentencing recommendations.

The five factors I just mentioned are currently in Nevada law for sentencing enhancements, so the courts are already familiar with considering those factors. This bill would provide a balance against enhancements. Before the court goes below the mandatory minimum, it must state on the record that it has considered those five factors. If the court does decide to go below the minimum, it may then suspend the sentence, give a term of probation, or refer the offender, if eligible, to a specialty court. I want to reiterate that while the court can go below the mandatory minimum, there is no requirement that it ever has to do so.

In addition, A.B. 498 does not apply to all mandatory minimums currently in the Nevada code. It excludes violent offenses, sex offenses, crimes against children, and Driving Under the Influence (DUI). It applies to a small number of crimes, including drug crimes and burglaries.

More generally, this provision is called a safety valve. There are three benefits to a safety valve: one, it will allow courts the discretion to sentence below the mandatory minimum in extraordinary cases; two, it does not abolish the mandatory minimums, so in the cases where the extraordinary circumstances do not exist, the mandatory minimum still applies; and three, it will save money because of reduced terms of incarceration.

Nevada would not be the first jurisdiction to have a safety valve on the books. Montana, Maine, Oregon, Minnesota, Connecticut, and the federal government already have one in place. Nevada's safety valve will provide cost savings to the state. To the extent we have been able to identify data, currently there are about 4,600 people in Nevada prisons under offenses which would be covered by the bill.

There are approximately 700 people in prison for drug trafficking. If we assume that approximately 25 percent of them were covered by the safety valve—I am pulling 25 percent out of the air—and they received a six month reduction in their mandatory sentence, the state would save $2 million a year. That is a general example of the cost savings recognized through this bill.

In addition, the safety value would help keep the prison population at bay, alleviating the need to build more prisons and, hence, avoiding future costs. Assembly Bill 498 will provide a way forward that will save money and allow for smart criminal-justice-sentencing policies. I would like the Committee to seriously consider this bill.

Morgan Baumgartner:
You have an amendment to A. B. 498 and some background information (Exhibit C) proposed by FAMM. On the second page of the amendment, we add in crimes of domestic violence as a group of crimes that are not subject to the safety valve, in addition to violent crimes, crimes against children, sexual offenses and DUI.

Vice Chair Segerblom:
Can you give us a general history of mandatory minimums? Was it a nationwide trend that occurred at some point?

Deborah Fleischaker:
It was not a national trend. Mandatory minimums came about mostly in the 1980s during the crack cocaine epidemic. It was part of the "tough on crime" policies that went into place around the country. They have been proven to not work particularly well. There has been a movement around the country to scale them back. Last week the New York legislature repealed most of the

Rockefeller drug laws, which were the harshest mandatory minimums in the country.

The federal government has also experimented with mandatory minimums. It had them in the 1960s, and they were all repealed under President Nixon. They have crept back since then, but it is interesting to note that when they were repealed, the crime rate did not increase, no one lost jobs, and no one was accused of being soft on crime. It did not affect much other than the sentencing policy.

Assemblyman Carpenter:
I can give a history of what happened in Nevada. People were upset because they felt that judges were not giving sentences that fit the crimes. That is the reason, as I remember, mandatory minimums were put into effect.

Vice Chair Segerblom:
Maybe the state did not have a budget crisis at that time, either.

Deborah Fleischaker:
I would also point out that A.B. 498 does not remove the mandatory minimums, and it does not apply to violent crimes. It applies to the less serious crimes like drug trafficking and burglary. These crimes deserve punishment but may not deserve the mandatory minimums that currently exist.

Assemblywoman Parnell:
Are all of these victimless crimes that are being considered?

Deborah Fleischaker:
I would not necessarily create the distinction between victim and victimless crimes. For example, in burglary there may well be a victim. The bill creates a line between the violent and nonviolent crimes. Violent crimes are not included.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
We want to go on record in support of this measure and efforts to give judges discretion to look at the specific circumstances in considering a sentence. The example provided was burglary. We often see a crime like that and think of someone with a mask on climbing in a window at night. In Nevada, burglary is entering a structure, whether a vehicle or building, with the intent to commit a crime. This bill would allow a judge to look at the circumstances involving a case like that, and rather than imposing a sentence anywhere from one to ten years, recognize that this might be someone stealing a carton of milk because

they did not have any money which would be charged as a petty larceny and a felony burglary.

This bill allows the judge to look at specific circumstances and deviate from the current mandatory minimums only if they put on the record that they have considered these circumstances and have gone through the steps to deviate down, otherwise the current statutory scheme of mandatory minimums would stay in place. Because we think judges should have more discretion in considering individual circumstances, we support A.B. 498.

Vice Chair Segerblom:
So if someone breaks my car window and steals my iPod, that is a burglary?

Jason Frierson:
Yes, that would be a burglary. I believe that the burglary statutes were expanded expressly to deal with vehicles and entering vehicles to commit a crime.

Vice Chair Segerblom:
He would not have to be in it?

Jason Frierson:
No, he would not have to be in the vehicle. As a matter of fact, the statute and case law say that once there is a breaking of the plane it is enough to charge burglary. So if someone kicks in a door, technically once they break the plane of the door, it is enough to charge burglary, and the same applies for a vehicle.

Assemblyman Manendo:
What would be the punishment for the example of stealing milk?

Jason Frierson:
Typically, the charge would be petty larceny and felony burglary but usually those cases get resolved to misdemeanor petty larceny. It depends on the individual's record. I have had clients that were habitualized for stealing Tide, but their record made them eligible for habitual treatment because it contained significantly worse crimes. In a typical case, these kinds of cases are, more often than not, negotiated down to a misdemeanor of some sort. The issue is that the individual is exposed to the felony and, depending on the court and the district attorney (DA) with whom you are working, at times it becomes more difficult to negotiate those cases down.

Assemblyman Manendo:
So this bill would not affect any of those folks, but it could affect someone who is habitual?

Jason Frierson:
No. Individuals who are charged always have the potential to face a felony charge. It usually does not happen, but I would not want to be the one or two out of ten who has a bad day with a judge or a DA. In practice, the bill would not be sweeping because it only applies to the small number of cases, but it would be the small number of cases that warrant special consideration.

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
I had a case where a young man was charged with burglary for stealing two CDs from a K-Mart. He was an 18-year-old in high school who did something stupid. Fortunately, the DA recognized it for what it was and only charged it as a petit larceny, but like Mr. Frierson said, you do not want to be the one person in the wrong place at the wrong time, with people in a bad mood lined up against you.

All criminal cases are incredibly fact specific, and no two are exactly the same. That means there are some cases where the mandatory minimums are simply not appropriate, even though most of the time they are. This bill gives judges the discretion they need to make sure that justice is done and the correct sentence is given, even though the defendant is found guilty of a crime.

James Jackson, Las Vegas, Nevada, representing Nevada Attorneys for Criminal Justice:
We support this bill. It is a bill that would expand the discretion of judges, but in exercising that discretion, the judge must make case-specific findings, on the record, to justify why any downward departure would be applied.

In response to Assemblyman Manendo's questions, a habitual criminal is never going to be looked at favorably in terms of downward departure. The term "habitual" takes away the opportunity for that ever to happen. It would be a first offender or someone whose record is minimal and has not indicated the need for harsher punishment. It is case and defendant specific and would not apply to many cases under our sentencing structure.

One other thing to make clear is that this bill does not take away from the Truth In Sentencing provisions that were passed in the 1995 session, into which I had a lot of input, in terms of the criminal defense side, as the then State Public Defender. The 40 percent requirement is still going to exist. A person may get a reduced sentence, but he will still have to serve 40 percent of the minimum sentence before he can ever be considered for parole.

Rebecca Gasca, Reno, Nevada, American Civil Liberties Union of Nevada:
We are in support of A.B. 498. I would give a hearty me too to everything that has been said.

Since the ACLU has had a position on the Advisory Commission on the Administration of Justice (Commission), we have heard extensive testimony regarding the Truth in Sentencing laws and how they have affected our criminal justice system. We see this bill as an advantageous way to address some of the over incarceration that is obvious in our prison system, particularly for those who have not committed violent crimes. It is a good move that will support true justice.

Vice Chair Segerblom:
That is all in favor, so I will move to the people speaking against.

Kristin Erickson, Reno, Nevada, representing Nevada District Attorneys Association:
Assembly Bill 498 completely undermines the Truth in Sentencing structure that was devised in 1995. I am not referring to the minimum and maximum, meaning the minimum cannot exceed 40 percent of the maximum; I am referring to the fact that a defendant is given a minimum sentence, whether it is 18 months, 12 months, or 4 years. The minimum sentence tells the victim that the offender must serve this amount of time before he is eligible for parole.

The penalties for a lot of crimes are stated as one to four years, or one to ten years, and we are then able to tell the victim that the defendant will serve at least one year. A victim deserves that certainty. If a defendant is sentenced to 18 to 48 months, we can tell the victim he will serve at least 18 months and will not be eligible for parole until he has served at least 18 months. If this bill were to pass, we could not tell the victim what the defendant's sentence will be.

In addition, taking all of the facts and circumstances into account, if the judge is allowed to sentence an individual to less than the mandatory minimum, should he not also be able to sentence the defendant to more than the maximum if deserved? That is not fair; it is not right for the defendant because he deserves

the certainty of knowing what the maximum penalty is. The victim also deserves that certainty.

The question was raised about victimless crimes. The bill does involve some victimless crimes such as drugs, yet it involves the entire property crime statute, where there are always victims. Residential burglary, car burglary, home invasion, grand larceny, and possession of stolen property all have victims, and the victims deserve to know the sentencing parameters.

There are also some concerns if judges depart from the mandatory minimum, which is usually one year, and sentence the defendant, for example, to nine months. Does it have to be 9 months to 24 months? Since the sentence is now below a year, does the conviction become a gross misdemeanor because the sentence for a gross misdemeanor is up to one year in jail? I do not know the answer, but if I were a defense attorney I would argue that, and the case would probably end up being litigated.

Drug trafficking has a mandatory prison sentence unless the defendant provides substantial assistance. That is the law right now, and it went through the Commission. If a defendant provides substantial assistance, he is eligible for probation. The Commission broadened the definition of substantial assistance to include other crimes in addition to drug trafficking.

As a result, we do not feel this bill is necessary. All of the hard work that went into the 1995 Truth in Sentencing laws should remain, and victims and defendants deserve to know the parameters of the sentence.

Assemblyman Horne:
We have been revisiting the 1995 laws for at least the last two sessions. I think the Legislature has already acknowledged that it was not perfect legislation.

My question is: in the federal system, there is downward departure. The Supreme Court found it was discretionary for district judges to be able to do it. It had been practiced for a long time. If it is okay at the federal level, why is it bad for the states?

Kristin Erickson:
I am aware that the federal government does have downward departure; however, I am not familiar with the criteria used to establish it. The federal government also has very set sentencing structures. The state courts have much more discretion; they can give a minimum or maximum sentence regardless of the circumstances.

Assemblyman Horne:
Nevada Revised Statutes Chapter 193 outlines the sentence structure for felonies, and there really is not that much discretion. The difference with states, I would say, is because we elect our judges. I am cynical; as judges near their reelection, they would be less inclined to downward depart than if they had just been elected, as opposed to federal judges who are appointed for life. We give them this authority, and hopefully they use it prudently, at their own political risk. Would you agree with that?

Kristin Erickson:
Yes, judges are subject to the public for their record.

Samuel Bateman, Las Vegas, Nevada, representing Nevada District Attorneys Association:
Me too. The only thing I would add is that most of the crimes we are talking about have minimum sentences between one and two years. With Assembly Bill No. 510 of the 74th Session, if someone gets a minimum of 12 months, they are really going to serve about nine months. When we are talking about a downward departure from nine months, we are in the realm of misdemeanors and gross misdemeanors. The question is begged, what happens to the top end? What happens to the 40 percent scheme, and what problem exists where we are deviating from a 12-month minimum down to 9, 6 or 3 months on a felony? What processes do we have in place for someone who is immediately eligible for parole? I think this bill is not clear as to its significant effects across the system.

The federal guidelines are much more complicated, and the downward departure guidelines are much more specific than what we have in this case. Paragraphs (a), (b), (c), (d), and (e) in subsection 3 of section 1 are already taken into account by the judge in every sentencing after the judge receives the presentence investigation (PSI) report by the Division of Parole and Probation. Therefore, based on our existing statutory scheme in Nevada, I think this bill is very problematic in regards to all sentencing and its potential effect down the road.

Assemblyman Carpenter:
This speaks of misdemeanors, and I thought judges had wide discretion in misdemeanor cases.

Sam Bateman:
That is something I was going to bring up. There is not a minimum and maximum in misdemeanors and gross misdemeanors, there is just the sentence. This provision does not make a lot sense for those charges. The minimum sentence for a misdemeanor is a day. Misdemeanors and gross misdemeanors are subject to informal probation, so I am not really sure how deviation from a minimum, when there is no such thing, really makes any sense at all.

Brett Kandt, Office of the Attorney General and Executive Director of the Advisory Council for Prosecuting Attorneys:
We share the same concerns that have already been voiced by the DAs Association, and perhaps it might be appropriate for this Committee to consider referring this to the Commission for further review.

Assemblyman Anderson:
That is an interesting concept, that we would refer this bill to a nonjudicial body and make them responsible for creation of legislation, because their guidelines, as already suggested, are not sufficient. I am trying to figure out why we would do that.

Brett Kandt:
We believe that review of any proposals which would make significant changes to the current sentencing structure and penalties is why the Commission was created.

Assemblyman Horne:
If we did refer the bill, and the Commission said they support this idea and recommend a change in the law, would you then come to the table and say, me too, we support it?

Brett Kandt:
That is speculative. It would depend upon what is recommended by the Commission and whether there are any minority positions that raise concerns which should also be considered by this Committee in a future session. It would depend upon the proposal.

Vice Chair Segerblom:
Does anyone want to address the question about misdemeanors?

Deborah Fleischaker:
I would say that in cases where judges already have discretion to go below a mandatory minimum or to issue a term of probation, they can still do that, this new provision would simply not apply.

Vice Chair Segerblom:
We will close the hearing on A.B. 498 and turn it over to Mr. Anderson.

Chairman Anderson:
We will move to Assembly Bill 499.

Assembly Bill 499: Revises provisions relating to discovery in criminal proceedings. (BDR 14-1158)

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
We presented the premise behind A. B. 499 with an effort to make sure that the law reflected, what the actual practice is in most instances. Currently, if an individual is arrested on probable cause or a warrant, pursuant to NRS that person has to be brought before a magistrate. We call it a 72-hour hearing. At that 72-hour hearing, the individual is informed of the nature of the charges against him, and at that time if he is indigent, he is appointed counsel. Oftentimes, at that point, an offer of negotiation is made. That is usually the misdemeanor offers, like as was discussed with the previous bill when the burglary cases get negotiated down to misdemeanors.

Usually at the 72-hour hearing, defense counsel is provided with a copy of the complaint and discovery. This is an entry-level amount of discovery. This is not the level of discovery needed for trial; it is to prepare for the preliminary hearing. It is usually comprised of a police report and witness statements. It is at that time that offers are made and we are able to evaluate a case and advise a client. That is the practice. This bill proposes to put into law what that practice actually is. The current law is that discovery must be presented two days before the preliminary hearing. The actual practice is that discovery is given at the 72-hour hearing.

When laws regarding discovery for preliminary hearings were put into place in 1997, the original bill proposed providing discovery prior to arraignment or at the arraignment at the latest. The testimony at that time on behalf of the defense bar reflected, at least in Clark County, that it was already happening. I have spoken with members of the prosecution bar in other counties, particularly Washoe County, and their process is not exactly the same. Just because it happens one way in Clark County does not need to be the way it happens everywhere else.

What makes this time unique is that the Nevada Supreme Court has imposed performance standards on the defense bar. Part of the performance standards says that defense counsel is required, within 48 hours of being appointed to a case, to have a client interview. We are directed by the Nevada Supreme Court, pursuant to Nevada Supreme Court ADKT No. 411, to discuss the case, the facts of the case, and a plan of possible resolution with our client. It therefore makes it even more important that we do not have an improper practice in statute, that is, not requiring providing of discovery until two days before the preliminary hearing. This bill does not do anything other than ask the prosecution to do what they are already doing, to provide discovery when they have it. It does not add to the amount of discovery the prosecution has to provide for the preliminary hearing. Also, the defense can get a continuance if they have been prejudiced by the lack of discovery.

Very few people would say that two days before the preliminary hearing is enough time to really evaluate a case and advise a client as to whether or not he would enter a plea, particularly to a gross misdemeanor or a felony. The bill simply directs the prosecution to provide the defense with whatever discovery they have as the basis of their charge in enough time for the defense to adequately advise their client and move the process along.

I often think of a case when I had a client charged with petit larceny and felony burglary for going into an AM/PM and drinking a Yoo-hoo in the store. She said she was not going to pay for it. Had I not had discovery at initial arraignment, I would not have been able to recognize that this was not the kind of case that needed to take up a jail bed. I was able to speak with the prosecution and the court, and we resolved the case that day, saving two weeks of jail time.

There are instances where we have difficulties, and there are personality conflicts, but this bill was not submitted for that purpose. It is not a good idea to try to legislate around personalities. This bill would codify what is a proven practice and what is currently recommended by the Nevada Supreme Court.

Assemblyman Segerblom:
You told me of an incident where the prosecutor had the discovery in his hand, you asked for it, and he said, "No, I do not have to give it to you until two days before the preliminary hearing."

Jason Frierson:
That stuff does happen; there are personality conflicts between defense counsel and the prosecution. That has occurred in Clark County on a couple of occasions where personalities prevented the timely providing of discovery. This bill will eliminate that even as a possibility, but that behavior is not the norm.

The withholding of discovery for tactical reasons is just improper. This happens in only a minority of cases, but this bill would prevent that, and it would also help defense counsel to comply with the performance standards.

Assemblyman Carpenter:
The way the bill is written now, it applies to preliminary hearings. Is that not when the defendant goes to court to find out if they are going to be bound over to district court?

Jason Frierson:
The preliminary hearing is the stage where the court determines if there is enough evidence to bind the defendant over to district court. The exchange of discovery occurs prior to the actual preliminary hearing. In Clark County it typically occurs at the initial arraignment, which this bill directs.

Assemblyman Carpenter:
The original statute states, "Not less than two judicial days before a preliminary examination," and your bill says "at or before the time a person is brought before a magistrate." It seems like these are two separate issues. If you are going to take out the part about the preliminary examination, it needs to be put back in somewhere, because there is no way the prosecution would have most of the pertinent information when the defendant comes before the magistrate, but he would before the preliminary hearing.

Jason Frierson:
It is an issue of wording. The statute as it currently reads goes two days back from the preliminary hearing. The proposed change would date it from the initial arraignment. There is always an initial arraignment before the preliminary hearing, so there are two court appearances. I have spoken with members of the District Attorneys' Association about variations, possibly changing the existing language from 2 days to 10 or 14 days. I think that this bill achieves the same end, it just directs the focus on the arraignment as opposed to the preliminary hearing.

Assemblyman Carpenter:
If the prosecution is giving the defense this information before the appearance before the magistrate, I do not see anything wrong with the language. It seems to me that for protection there needs to be something that says the prosecution will give the information before the preliminary hearing, also. Otherwise, someone will say that they do not have to do it. I think you need to cover both bases.

Jason Frierson:
We would not be opposed to changing 2 to 14 instead of focusing on the initial arraignment, if that is something with which the Committee is more comfortable. Our point is that we typically have two weeks to prepare, and we cannot prepare in those two weeks if we do not have the discovery.

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
I would just give a hearty me too and reiterate that with the requirements of ADKT No. 411, which are substantial in preventing more ineffective assistance of counsel cases, it would be a cost saving measure as well. The earlier we can get information, the better we can interact with our clients, and the sooner we can get them out of jail, if that is viable. The more faith the defendants have in the legal system and their attorney knows what he is doing, even if they are eventually convicted, the better for everyone.

Chairman Anderson:
Did you hear Assemblyman Carpenter's question?

Orrin Johnson:
I agree with what Mr. Frierson said. The only thing I would add is that the first impression can be frustrating when we, as the defense, have to say to our client that we do not know anything about the case. The defendant feels like the deck is stacked against him and he will not get a fair shake. Anything we can have at the arraignment is critical. Nevada Supreme Court ADKT No. 411 reflects the importance of that initial meeting.

Chairman Anderson:
We will move to the opposition.

Mike Davidson, Chief Deputy City Attorney, Criminal Division, City of North Las Vegas, Nevada:
I am here to speak on behalf of my city and other similar cities. This proposal actually has a significant impact on those of us who are misdemeanor courts.

City courts exclusively handle misdemeanors. The statute as it has read for many years has, on its face, referred to felonies and gross misdemeanors, because preliminary hearings only take place in those cases. There are no preliminary hearings in misdemeanor cases; we go from the original appearance at the arraignment, to a possible pretrial conference, or directly to trial. The bill, as proposed, would actually take it from a law that did not apply to misdemeanors to one that will, if the language about preliminary hearings is removed, although the reference still exists in subsection 4.

Our concern is that the modification would be an impossibility for us. We work four days a week. A person has to be brought before a magistrate within 48 hours on a warrantless arrest by United States Supreme Court ruling. If a defendant were to be arrested on a Friday, the defendant would normally be brought before the magistrate by video on a Sunday or Monday. None of our prosecutors will be there Saturday, Sunday, or Monday. It would be an impossibility for us to comply. Henderson would be in a similar situation because they, too, work four days a week.

Chairman Anderson:
What about the concept of sharing information? What would be a reasonable expectation since there is a desire to have discovery, even in misdemeanor cases? I ask because under current statute there are some cases that could be graded up from a misdemeanor to an E felony or higher.

Mike Davidson:
You mentioned two things. I spent 20 years as a criminal defense attorney before I became the Assistant DA for Clark County and now Deputy City Attorney for North Las Vegas. I concur wholeheartedly with you whether as a prosecutor or a defense attorney, getting the information to the defendant that he or she needs to adequately defend is important.

The way we handle that in our court is that individuals, represented or unrepresented, will fax us a request for discovery, and we immediately make it available to them to either be picked up or mailed. We have always believed, both in the district attorney's office and in the city attorney's office, that the plea bargaining system works better when we get information to the defendant as quickly as possible.

As it is written now, the bill poses an impossibility for those of us who work the schedules we do, so any modification that takes that into consideration, whether it is 10 or 14 days gives us a little more time. Most of the time we do not even get the police reports in that period of time. Our prosecutors in misdemeanor courts normally will not even see paperwork on cases until we sit at arraignment. We are at a disadvantage too. Any reasonable time that takes into consideration the way the cities actually operate would be a modification we could support, or if the intent is to only address the gross misdemeanors and felonies, that should be made clear in the bill.

Kristin Erickson, Reno, Nevada, representing Nevada District Attorneys Association:

We are opposed to A.B. 499 primarily for the reason that we are not capable of complying with the provision as it is written. It is my understanding that Clark County has a scanner, so as they receive cases, they scan them into the system, which enables separate divisions to work on the file at the same time. Neither Washoe County nor the rest of the counties have that same equipment or personnel. We receive the file and review it—we are in the same situation as Mr. Davidson, we rarely have all of the reports at the time of charging— and we make the charging decision of do we proceed with prosecution or not. If we proceed, then the file goes to our word processing center, it is logged in and out, they type the complaint, we review it, and we try to get this all done within 72 hours. Because we are working with the paperwork hands on, we cannot also be providing discovery at the same time.

Our policy is that once the complaint is on file for felonies and gross misdemeanors, it is immediately sent to discovery. The defense will receive the file for discovery within days of the initial appearance. In addition, in Washoe County, I am not even certain that the public defender is appointed by the time of the initial appearance. It is my understanding that the defendant has to fill out the application, which goes to the judge and has to be approved, and then the public defender is appointed. I believe the defendant is usually still in the application process at the time of the initial appearance.

We agree that better decisions are based on more information, and we have no problem sharing what we have. The problem is that we do not have the equipment or personnel to provide it at the initial appearance. We do the best we can.

Samuel Bateman, Las Vegas, Nevada, representing Nevada District Attorneys Association:

As Mr. Frierson noted, in Clark County there usually is enough discovery at the arraignment in justice court for defense attorneys to be able to discuss cases with their clients. One concern we have, which may just be a result of the caseload, is that often contract counsel is appointed at this particular hearing instead of the public defender's office. This is because the public defender's office cannot accept a case, possibly because of a conflict of interest. Oftentimes when contract counsel gets appointed, they are not even in the courtroom. There is no one to give the discovery to. We do not normally hand discovery to in-custody defendants. In these cases we provide the discovery through other mechanisms, and it occurs after the 72-hour hearing.

Where the bill states "at or before," it is a virtual impossibility to provide any discovery, even for the Clark County District Attorney's Office, before the 72-hour hearing. We are here because there are practical concerns that need to be taken into account, and discovery is a dynamic process that is created over time. Reports do not magically appear, they have to be drafted, copied, and provided by law enforcement to our office, and audio statements have to be transcribed, which takes days if not weeks. The preliminary examination is within a 15-day period after arrest. I think we need to be cognizant of the logistics of what actually takes place. We are not against providing discovery, and Clark County does provide as much as we possibly can at the arraignment. So if we are going to proceed with this bill, we need to look at the language and how we can come to some sort resolution that takes into account the practical realities.

Chairman Anderson:
Mr. Frierson, will you come back up. Was it your intent for misdemeanors to be included in the bill?

Jason Frierson:
It was not our intention to include misdemeanor cases. We were focusing on the more serious cases like gross misdemeanors and felonies. Also, we would be amenable to changing the language to a number of judicial days before the preliminary examination, if that would provide clarification.

Chairman Anderson:
Are you saying that two judicial days, as is in existing law, is not sufficient time? Are you looking for a larger time period even though those reports may not be completed?

Jason Frierson:
We want to obtain whatever discovery the prosecutor has, when the prosecutor has it. This bill is in no way proposing that the prosecution must produce anything more than that. Transcripts and things like that are oftentimes provided after the preliminary hearing, and they are not within the intent of the bill. The intent of the bill is simply to say, that two judicial days are not enough time to comply with what the defense is supposed to be doing when representing our clients. We need an adequate amount of time since we are often defending against felony charges.

Chairman Anderson:
Do you think you can work something out tonight?

Jason Frierson:
We can work it out right now.

Chairman Anderson:
Mr. Davidson, it seems that this bill is not intended to apply to you.

Patricia Hines, Private Citizen, Yerington, Nevada:
I am for this bill. When I first read it, I did not know it related to discovery before the preliminary hearing. I would just like to ask about when the presentence investigation (PSI) should be given to the defendant or his lawyer. This bill mentions reports, and I consider the PSI to be a very important one. So please consider at what point the defendant should get the PSI, if it is required.

Chairman Anderson:
Well, a presentence investigation is usually prepared for the judge after conviction and prior to sentencing. Its dissemination is controlled by the judge. What we are dealing with in this bill is making sure that the arrest is proper.

I will close the hearing on A.B. 499. I will ask the parties to work quickly on a resolution. We will take a recess to set up for work session.

[Ten minute recess.]

We will start the work session with Assembly Bill 461.

Assembly Bill 461: Makes various changes relating to older persons. (BDR 15-126)

Jennifer M. Chisel, Committee Policy Analyst:
[Reviewed work session document (Exhibit D).] Assembly Bill 461 was presented by Assemblywoman McClain on March 23, 2009 and it addresses the investigation and reporting of elder abuse. During the hearing, Assemblywoman McClain presented a mock-up to replace the bill, and after the hearing the Attorney General's (AG) Office submitted additional amendments that were agreed to by Assemblywoman McClain. The attached mock-up reflects both her initial mock-up as well as the agreed upon amendments.

The first amendment is in section 1 of the bill, on pages 1, 2, and 3 of the mock-up. It retains existing law regarding who is required to report suspected elder abuse instead of requiring any person to report such abuse. Additionally, page 3 reinstates the requirement for attorneys and clergymen to report abuse, unless that information is obtained through privileged communication.

Sections 8 and 9 are also deleted from the bill based on the amendment, page 9 of the mock-up.

The second amendment is to section 1, subsection 7, and changes the time to submit investigation reports to a consistent 30 days for each agency.

The third amendment, page 5 of the mock-up, deletes the provision restricting plea agreements in elder abuse cases.

The fourth amendment relates to the multidisciplinary team, pages 7 and 8 of the mock-up. It clarifies that the AG's Office has the discretion to organize a multidisciplinary team to investigate elder abuse and further clarifies that the AG is not the supervising authority over such a team. This amendment addresses concerns that were raised during the hearing by the AG's Office and other members of law enforcement.

Chairman Anderson:
The four suggested amendments are not in conflict?

Jennifer Chisel:
That is correct.

Assemblyman Carpenter:
In regard to the first amendment, where it takes out the requirement of reporting a privileged communication by an attorney or religious person, does that requirement appear somewhere else in the bill?

Chairman Anderson:
This amendment would keep current practice. Privileged communication is still protected. This just clarifies the language.

Jennifer Chisel:
The new language in green at the top of page three, which deals with clergymen and attorneys, was in statute prior to 2005 when it was removed. This bill puts that language back. The purple strikethrough on page 3 was language that was proposed in the bill, and the orange language on page 2 is existing statutory language, which was proposed to be deleted by the original bill, but the amendment reinstates existing law with regard to reporting requirements.

Chairman Anderson:
The question remains whether the elder abuse office is going to be able to deal with this issue in a similar fashion as child abuse reporting.

Assemblyman Cobb:
I do not see the nexus between collecting a $10 fee from all civil actions and the underlying purpose of the bill, including the prosecution of crimes against older persons, so I will be opposed to the bill.

We are already considering a number of fee increases, and they should be handled within another bill which considers all potential fee increases, or there should, at least, be a nexus between the fee and the underlying bill.

Jennifer Chisel:
The provision that Assemblyman Cobb is referring to is on page 6 of the mock-up, in section 3. This would institute a new $10 fee for the filing of any civil action, and the proceeds of that fee would go to the account for the unit for the investigation and prosecution of crimes against older persons, which is within the Office of the Attorney General. It is a funding mechanism.

Chairman Anderson:
This is the most applicable area that the Attorney General identified for funding.

Jennifer Chisel:
I would also point out that there is an additional appropriation within the bill for that unit. That is in section 10 of the bill.

Chairman Anderson:
This means that this bill will have to go to Ways and Means, so it may or may not get funded.

Assemblyman Carpenter:
Is the Attorney General's Office the only one that prosecutes these kinds of crimes? I thought the district attorneys could too.

Kristin Erickson, Reno, Nevada, representing Nevada District Attorneys Association:
Yes, the DAs' offices can also prosecute these crimes in addition to the AG's Office.

Chairman Anderson:
So if the Division of Aging Services carried out an investigation, then in all probability the report would be presented to the district attorney and the county, and it would be pursued in that fashion.

Kristin Erickson:
You are correct. If they conduct an investigation, they would submit it to us, either directly or through a police agency, and we would review it then for charges.

Assemblywoman Parnell:
I think that we would all agree that the policy in this bill is incredibly important. As a former teacher, like the Chair, we took our role seriously. If we suspected child abuse, we knew what we were supposed to do. I hope that we would feel as passionately about protecting our older population.

The fiscal impact does concern me. I am wondering if the Committee needs to look at this as supporting the concept and then rerefer it to Ways and Means. It is a suggestion.

Chairman Anderson:
I note that the bill was not jointly referred and that it contains appropriations not included in the executive budget. The $10 fee may give a certain level of comfort to Ways and Means; it may not cover the entire cost, but it may come close.

I will entertain an amend and do pass motion with suggested amendments 1, 2, 3, and 4.

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 461 AS STATED.
>
> ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON, HAMBRICK, AND MCARTHUR VOTED NO.)

Let us turn to Assembly Bill 262.

Assembly Bill 262: Makes various changes concerning the issuance of marriage licenses. (BDR 11-961)

We have had an interesting discussion on A.B. 262.

Jennifer M. Chisel, Committee Policy Analyst:
Assembly Bill 262 was discussed in work session on Friday, April 3, 2009. The Committee had three amendments to consider, amendments number 2 and 3 on the work session document (Exhibit E) received the most discussion.

The first amendment is a compromise amendment among the interested parties.

The second amendment was proposed by Assemblyman Segerblom, which would require that at least one witness be present at a marriage ceremony and establishes that the minimum age for the witness would be 16. There was discussion of withdrawing that amendment.

The third amendment, from George Flint, requires county clerks, except in Clark County, to appoint marriage licensing agents. The amendment, page 3, subsection 3, says "In any county whose population is 400,000 or less, the county clerk shall appoint marriage licensing agents...." The discussion revolved around the word "shall" and whether it should be "may" or "if requested."

Chairman Anderson:
Assemblyman Segerblom, are you still supporting the second amendment?

Assemblyman Segerblom:
I support it in my heart, but I will give it up on paper.

Chairman Anderson:
To save time, I would propose that we state "In any county whose population is 400,000 or less, the county clerk may appoint marriage licensing agents...," thus it leaves the decision to the county clerk everywhere except Clark County. This gives statutory permission.

Assemblyman Cobb:
I support the vast majority of this bill, but I do not support the fee in proposed amendment 1(e) of the work session document.

Chairman Anderson:
Mr. Flint, can you explain the fees in 1(d) and 1(e)?

George Flint, Reno, Nevada, representing several wedding chapels:
In 4(c), which is on the second page of my proposed amendment, I agree that the $10 fee to be charged for selling a marriage license should be removed.

The $200 fee in 6(c) and the $100 fee in 3(c) of my proposed amendment are fees we would pay to the county for the training and software implementation. These would not be state fees or an increase in existing fees. It would be our way of paying our fair share for letting us have the right to issue marriage licenses. We are not creating new fees.

The last part of the work session document in 1(e), which proposes charging more for certified copies, was an alternative that was offered to Senator Mathews' bill, Senate Bill 14, to raise money for the Account for Aid for Victims of Domestic Violence. That was part of the compromise amendment we worked out. The Senate has already processed their bill so we can take that language which refers to the certified copies out of A.B. 262.

Chairman Anderson:
So in the first amendment, subsections (d) and (e) of the work session document are no longer necessary?

George Flint:
That is correct.

Chairman Anderson:
The motion I would suggest is to accept the first amendment, subsections (a), (b), and (c), as described in the work session document, and to accept the third amendment but change the language to "in counties with a population of 400,000 or less, the county clerk may appoint marriage licensing agents affiliated with commercial wedding chapels." I would also note that the bill becomes effective July 1, 2009, and expires on July 1, 2011, unless acted upon in the next legislative session.

Assemblyman Carpenter:
What happened to the increased fee for the certified copy of a marriage license that would go to the victims of domestic violence?

George Flint:
The reason we agreed to remove that fee from this bill is because the Senate Finance Committee has a separate bill that had already addressed the issue, and this would be duplication. It is not taking any money away from the program.

Chairman Anderson:
There is a question about 4(b) of your proposed amendment, which is about credit and debit card accounts.

George Flint:
If we get this program, that is the way the money would be transferred from the wedding chapel agent to the county. This way we do not have to carry cash every day to the courthouse, it can be transferred by a debit account.

Assemblyman Carpenter:
So section 4, subsection 3 on page 5 of the bill will be deleted?

Jennifer Chisel:
That is correct. It is 1(d) of the Chairman's amendment. The other $10 fee that Mr. Flint is discussing is in his amendment, number 4(c). There are two separate $10 fees that are being discussed.

Nick Anthony, Committee Counsel:
Part of the confusion is that in 1(d) and 1(e) of the work session document, we are talking about making changes to language in the bill. Assemblyman Carpenter is asking if the language in the bill comes out in its entirety. That would be up to the Committee. Do you wish to completely remove section 4, subsection 3 of the bill?

The Chairman's amendment would have made the other fee discretionary rather than mandatory.

Assemblyman Carpenter:
The Chairman's amendment would be to change the bill so that if the county commissioners decided they wanted to put on the additional $10 fee, then the monies would go the county general fund. The way I read it, it would end up being deposited in the state General Fund.

Chairman Anderson:
I do not want to muddy the waters more than they already are. I saw what was going to take place. The question about the additional dollars for the state for the domestic violence program has been addressed in another bill in the Senate. Therefore we do not need either section 4, subsection 3, or section 5, subsection 1, paragraph (e). Also we do not need subsections (d) or (e) of the first proposed amendment, as described in the work session document.

Assemblyman Gustavson:
In the original bill, section 4, subsection 2 increases the fee from $5 to $20.

Chairman Anderson:
Thank you for bringing it to my attention.

Assemblyman Gustavson:
I have not heard any discussion about that fee increase in this meeting. I wanted to find out if it is still in the bill?

Chairman Anderson:
It is probably not necessary.

George Flint:
That speaks again to the accumulation of money for the domestic violence program. So it can be removed.

Chairman Anderson:
I would be willing to accept an amendment to delete sections 4 and 5 of the bill in their entirety. We would also remove the changes in section 2 to take us back to the original age to marry. We would amend section 1 to provide that a marriage certificate may be issued for renewal and section 3 to clarify the provisions related to marriage licensing. The main change in section 3, subsection 2, paragraph (f) is the person needs to appear to be 18, but I think we changed that to 25.

George Flint:
That is correct.

Jennifer Chisel:
Yes, you are correct. I did not delineate all of the specific changes in my explanation of the amendment of section 3 of the bill, relating to proof of name and age, but the changes put the law back to current statute. These changes are in the Chairman's amendment. It also deals with a secondary indentifying document, no proof of age is required when the person clearly appears to be older than 25, and requires a social security number. It may be easier for the Committee if there was a new mock-up of this, since we are trying to incorporate two sets of amendments.

Chairman Anderson:
Let me ask for A.B. 262 to be drafted into a clean mock-up.

Let us close A.B. 262 and turn to Assembly Bill 102.

Assembly Bill 102: Revises provisions governing problem gambling. (BDR 40-329)

Jennifer M. Chisel, Committee Policy Analyst:
[Reviewed work session document (Exhibit F).] Assembly Bill 102 establishes a diversion program to treat problem gamblers who have been convicted of a crime. There are three amendments for the Committee to consider. I have provided a mock-up, but again this is my rendition of what the bill may look like.

The first amendment is on page 2 of the mock-up and would provide judicial authority to determine whether a person on parole or probation is eligible for the problem-gambling program. The second amendment is on pages 3 and 5 of the mock-up and would authorize a defendant to file a petition requesting that his criminal record be sealed after successful completion of the program. The third amendment is primarily found on page 5 of the mock-up and would authorize other qualified mental health professionals to work with clients in a court-ordered problem-gambling program. This amendment can also be seen throughout the mock-up in the phrase "or other qualified mental health professional." This proposal came from the marriage and family therapist group and the psychologist group and was agreed to by the Department of Health and Human Services. It also addressed some of the concerns brought up by the Committee in discussion.

Assemblyman Cobb:
I have several issues with the bill. The concept of these diversion programs is that we are identifying individuals who have substance abuse problems and the like and getting them into treatment programs, where they can be closely monitored. We can be assured that they are complying with the requirements of the diversion programs. This bill creates a situation where an individual self-certifies to the court that he is a problem gambler, and the court attempts to determine whether or not he is.

Section 8 is the determination of qualification for the diversion program. It refers back to section 7 for the court to determine whether or not that individual is eligible for the election, but all that refers to is the type of crime and the status of the individual in terms of the criminal justice system. It does not refer to any type of confirmation that this individual actually has a gambling problem.

It has been brought to my attention that, if this bill goes into effect, there will be tremendous numbers of individuals, who have committed the types of crimes that are not prohibited under section 7, simply self-certifying to the court that they are problem gamblers and getting out of any type of punishment for their crimes, whether or not they have a gambling problem.

This will be a tremendous problem for our criminal justice system to absorb. In addition, there is no type of monitoring system, as we would have with an alcohol or drug abuse situation. There is no monitoring authority. There is no way to test someone to see if he is continuing to gamble.

There are two huge issues with this bill. We did discuss different ways to amend the bill to fix it, but I do not think it is possible. I will be opposed to this bill.

Chairman Anderson:
I have a letter (Exhibit G) that was directed to me from the director of the Reno Problem Gambling Center, signed by Denise Quirk. It addresses some of the issues I had raised. In this instance we are relying upon the judge to make an evaluation. Ms. Quirk indicated that detailed personal histories, involving all aspects of an individual's mental and physical health, are taken through written and verbal questioning. Standardized assessment tools are used and diagnostic questions are given to allow the professionals to determine whether the individual meets the criteria. The criminal history is also obtained from the defendant, as well as from other sources, with his consent. The person then has to answer to the judge as to why he is a candidate for placement.

Diversion programs are always controversial, and it is a question of judicial discretion as to how someone gets into them.

There are several letters of support for the bill. It seems like a positive approach to a serious issue and one that the Department of Health and Human Services felt comfortable recommending to us.

Assemblyman Horne:
I would like to address some of Assemblyman Cobb's concerns. Many of those arguments were made regarding basically all of our specialty courts. For the drug courts, people would be using their substance abuse problems as a way to skirt their obligations to pay for the crimes they committed. I heard the same arguments in 2003 for the mental health courts. They have both been very successful programs. Problem gambling is a real issue and has been for quite some time. I think it is an important issue to address. I do not think we should not address it because we cannot take a blood sample to test for it. If the Department of Health and Human Services thinks it is a good idea, I think we should give it try.

Assemblyman Carpenter:
I understand Assemblyman Cobb's point. In section 8, subsection 1 of the mock-up, maybe if we took out "or the person states that he is a problem gambler," it would help the situation. Then it would be strictly up to the court to make that decision after it has reviewed everything.

Chairman Anderson:
Are you anticipating then that the court has to take this issue into consideration for every person who steps in front of him? Either the person states that he is a problem gambler and then the screening would take place, or every individual would have to be screened.

Assemblyman Carpenter:
It states "If the court has reason to believe that a person who has been convicted of a crime is a problem gambler." It seems to me that the person would have told the court before that he had this problem because the way I read it, the only requirement is that the person states he is a problem gambler. The court would have to put him into one of these programs.

Assemblyman Horne:
With other courts, particularly drug and alcohol abuse, that is how the court finds out that there is a problem. The person tells the court "I am a meth user" or "I am an alcoholic." The situation would be the same for gambling. The person would say, "I went into a store and stole items because of my gambling addiction." It is not so much a self-diagnosis as a self-affirmation of a problem. From there the judge makes the determination.

Assemblyman Segerblom:
This bill is so important. This is the one area in Nevada that is unique to us, and so many people have lost their lives and livelihoods because of problem gambling. I think it is fantastic that we are addressing this serious problem.

Chairman Anderson:
I think it would be a shame to lose the legislation.

Assemblyman Hambrick:
This is a problem, and I have known people who have lost homes and families. But going through the bill there are a lot of subjective criteria and no objective standards and review criteria. I cannot offer an answer as to how to solve the problem, but it concerns me that we seem to be lacking objective standards and ways to grade the success or failure of the program.

Chairman Anderson:
I guess the question is whether the judge has the necessary information to make the evaluation as to whether the person should be placed into a program. If I am to believe the writing from Ms. Quirk, there seems to be several assessment tools and evaluation criteria which are used.

Assemblyman Carpenter:
My suggestion would be to take "or" out and put "and" in.

Assemblyman Segerblom:
How about if they self-identify, it has to be corroborated? I think that is the purpose of this bill: if the person brings it to the attention of the court, he is referred to one of these evaluators.

Chairman Anderson:
Where did you want to put in the "and?"

Assemblyman Carpenter:
Section 8 of the mock-up, line 40.

Chairman Anderson:
So it would read "If the court has reason to believe that a person who has been convicted of a crime is a problem gambler, and the person states that he is a problem gambler."

Let me ask if the word "and" would make a difference compared to "or?"

Nick Anthony, Committee Counsel:
Yes. The word "and" would require both the court to have reason to believe that the person convicted of a crime is a problem gambler and the person to affirmatively state that he is a problem gambler on the record.

I would like to point out that after this the court still has to hold a hearing to determine whether or not the person should receive treatment under this bill. Those are just the preliminary steps before the hearing when the court actually makes the determination.

Assemblyman Carpenter:
I thought that the person could self-identify and that would start the procedure. I wanted to make sure that the person could not just self-identify and the court would have to put him in a program.

Chairman Anderson:
Let us take the baby step of putting the entire onus on the court. If the court has reason to believe that a person who has been convicted of a crime is a problem gambler, the court shall hold a hearing before it sentences the person to determine if he is eligible for the program.

Assemblyman Segerblom:
That is fine because the first thing a judge is going to say is "Are you a problem gambler?"

Chairman Anderson:
He could ask that question.

Mr. Anthony, would we need the phrase "and the court finds that he is eligible to make the election"? Is that statement necessary?

Nick Anthony:
Yes, you would still keep all of the remaining language. You would only strike between the commas, "or the person states that he is a problem gambler."

Assemblyman Cobb:
I did not address the amendments, but I would also be against amendment one, as suggested by Health and Human Services, which would allow repeat offenders to claim a gambling problem and avoid punishment through the diversion program.

Chairman Anderson:
That is the heart of addictive behavior. The chances of someone changing his ways immediately are slim to none. At least with the people in a drug program, in the 12 to 15 months they fall off their program quite frequently, but the court is able to right them and continue to give them assistance. The question is how much we trust the judge.

Assemblyman Segerblom:
I would like to move to amend and do pass.

Chairman Anderson:
Let me suggest that we take amendments 1, 2, and 3 as suggested by the Department of Health and Human Services and reflected in the mock-up and that we further amend the mock-up to remove from section 8 the phrase "or the person states that he is a problem gambler."

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 102.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON, HAMBRICK, AND MCARTHUR VOTED NO.)

Chairman Anderson:
[Reviewed Committee business.]

We are adjourned [at 12:23 p.m.].

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 7, 2009 **Time of Meeting: 09:42 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 498	C	Morgan Baumgartner, Families Against Mandatory Minimums	Amendment Mock-Up; Background Information
A.B. 461	D	Jennifer Chisel, Committee Policy Analyst	Work Session Document
A.B. 262	E	Jennifer Chisel, Committee Policy Analyst	Work Session Document
A.B. 102	F	Jennifer Chisel, Committee Policy Analyst	Work Session Document
A.B. 102	G	Chairman Bernie Anderson	Letter dated April 2, 2009, from Denise Quirk, Clinical Director, Reno Problem Gambling Center