

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
May 21, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:46 a.m. on Thursday, May 21, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman William C. Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court
T. Arthur Ritchie, Jr., District Judge, Department H, Family Division,
Eighth Judicial District
Connie J. Steinheimer, District Judge, Department 4, Second Judicial District
Robert Lueck, Former District Judge, Eighth Judicial District
Ron Knecht, Court Appointed Special Advocates, Carson City

Senate Committee on Judiciary
May 21, 2009
Page 2

Chris Bayer, Executive Director, Court Appointed Special Advocates,
Carson City
Sabra Smith-Newby, Director, Department of Administrative Services,
Clark County
Lisa A. Gianoli, Washoe County
John R. McCormick, Rural Courts Coordinator, Administrative Office of the
Courts
James T. Richardson, Director, Grant Sawyer Center for Justice Studies,
University of Nevada, Reno
Lisa Young, Chief Fiscal Officer, Records and Technology Division, Department
of Public Safety
Rebecca Gasca, American Civil Liberties Union of Nevada
Josh Martinez, Las Vegas Metropolitan Police Department
Dennis K. Neilander, Chair, State Gaming Control Board

CHAIR CARE:

Seated to my right this morning is my guest, Ashton McKissack, who is a student at Jacks Valley Elementary School. Ashton wanted to see what happens in the Senate Committee on Judiciary. Thank you, Ashton, for being here with us this morning.

I said yesterday we would discuss the potential amendments to Assembly Bill (A.B.) 218. We will not do that today. The bill will be reported to the floor tomorrow, and we can seek amendments at that time.

ASSEMBLY BILL 218: Authorizes the Nevada Gaming Commission to prescribe the manner of regulating governmental entities that are involved in gaming. (BDR 41-603)

I will open the hearing on A.B. 64.

ASSEMBLY BILL 64 (1st Reprint): Increases the number of judges in the Second and Eighth Judicial Districts. (BDR 1-371)

THE HONORABLE JAMES W. HARDESTY (Chief Justice, Nevada Supreme Court):
I request that you allow us to offer testimony on both A.B. 64 and A.B. 65 because they are linked.

ASSEMBLY BILL 65 (2nd Reprint): Provides for the collection and disposition of additional court fees. (BDR 2-372)

Assembly Bill 64 and A.B. 65 are the most important pieces of legislation impacting the judicial system in decades. Assembly Bill 65 asks the Legislature to revisit civil filing fees that have not been examined since approximately 1993. The fees provide a revenue source for the expenditures we will be talking about and create a new opportunity for rural communities to deal with revenue shortfalls impacting the operation of the judicial system. The legislation would help the judiciary meet the American Bar Association standards for disposition of civil cases.

We made a comparison of the civil filing fee bills in five states, and Nevada was the lowest. Working with Clark County, we focused on modifications to the fee bill that would make Nevada more competitive. It is reasonable to elevate the fees to recognize the complexity of issues in difficult cases such as construction defect, class action or complex business cases. The lawyers practicing in these areas support this legislation.

The Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery heard testimony from a number of business lawyers who urged the Subcommittee to consider and recommend increased fees so additional services could be provided in business court and other complex cases by adding judicial officers. Written opinions in business court cases was a major objective of that committee. We raised those fees, and these bills come to you with the support of the State Bar of Nevada, the judicial system and the counties that worked with us on these bills.

Two significant additions to A.B. 65 are beyond what was originally discussed when we formulated the bill. First is the addition of a \$50 filing fee paid in all notices of default and election to sell that are recorded in the State. The purpose of that fee is to fund foreclosure mediation described and outlined in A.B. 149. Without that fee, the Nevada Supreme Court cannot administer a foreclosure mediation program contemplated in A.B. 149.

ASSEMBLY BILL 149 (2nd Reprint): Revises provisions governing foreclosures on property. (BDR 9-824)

We have modified the fee bill to recognize the concerns of some of the plaintiffs' bar, particularly fees we had proposed dealing with guardianships and compromise to minors' claims. Those have been withdrawn.

Another issue is the disposition of some of the fees. We had originally contemplated that all of the fees collected would be used to help counties defray the costs of facility expenses and the operating expenses of judges. We had an expectation that the State would pay the salaries and benefits of the judges covered by the bill. Recognizing the serious financial concerns of the State this year, a request was made that we consider the impact and look at the possibility of paying for six months of this biennium's salaries and benefits for the judges covered under A.B. 64 from the filing fee bill in A.B. 65. We ran the calculations, and we do not see any adverse impact of doing so, as long as it is understood this is a one-time approach that sets no precedent for payment of future salaries and benefits for judges added under A.B. 64.

We have provided a schedule showing the amount of funds generated by the filing fee bill ([Exhibit C](#)) and the disposition of those funds during the biennium ([Exhibit D](#)), including the salary reduction. These assumptions are based upon civil filings as of 2007. Since 2007, the civil filings have increased by approximately 25 percent in the Eighth Judicial District and 15 percent to 20 percent in the Second Judicial District. Consequently, the amount of revenue to be generated from these funds is increased.

The net effect of this is \$11.2 million in new resources to the Eighth Judicial District for funding the facility costs, [Exhibit D](#). Based upon our understanding with the Clark County Commissioners, this additional revenue stream will retire any additional facility costs incurred. This is also true in Washoe County. After paying the salaries and other costs, \$2.2 million is available for that purpose, [Exhibit D](#).

We provided a sheet showing what this would do for rural communities, [Exhibit C](#). They do not need judges but have other needs. In Carson City, for example, \$367,214 would be generated based on 2007 filing figures that can be used for technology and other issues, including Court Appointed Special Advocates (CASA). In Churchill and Lyon Counties, the figure is \$366,829. In Esmeralda, Mineral and Nye Counties, the figure is \$505,712. In Eureka, Lincoln and White Pine Counties, it is approximately \$96,000, which would provide a first-time revenue stream for bonding purposes to deal with the courthouse

problem in White Pine County. We urge your support of A.B. 65. It makes good economic sense and leaves Nevada in a competitive position.

The Nevada Supreme Court is concerned about its ability to achieve time to disposition under the American Bar Association standard. Anyone who has practiced law in Clark County knows the frustration that exists with the delays in the disposition of cases. It is unacceptable for cases to take three and a half years to come to trial. Medical malpractice cases are serious problems in the Eighth and Second Judicial Districts. Because of the caseloads, we are not able to bring medical malpractice cases to trial in either of these two Districts within the two-year time frame specified in the statute.

The Nevada Supreme Court is also concerned about addressing the business court issues. We want to accommodate the recommendations made by the Legislative Commission's Subcommittee to improve business court, including writing opinions. There is no way the Court can accomplish that, especially in Clark and Washoe Counties, without the addition of judges. We also want to address some concerns with the drug and mental health courts. Drug and mental health courts in northern Nevada are being serviced exclusively by Senior District Judge Peter Breen and Senior District Judge Archie Blake. Without them, we would not have drug and mental health courts in Washoe, Churchill, Lyon, Mineral and Douglas Counties. We need a plan to transition a regularly elected district court judge into the drug and mental health courts. District Judge T. Arthur Ritchie has accomplished that in Las Vegas, but we must do so in the Second Judicial District.

I hope you will conclude that these judges are needed; this is an important step for the judiciary to accomplish a number of these objectives.

The judiciary is being asked to assume one of the biggest tasks we have faced in the history of the judiciary—to organize and implement a program to provide foreclosure mediations in our State, which is the hardest hit in the Country in this subject. We need the judicial resources to do this. We are reaching out to the State Bar and private mediators, but we will need judges to accomplish this and other objectives identified. You cannot expect an overworked and overtaxed judicial system to respond to a program like that without support. The judiciary has been responsible in presenting a plan to the Legislature that is revenue neutral to the General Fund to accomplish this objective over the next two years.

CHAIR CARE:

My approach has always been to accept as a truism when the Judicial Branch says it needs something.

T. ARTHUR RITCHIE, JR. (District Judge, Department H, Family Division, Eighth Judicial District):

The Judicial Business Plan evolved over a period of more than a year. We worked together to find out how much judges would cost and estimated the capital expenses. We estimated the revenue we would generate so we could come to the Legislature with an understanding of what we needed and how it would be funded. Assembly Bill 65 benefits all counties in the State, especially Clark County with a population of 2 million and a large urban court. Our critical need is to address the load of civil filings.

The 2007 Annual Report of the Nevada Judiciary showed civil filings of just over 24,552, which does not include the approximately 40,000 in family court. In 2008, that number went to over 27,000 filings. In April of this year, our civil filings to date were 10,277 or tracking to almost 31,000 civil filings. We are conservative in stating facts and statistics. Filings between January 2008 and January 2009 increased by 24 percent. The first four months of 2009 compared to the first four months of 2008 reflect a 36-percent increase.

We have judges managing 2,000 pending cases in their civil dockets. We had 327 medical malpractice filings last year, which have statutory requirements to resolution. In the first four months of 2009, 294 medical malpractice cases have been filed. A significant number of those are related to the endoscopy center. That illustrates just one area of civil matters.

We review over 14 different types of civil cases. We need additional civil judges to get cases to trial before three and a half years. We have competing resources in trying to meet the business court needs. We are under a Nevada Supreme Court order to add a third business court judge next month. That will result in shifting caseloads. We have two judges doing construction defect cases. We are trying to set up case management models. When judges have more cases than they can handle, it is simple survival to move their dockets along. They cannot be innovative. Looking ahead to 2011, this will give us a chance to reinvent the way we handle civil cases.

The new judges we were given in 2007 for the family division have reinvented that court. We have dedicated more resources to reduce in half the time to get matters resolved. If we do not receive the judicial resources by 2011, it will be a shame. The prospect of not having judicial resources until 2013 is unthinkable. We would like to spend the next one and a half years planning for the additional judges that A.B. 64 would provide.

CHAIR CARE:

Please break down the caseload and the growth of the caseload of the family court in the Eighth Judicial District.

DISTRICT JUDGE RITCHIE:

The Family Court caseload has grown, but not as quickly as the normal civil filings. The additional judicial resources have allowed those caseloads to be cut by almost 40 percent. You can now get in front of a judge within 28 days. Early case-management rules were passed by the Nevada Supreme Court that went into effect January 1. These rules require the judges to meet with all parties early in the case. The early management conference was not possible because of the number of cases in Clark County. Now, we have the judicial resources to make the caseloads manageable, and we have been able to pass innovative rules to allow us to get our hands around those cases right away. The Chief Justice has met with judges in the Eighth Judicial District to try to implement that type of procedure if we have the opportunity to do that in civil cases.

CHIEF JUSTICE HARDESTY:

The Chief District Judge in the Eighth Judicial District has put District Judge Jennifer Elliott in charge of the drug court. She is a family court judge, which is a drawdown on that resource. This reflects the point I made earlier that we have to address that issue and the importance of the drug court using a family court judge. This bill is important for the backfill.

SENATOR WIENER:

We processed a veterans court bill. How does that fit into this formula?

CHIEF JUSTICE HARDESTY:

The Legislature has also processed a court for gamblers. Those are wonderful concepts, but we cannot meet those goals without these judges. We hope to accomplish those objectives. We cannot add veterans courts, gamblers courts or foreclosure mediation without sufficient judicial resources to meet those obligations.

DISTRICT JUDGE RITCHIE:

I have met with our administrator regarding the veterans court. We will add a calendar to our drug court calendar, which is handled by District Judge Elliott. She has full drug court calendars on Tuesdays and Thursdays and a special calendar on Fridays. The Eighth Judicial District will make the veterans court work with a special calendar for the veterans. We are concerned about funding, but we will make it happen.

SENATOR WIENER:

Please give us an inventory of how many judges are now dedicated to specialty courts. How many do you anticipate in the foreclosure court?

DISTRICT JUDGE RITCHIE:

The specialty courts in the Eighth Judicial District include the mental health courts. We have District Judge Jackie Glass. We have the felony driving-under-the-influence courts, which District Judge Kathy A. Hardcastle manages. Other specialty courts include the prison reentry and the drug courts. We also have drug courts in our juvenile court. District Judge Elliott is our primary drug court judge for the criminal cases. We have judicial officers in the family division who also manage drug court. We are committed to the specialty court process. We have to balance our resources and cannot do everything; we would like to expand these specialty courts without the additional judicial resources. We added a methamphetamine mothers specialty court in the juvenile calendar at the end of last year. We are doing that at the expense of our civil dockets. That is good policy but ignores the reality that we have to do something about those caseloads.

SENATOR WIENER:

Would some new judges handle civil cases and others be used to create new specialty courts, such as foreclosure and veterans court?

DISTRICT JUDGE RITCHIE:

The new judges will be dedicated to the civil docket.

SENATOR WIENER:

Will you move some of the more tenured judges to the specialty courts?

DISTRICT JUDGE RITCHIE:

Part of the plan is to have full-time business court judges. District Judge Elizabeth Goff Gonzalez does criminal, civil and business court. District Judge Mark R. Denton does civil and business court. The additional judges would allow us to beef up the business court. It would have flexibility to address other civil needs within the court. We have made decisions concerning assignments of specialty courts in anticipation of getting new judges. We might have issues if A.B. 64 and A.B. 65 are not passed.

CHIEF JUSTICE HARDESTY:

I appointed a working group a month ago regarding the foreclosure issue. They have been working on rules for the Nevada Supreme Court to manage this program. The mediations will be conducted primarily by attorneys, senior judges, members of the alternative dispute resolution team and Supreme Court settlement judges. If a participant in the mediation fails to participate in good faith, the mediator will tender a written report to the district court. The district court will then have to adjudicate an argument of bad faith, which may lead to a loan modification or some other sanction. We are projecting somewhere between 1,200 to 1,500 mediations per month. I hope a large percentage will not result in a mediation report about bad faith participation. I am concerned about instances where borrowers have been unable to locate their lender and are not clear where the documents are. A key component is that the lender must appear and participate in good faith with a person of authority and bring their documents. It will be a concern for the district judges to have to deal a caseload that flows out of the mediation. That is the impact on the judicial system, and we anticipate mediations will start by the middle to the end of July.

SENATOR WIENER:

How many senior judges do you have on the roster?

CHIEF JUSTICE HARDESTY:

We have 22, and they are utilized statewide. We have a program going where the Nevada Supreme Court, working with the chief judge, directed a medical

malpractice concentrate on settlement conferences. We have teams of senior judges who work for a month on settlement conferences with cases older than two years, in some cases over three years. This is a perfect example of how senior judges can help the system. We would like to revisit this program in a few months to try to get the medical malpractice case backlog resolved. In June, we are initiating the same program in both family courts using senior judges to get them caught up on settlement conferences.

DISTRICT JUDGE RITCHIE:

The Nevada Supreme Court and the Eighth Judicial District have worked together to settle medical malpractice cases. To meet statutory mandate, we review every medical malpractice case in January and August of each year. We set 70 cases for settlement conferences during the month of May, and we have had teams of senior judges working on four cases every day. As of yesterday, we had settled 16 cases in the first two weeks and two days. These are cases that have been set for trial as far out as next year. At the end of this program, we will calculate the number of trial days and the resolution. Just to give some perspective, the last medical malpractice status check showed we had resolved about 25 or 26 cases last year through trials and recorded settlements. In two and a half weeks, the senior judges have settled 16 cases by handling the settlement conferences. If we settled 70 cases through settlement conference, we would still have 220 pending medical malpractice cases on the docket that are not endoscopy-related. The resources and innovation of trying these different methods to attack this caseload does not substitute for having enough judicial officers.

CONNIE J. STEINHEIMER (District Judge, Department 4, Second Judicial District):

It is interesting to hear what is going on throughout the State and what is happening in the Eighth Judicial District. It gives perspective to what is happening in the Second Judicial District. Many days we feel like we are the biggest little court in the State of Nevada. People anticipate that the Second Judicial District can do everything the Eighth Judicial District can do. They look at us as an urban area, but we are not urban as it relates to the Eighth Judicial District.

Our difficulties in managing this process are significant. We are housed in a building built 100 years ago. I have court daily in a courtroom that is 100 years old. I have court held in two departments in a building built in 1930. My remaining civil cases are housed in a building built 50 years ago. Fifty or

100 years ago, there was no concept of security or the level of threats to the judiciary. Additional revenue to augment what Washoe County can produce to support the judiciary in the physical plant is significant for the County. For instance, I park in the basement when I come to work in the morning. Other managers from the County park where I do, as well as all the defendants brought by the sheriff. My first gauntlet is through a series of locked doors where I run into in-custody defendants who may or may not be appearing before me. It is more significant when I am alone because the elevator door opens into a locked vestibule in the basement. Members of the public and defendants I may be sentencing are on the elevator with me. I can choose not to ride the elevator three floors up with those defendants, but I have to use a key to get through the locked doors to walk the four stories. The funding provided in this bill will enhance the security and our physical plant.

We also need judicial officers. We did a caseload study in 2006 and brought it to the Legislature in 2007. It showed that Washoe County needed 2.5 family court judges and 4.8 civil/criminal judges. Washoe County voted to support the request for new family court judges as the highest priority because Senior District Judge Breen and Senior District Judge Blake were helping us with the specialty courts.

Our family court is working hard to change its business practice. It has shortened the time for disposition. It is able to do early case conferences, and it is working hard to meet the American Bar Association standards.

Since 2006, the civil caseloads have increased. Our last new civil judge in the Second Judicial District was elected in 1991. Since that time, we have lost two of those general jurisdiction judges to the family court. As the family court developed, we gave up slots in the general jurisdiction and put them in family court in addition to asking the Legislature to fund dedicated family court judges. We now have six family court judges in the Second Judicial District and eight civil/criminal judges.

We have the same issues with foreclosure and increased filings in the civil area as the Eighth Judicial District. We are mandated to have a business court. Our statistics show we have similar numbers to Clark County based on the fact we only have eight judges to cover these caseloads. We have been innovative over the years to maintain with these few judges. We have been active and aggressive about settlement conferences. We have a no-bump policy in the

Second Judicial District. If you have a trial scheduled, we do all we can to get your trial heard. On any Monday, we have between three and eight cases going to jury trial. We also have a stacked calendar in each department, with six to ten matters set for every Monday. We set nonjury trials on Thursdays. We are busy.

Judges work a lot of overtime to keep up with the trials. The new judge we have asked for in the Second Judicial District will assist us in meeting the goals for business court and medical malpractice cases. We will also have funding for facility modifications.

ROBERT LUECK (Former District Judge, Eighth Judicial District):

I oppose A.B. 64 because the counties cannot afford it, and there are different ways cases can be managed to make a difference. I do not know why we do not go to mandatory mediation in civil cases. It works.

The fallacy of the conceptual thinking is that everything has to be centered around a judge. A judge conducts settlement conferences, early case conferences, motions and trials. Yet, we know from our experience in Nevada that mediation is working well. When we passed it in 1997 for custody and visitation, between 70 percent and 80 percent of the cases resolved with full or partial plans, which takes hundreds of cases out of the system in terms of court time.

The Nevada Supreme Court has been running the civil appeals settlement program for over ten years. They are resolving approximately 53 percent of the civil appeals that go to the civil appeals program. This is done by people outside the judiciary.

In Nevada, we refuse to go to mandatory mediation for civil and domestic cases, but other states are doing it. Utah, by statute, initiated mandatory mediation for domestic cases, and their results are positive—well over 50 percent of the cases settled. We know from studies done elsewhere that mandatory mediation in family law matters will resolve approximately two-thirds of the cases with full settlements and another 10 percent to 14 percent with partial settlements. In civil cases, close to 80 percent of the cases in mediation are resolved outside the court using private mediators. We do not need \$1 million courtrooms to do that.

Texas, Florida and Virginia are expanding their mediation. California ran a program of mandatory mediation in civil courts in some districts which resulted in approximately 58 percent to 70 percent settlement rates—taking place outside the court. Mediation is proving to be valuable in getting cases out of the court and reducing the burden on the court.

We always talk about needing more judges and courtrooms. We need to remodel our adjudication system. The Commissioners on Uniform State Laws will be meeting this summer. They will be giving final approval to the Uniform Collaborative Law Act. The collaborative process in divorce results in 78 percent to 94 percent settlement rates. They are also experimenting with it in the civil courts, including medical malpractice and business litigation. This is what our judicial colleagues should be studying—how to implement mandatory mediation.

Many of the case filings they are talking about are handled through the Court Annexed Arbitration Program. Almost 4,000 cases in Clark County go through that process. We know these other processes work. I did strategic planning for family court. I know the caseloads they face, and that new methods and approaches are developed to handle them other than the traditional adversary model in our courts. We do a lot of emotional and financial damage to our families and litigants. People cannot afford litigation. Fewer and fewer cases are going to trial. Alternative means are developing rapidly to handle these disputes at a reasonable cost.

I cannot get anyone to look at the studies of these alternative programs or to talk to experts outside the State. What I am proposing today is not novel. These are proven techniques.

The new Early Case Conference—Nevada Rule of Civil Procedure 16.1—is a disaster. We need to get people out of this system, especially when we have approximately 60 percent pro se litigants in family court where we expect people to do things they do not know how to do. We need new, innovative answers. Rather than spending \$28 million on a courthouse, let us spend \$2.8 million for a mandatory mediation program. We could remove 40 percent to 50 percent of civil cases out of the judicial system.

I am critical of the judiciary in a good-faith way. I respect them for the work they do. I am critical of our lack of innovative thinking. I have written alternatives to A.B. 64.

CHAIR CARE:

If you have something you want us to consider as a potential amendment, feel free to forward it to our committee staff. We will take testimony on A.B. 64 and A.B. 65 together.

RON KNECHT (Court Appointed Special Advocates, Carson City):

We support A.B. 65. We are speaking on behalf of Carson City Court Appointed Special Advocates (CASA) and State CASA. The CASA organizations consist of volunteers in counties under 100,000 in population. They are not supported by regular tax funds. We get occasional grants from local agencies. Our volunteers take care of the least fortunate in our community. As far as the allocation of fee proceeds to CASA, this is something the Carson City judges have wanted to do for some time. It was not clear they had the authority. They have encouraged us to seek the CASA provision that Chief Justice Hardesty included in A.B. 65.

CHRIS BAYER (Executive Director, Court Appointed Special Advocates, Carson City):

We support A.B. 65. Our district judges indicated they appreciate any assistance that allows them to divert filing fees to help support the local CASA organization. I understand that sentiment is shared in other rural areas of the State.

SABRA SMITH-NEWBY (Director, Department of Administrative Services, Clark County):

Traditionally, Clark County and courts have worked together to determine the number of new judges to add. This interim was unique because a plan was devised with A.B. 64 and A.B. 65 together relative to the new fees that would come to support the judges. Clark County's budget shortfall was approximately \$114 million before calculating any impacts from several measures targeting Clark County.

We originally supported these two measures. We still support the addition of judges and A.B. 65 fees to support them. The original deal brought before the Clark County Board of Commissioners and approved by the Board added nine judges. The funds that came out of A.B. 65 were sufficient to support that. Since that time, there have been a number of diversions on those revenues—\$20 was inserted to be sent to legal aid societies, and the funds for the salaries of the judges for the first six months were diverted. The court's funding is a partnership between the State and the counties. The State pays for the salaries

of the judges, and the counties pay for staff and courtrooms. The diversion of funds to pay the salaries is a large diversion and possibly precedent-setting. While we appreciate the Chief Justice's remarks that this diversion to pay for salaries on behalf of the State is not precedent-setting, we worry that it is. Nevertheless, the total amount of funding we expected to come from A.B. 65 has not changed, yet the diversion within A.B. 65 to other uses has changed. The amount of money has been reduced, but the number of judges we originally had agreed to has stayed the same. Because there have been fiscal changes to what we originally agreed upon, we reluctantly oppose these measures. We could come back into support of these two measures and the addition of the judges if the number of judges was reduced to reflect the diversion of the funds.

I understand information has been provided to you regarding the revenue and the cost for the salaries and the staff, [Exhibit C](#) and [Exhibit D](#). We need to pay for the courtrooms. That planning, construction and design must start immediately, even though the judges may not come on board until 2011. That is a significant cost to Clark County. We estimate jury courtrooms to cost approximately \$2.2 million each, with ongoing rent of \$168,000. A nonjury courtroom would cost approximately \$1.8 million. If you extrapolate that across nine judges, it is a considerable amount of money.

CHAIR CARE:

Have you looked at the handouts, [Exhibit C](#) and [Exhibit D](#)?

MS. SMITH-NEWBY:

Yes, I have. I will take them back to our fiscal staff.

CHAIR CARE:

Do you have enough data to give us an idea what the hit would be for Clark County if the number of judges remained as contemplated in the bill with the amendment of the \$20 and the suggestion regarding the first six-months salary?

MS. SMITH-NEWBY:

We estimated the first diversion—the \$20 to the legal aid societies—would reduce the number of judges from nine to eight. Therefore, the numbers I have are for eight departments rather than nine. We assumed eight departments, six civil and two family, would cost approximately \$6.2 million. I spoke previously about the jury courtroom and the nonjury courtroom. We assumed

four of each. That came to approximately \$16.2 million with an annual rent of approximately \$1.2 million. If you look at the fees—the security fees and clerk positions and all of those costs—we estimate a shortfall of \$4.3 million for the first 18 months.

CHAIR CARE:

This is an exempt bill. Please provide written computations to us so we can have something concrete to look at. I will disclose that Ms. Smith-Newby is married to an associate at my law firm.

LISA A. GIANOLI (Washoe County):

Washoe County has previously supported this bill. We are neutral today. Our main concern is section 7 of the bill, where Washoe County would pay the salary of the judge for the first six months. We understand we do have revenue to support that. However, we are concerned that it would set a precedent if we accept a responsibility that previously belonged to the State. Given the nature of revenue diversion occurring this Session, we do not want that shifting of expenses to become a future habit.

CHAIR CARE:

I will close the hearing on A.B. 64 and A.B. 65 and open the hearing on A.B. 497.

ASSEMBLY BILL 497 (2nd Reprint): Provides for the collection and sharing of certain statistical data and information relating to the criminal justice system. (BDR 14-1154)

CHIEF JUSTICE HARDESTY:

I am appearing in my capacity as Chairman of the Advisory Commission on the Administration of Justice. This bill improves the information-gathering capability of the Commission to better advise the Legislature on issues involving the criminal justice system. We urge your support.

JOHN R. MCCORMICK (Rural Courts Coordinator, Administrative Office of the Courts):

Initially, the Department of Public Safety, Records Division and the Administrative Office of the Courts had submitted large fiscal notes. Subsequent to that, there was a negotiation with the bill's chief sponsor,

Assemblyman Bernie Anderson, and it was amended in such a fashion that the Administrative Office of the Courts can remove its fiscal note.

JAMES T. RICHARDSON (Director, Grant Sawyer Center for Justice Studies, University of Nevada, Reno):

We did some work under contract with the Advisory Commission on the Administration of Justice headed by Chief Justice Hardesty. We ran into problems with the quality and lack of data. We encourage you to pass this bill. It will be a step forward to make data more useful. If the data is useful, better policy decisions can be made.

LISA YOUNG (Chief Fiscal Officer, Records and Technology Division, Department of Public Safety):

I represent the Criminal History Repository. We support this bill. We will work with the Commission and the Administrative Office of the Courts to collect the information they are requesting. I am the administrative services officer for the Department of Public Safety, Records and Technology Division, and we house the Criminal History Repository. As part of that, we gather statistical data and annually publish the uniform crime report for the State of Nevada. We were tasked as a good place to house statistical data. When the bill was originally authored, we did attach a fiscal note because it was vague, and we were not sure what types of information and statistics we were being requested to gather.

Section 1 of the bill says the Central Repository for Nevada Records of Criminal History will work as the gathering point and go out to the various entities, such as the courts or the Division of Parole and Probation, as the Commission requests information. We will put the information together and report back to the Commission.

Section 3 of the bill has the Department of Corrections provide certain information to us when requested. Section 5 of the bill is the Court Administrator piece, and we work closely with the courts.

SENATOR PARKS:

Seven agencies had submitted fiscal notes. Did I hear testimony that the fiscal notes were removed?

Senate Committee on Judiciary
May 21, 2009
Page 18

MR. MCCORMICK:

The Administrative Office of the Courts removed its fiscal note with the specific changes made to section 5 of the bill.

MS. YOUNG:

The Criminal History Repository had submitted a fiscal note. The way the bill was originally authored, it appeared data may need to be transferred electronically, and some of the fiscal notes related to the exchange of data electronically. During this biennium, we will assess what information is requested and how that information is gathered. If we feel there is a need for some electronic interfaces with different data systems, we would consider putting that in our next biennial budget.

REBECCA GASCA (American Civil Liberties Union of Nevada):

We support this bill. It is an opportunity for the Legislature to make sound public policy decisions in the future based on the facts gathered with this bill.

CHAIR CARE:

I will close the hearing on A.B. 497. I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 497.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

I will open the hearing on A.B. 238.

[ASSEMBLY BILL 238 \(1st Reprint\)](#): Increases the penalty for soliciting a child for prostitution. (BDR 15-177)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):

This bill is a simple policy question. Do we want to make the johns—the persons who solicit prostitutes—to have a greater risk of penalty if they are soliciting a child prostitute? My opinion is that we do. If we have this on the books, people will think twice when they are downtown and decide to solicit a

prostitute. I hope they will think twice because the young woman they are soliciting might be under the age of 18. They would be looking at Category E felony exposure. While that calls for one to four years in the state prison, it would be mandatory probation if you have no other felonies.

I present this bill for consideration because it is another mechanism to protect our children who find themselves on the streets.

SENATOR WIENER:

Mr. Wilkinson, how would this interact with the measure regarding an adult using a juvenile in the commission of a crime?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):

It would not interact with this bill at all. That statute could apply to someone who is pandering a child. It would not apply to the person soliciting the subject. It is not someone committing a crime with the assistance of the child when the child is the one being solicited.

SENATOR WIENER:

The pimp using a child would have a greater penalty?

MR. WILKINSON:

Yes.

CHAIR CARE:

The penalty for solicitation is a misdemeanor. Under this bill, if a child is involved, we are talking under 18 years of age, correct? Was there any discussion in the Assembly about mistake of fact? For example, if a man solicits a young woman, and he says she looked over 18 years of age.

ASSEMBLYMAN HORNE:

There was some discussion on that issue. I am treating this as a strict liability crime much like statutory rape. For example, you meet a young woman in a club who appears to belong in the club, and you have a sexual rendezvous. If she turns out to be under 18 years of age, you have no defense. We have that as public policy because we are protecting our children. While there are mistakes of fact, the message is to proceed with caution. My scenario of being in the club is a legal activity. Being on the street trying to solicit is not a legal activity.

CHAIR CARE:

In this day and age, there are instances arising from a chat on the Internet where a guy comes to the house thinking he is going to meet a young woman, but in fact, it is an undercover officer. We have some case law in Nevada on that issue. Is solicitation restricted to a face-to-face encounter, or is this something that can involve telephonic or other means of communication?

ASSEMBLYMAN HORNE:

That did not come up in the discussion of this bill.

SENATOR PARKS:

How do we notify johns of this enhanced penalty?

ASSEMBLYMAN HORNE:

Just like all our statutes when they go into effect, you are presumed to know the law. We do not put out notices for any of our enhanced or new penalties for any of the crimes. There is no way of sending out a notice to the world other than an article that may appear in the newspaper saying the law has changed in Nevada. Word of mouth may also serve to notify people. It is like a traffic law that changes—you may not have known about it, but you are still subject to it.

JOSH MARTINEZ (Las Vegas Metropolitan Police Department):

We support this bill. Our vice units have encountered more and more children engaged in prostitution, some at their choice and others not at their choice. From a law enforcement perspective, solicitation in this bill would give us another tool. It could go to the Internet crimes where the individual knows the child is underage, and they solicit that individual. We also have the Internet crimes of luring we passed in 2007. This bill is related to the solicitation of a child where the john comes and asks the individual. If they know this person is underage, it would hopefully get their attention. It does not send them to prison right away.

SENATOR WIENER:

I asked earlier whether this bill would interact with the measure regarding an adult using a juvenile in the commission of a crime. This is an illegal act, so there is still the opportunity to go after the person who is setting up the deal because that adult is using a juvenile in the commission of a crime. I understand the measure I inquired about presumed the crime would be burglary or muling for a drug deal, but I do not know it would preclude this.

Senate Committee on Judiciary
May 21, 2009
Page 21

CHAIR CARE:

I will close the hearing on A.B. 238.

SENATOR WIENER MOVED TO DO PASS A.B. 238.

SENATOR COPENING SECONDED THE MOTION.

SENATOR AMODEI:

I am not voting on this bill because I want to think about the exchange you had with Assemblyman Horne about intent.

THE MOTION CARRIED. (SENATOR AMODEI ABSTAINED FROM THE VOTE.)

* * * * *

CHAIR CARE:

Yesterday, I received a concur/not concur from Assembly Judiciary regarding Senate Bill (S.B.) 253.

[SENATE BILL 253 \(2nd Reprint\)](#): Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

The Assembly made a couple of changes. Senator Parks had a provision in his bill similar to what we have seen in others about members of the executive board in a position to gain financially and disclosing and abstaining. Language was added in the Assembly. There was a provision about being in the third degree of consanguinity or affinity. That would have to be an additional disclosure. The other one went with renters.

SENATOR PARKS:

The language added from the Assembly Committee on Judiciary is the belts-and-suspenders application. We had some dates in the requirement relative to associations that had limitations on the number of units that could possibly be rented, either number or percent. The Assembly took those dates out and indicated that those individuals would uphold the association; however, they would put in an element for hardship. It is a good change and makes it a better bill.

Senate Committee on Judiciary
May 21, 2009
Page 22

CHAIR CARE:

It is the recommendation of the sponsor of the bill that the Committee concur.

SENATOR WIENER MOVED TO CONCUR WITH LANGUAGE ADDED BY
THE ASSEMBLY TO S.B. 253.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

Mr. Neilander, I do have a question regarding A.B. 388.

ASSEMBLY BILL 388 (1st Reprint): Makes various changes relating to gaming.
(BDR 41-711)

There was a provision about pari-mutuel wagering and the Off-Track Pari-Mutuel Wagering Committee set up by the Legislature to negotiate in the world of pari-mutuel with the disseminator. There was a discussion about an amendment deleting that language, assuming A.B. 388 was still a bill in play. We got into the freedom-of-contract issue and whether you could have different sports books paying apparently different rates. As I understand it, that would put the Pari-Mutuel Committee, which is the negotiator, in the position of having to negotiate different rates for each individual sports book.

DENNIS K. NEILANDER (Chair, State Gaming Control Board):

You are correct in your assessment. The history of this goes back a long way. In the past, the Nevada Gaming Commission did the negotiations because of contentious issues the parties were unable to resolve. As history went on, the Commission stepped out of that role, and the Pari-Mutuel Committee was inserted in its place. It has been in existence for many years. The Pari-Mutuel Committee negotiates rates for disseminators, companies that broadcast the signals, particularly for horseracing. The Pari-Mutuel Committee also negotiates the rates the books and the tracks receive. There are a number of parties involved in this negotiation. Each sports book and race book in Nevada is required to be a member of the Nevada Pari-Mutuel Association. As a matter of statute, that Committee is comprised of different members from the Association

representing both small and large licensees, and independent books as well as affiliated books. During the last contract negotiation round, some tracks and providers of disseminating services that wished to negotiate different rates on a number of different issues—including the type of wager that might be offered and the location of the book—it created a problem for the Pari-Mutuel Committee.

It reached a point where there was a threat to black out the signal if the negotiations did not go in certain directions. The amendment proposed on the Assembly side seeks to achieve equality, so all of the rates would be treated identically. What you heard in Committee this week was an attempt to remove that amendment. The Gaming Control Board does not have a position on that.

SENATOR PARKS:

Would the added language suggested put a small independent sports book at a potential disadvantage? Would they have to individually negotiate if that language was in the bill?

MR. NEILANDER:

The language in the bill now attempts to ensure that will not happen. The testimony you heard this week was an attempt to delete that mandatory language from the bill. The proponents testified on the Assembly side that language is a precaution to try to prevent disparate applications of those rates, which may affect smaller and larger operators. It would be treating people differently from a rate-paying perspective.

Senate Committee on Judiciary
May 21, 2009
Page 24

CHAIR CARE:

There being nothing further to come before the Senate Committee on Judiciary,
we are adjourned at 10:27 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____