

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

**Seventy-Sixth Session
February 8, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:27 a.m. on Tuesday, February 8, 2011, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant
Jean Bennett, Committee Secretary
Lenore Carfora-Nye, Committee Secretary
Nancy Davis, Committee Secretary
Jeff Eck, Committee Secretary
Karyn Werner, Committee Secretary

OTHERS PRESENT:

Ben Graham, representing Graham Solutions, LLC
Keith G. Munro, First Assistant Attorney General, Office of the Attorney General

Chairman Horne:

[Roll called.] Those of you who have been regular attendees of legislative sessions will see many new faces this legislative session. Our Committee has 14 members, and 9 are freshmen. I am the new Chair of the Committee, and I know that Mr. Anderson is probably listening at this time.

We will start with Committee member introductions.

To my right and two chairs over is Assemblyman James Ohrenschall. He will be my Vice Chair and represents District 12 in Clark County. He has served on this Committee since 2007 and has served on Corrections, Parole, and Probation in 2009. That committee has merged back into the Assembly Judiciary Committee.

Two chairs to my left is Assemblyman Tick Segerblom who represents District 9 in Clark County. He has also served on this Committee since 2007. In 2009, he was Vice Chair of the Committee on Corrections, Parole, and Probation.

Assemblywoman Marilyn Dondero Loop is to my right and represents District 5 in Clark County. She is a returning member and has served on this Committee and the Committee on Corrections, Parole, and Probation in 2009.

Assemblyman Richard McArthur is at the end on my right. He is a returning member and served on this Committee and the Committee on Corrections, Parole, and Probation in 2009.

Those are the veterans of this Committee. Let us move to our new members.

Assemblyman Steven Brooks is on the front row at the end on the right. He represents District 19 in Clark County. Assemblyman Richard Carrillo represents District 18 in Clark County. Assemblyman Skip Daly represents District 31 in Washoe County. Assemblywoman Olivia Diaz represents District 11 in Clark County. Assemblyman Jason Frierson is at the end to my left. He has left the dark side of lobbyists and decided to serve the people in District 8 in Clark County. Assemblyman Scott Hammond represents District 13 in Clark County. Assemblyman Ira Hansen represents District 32 in the Northern Nevada, specifically the Sparks area. Assemblyman Kelly Kite represents District 39 in the Northern Nevada, specifically the Minden area. Assemblyman Mark Sherwood represents District 21 in Clark County.

We will now move onto staff introductions.

My personal attaché is Laurel Armbrust. She is my face in the office when you come in trying to catch me. She is the one you have to deal with.

Our Committee Counsel is Nick Anthony who served as Committee Policy Analyst for the Assembly Judiciary Committee in 2001 and the Senate Judiciary Committee in 2003 and 2005. He was counsel for this Committee and the Committee on Corrections, Parole, and Probation for the 2009 Session.

Our Committee Manager is Nichole Bailey. She will be in charge of the Committee Secretaries and will make certain the agenda gets posted in a timely fashion and will coordinate the exhibits when they are posted online.

Our Committee Secretaries include Jean Bennett, Lenore Carfora-Nye, Nancy Davis, Jeff Eck, Julie Kellen, and Karyn Werner. Julie and Karyn are returnees from the 2009 Session.

Michael Smith is the Committee Assistant, and Danielle Barraza is an intern from University of Nevada, Las Vegas.

Dave Ziegler is the Committee Policy Analyst. This is Dave's seventh session. He previously staffed Assembly Committees on Natural Resources, Government Affairs, and Commerce and Labor.

On a serious note, I want to say that if you want to get on my "bad side," treat my committee staff disrespectfully. They work very hard and work long hours. I know that we sometimes are in a rush and are passionate about issues or bills that are our priorities, and people have stepped across the line with the staff. It will not be tolerated here. When you drop off exhibits or other items last minute and take them to Michael, please be respectful when you do so. Do not shuffle through the papers they have. That has happened. This is their office and desk, and they are entitled to a certain degree of privacy. That is their workspace and do not intrude upon it. Do not yell at them as they are probably operating under my directions. Rather, come yell at me. We will leave it at that, and I think we will have a good session if everyone keeps that in mind.

Our meetings are Monday through Friday at 8 a.m. unless otherwise stated on the agenda. I apologize for being late this morning, and I will try very hard for that not to be a habit. We will try to start promptly and end promptly to be on time for floor sessions, which are usually at 11 a.m.

For the Committee members, to be recognized to speak, push your "speak" button, and a light will show on my board. It will show your name, and I will press that button, and your microphone light will go on. I can also turn your microphone off. Speaking of microphones, you should always consider this room live as there are ambient microphones, and conversations are picked up and broadcast on the internet. These meetings are live and are on the Internet. People from all over the state tune in and listen to what we have to say. Also, our meetings are broadcast down south in Clark County at the Grant Sawyer Building. I believe just about every hearing will be broadcast down south.

We will have many presentations this week, and into next week, for educational purposes. We have nine new members and have a lot of work this session. I thought it was a good idea for them to get an overview on the various departments and issues that will be coming before this Committee.

Today we will hear about recent Nevada Supreme Court cases and an update from Nick Anthony regarding Adam Walsh. We will have an introduction to Nevada criminal law, jurisdiction, procedure, and the courts by Mr. Ben Graham, who is a seasoned veteran here. We will also have an overview of the Office of the Attorney General by Keith Munro, who is also a veteran here at the Legislature.

Tomorrow we will have an overview of the court system; Thursday we will have an overview of the Nevada Department of Corrections by the new director James Cox, and a presentation by Chief Bernie Curtis on the Division of Parole and Probation. Friday is an overview of an audit related to judiciary subjects by

Legislative Auditor Paul Townsend, an overview of the Central Repository, and an overview of the Real Estate Division and common-interest communities (CICs) by Gail Anderson. We have a prison tour on Tuesday, February 15. We will also have an overview of the Secretary of State's Office, and we have a joint meeting with the Senate Judiciary Committee to review the Advisory Commission on Administration of Justice.

We will now turn to the presentation by Dave Ziegler on the Assembly Standing Rules. Mr. Ziegler will also present the Committee Brief. Then we will turn to the presentations by Nick Anthony, Ben Graham, and Keith Munro.

If there are no further questions by the Committee members, we will get started and try to move at a decent pace.

Dave Ziegler, Committee Policy Analyst:

Normally during the first committee meeting for each committee, the standing rules would be adopted. This year is different. Yesterday, on the Assembly floor, they adopted Assembly Resolution 1, which has the committee rules embedded in it. There are now a set of standard committee rules which have already been adopted. I do not think any particular action is required of the Committee today on these standing rules. I have the privilege of being the first person to try a handout on the new paperless system, Nevada Electronic Legislative Information System (NELIS). We will see how it goes.

In NELIS, there should be a handout for "Assembly Standing Rules 76th Session (2011) EXCERPTS" ([Exhibit C](#)). Yesterday we went through the rules that were adopted on the floor and excerpted out a few things that apply to the Committee specifically. I am not going to go through those in any detail but will mention a couple of things that may be of interest.

Some committee chairs are touchy about the idea of people approaching the dais, and there is now a standard rule in all Assembly committees, Rule No. 53. [Read from prepared handout.] The idea here is to take your conversations down to the end, or out into the lobby, and not converse around the dais.

Chairman Horne:

At no time can any lobbyists come up past the dais. You do not step up on the dais, even if you are invited. That will be the rule in this Committee.

Dave Ziegler:

Also under Rule No. 53, there is a section that begs a little explanation. If any member wants to make a request of the Research Division on behalf of the Committee on Judiciary, that request needs to go through the Chairman. If

something comes up in a hearing and you believe the Committee needs some information on this, those requests need to go through the Chairman. I do want to emphasize that each of you is free to contact us at any time for assistance on a research matter, and we will handle your individual request confidentially. We do that for all Legislators.

On page 4 of the handout, it states regarding hearings and a quorum that "a quorum of the committee is desirable but not required to conduct a public hearing." When we get deep into the session and people are running all over the place with business, sometimes a hearing may start without a quorum. That is allowed.

Under Rule No. 57, Committee Action, there are a couple of things worth pointing out. There are no longer any rules that require a two-thirds vote of the committee. If there is a simple motion in the committee other than on a bill or a resolution, it can be passed by a majority of those present. There are several things that require a majority of the entire committee which includes taking definite action on a bill. If you are to move do pass or amend and do pass, those actions take a majority of the entire committee, which is eight members. It also takes a majority of the entire committee to reconsider an action or to introduce an action that is not already prefiled. We will get a couple of those in the next few weeks where the Chairman will ask for the Committee's approval to introduce a measure on the floor, and that takes a majority of the entire Committee. However, it does not imply support of the measure.

Mr. Chairman, I do not think I will spend any more time on the Standing Rules except to say these new rules adopted yesterday on the floor do allow committees to adopt individual policies consistent with the rules. It is my understanding that you may do that at any time during the session.

Chairman Horne:

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

Next, we will move to the Committee Brief ([Exhibit D](#)).

Dave Ziegler:

The next item on the agenda is the Committee Brief. Again, it is in NELIS, and you should have it on your computers. If not, we do have backup copies.

Traditionally, for the new members, our office prepares a brief like this for each of the policy committees. Basically, it is an overview of the situation. Let me walk through this for you very quickly. I want to cover the history of the Committee, the subjects of legislation that we typically handle, a few statistics

from last session, some concepts of what types of legislation we considered in the 2009 Session, some of the issues that might come up this session, some of the applicable deadlines that we will be facing, and contact information.

The Chairman has already mentioned that this Committee was split the last two sessions into two committees: the Judiciary Committee and the Corrections, Parole, and Probation Committee. I have gone through a bit of the history of that at the top of page 2. Suffice it to say, that now, in 2011, those two functions are again combined into the Committee on Judiciary, which was a traditional practice prior to the 2007 session.

In terms of the subject matter that this Committee typically reviews, it is very broad with a lot of legislation on a lot of different topics. I will just run down the headings for you listed on pages 2 and 3. [Read from prepared handout.]

You can see that it is a very broad set of subjects.

In terms of last session, the two committees combined considered 130 Assembly bills and 50 Senate bills for a total of 180 measures. Of those, 111 were approved in both houses and reported to the Governor. It goes without saying that this is a high volume and major Committee that will see a lot of legislation. The Governor vetoed three bills last session that had gone through this Committee, and the Legislature sustained all three vetoes. The details are seen at the bottom of page 3.

I do not think, in the interest of time, that I will go through the selected legislation that was enacted in 2009. You may want to take a look at this on your own. It covers a wide range of subject matter.

I will make a brief comment on a couple of the things that did not go through the Judiciary Committee or the Corrections, Parole, and Probation Committee last session. Matters having to do with Constitutional amendments are typically referred to a different committee. Last session, the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments handled a number of joint resolutions. One of those will come back this session and would replace the State Board of Pardons Commissioners with a clemency board. This must come back to the Legislature this session and be enacted in identical form, and then go to the voters. That did not go through this Committee.

Likewise, the joint resolutions that would have called for the initial appointment of Supreme Court justices and District Court judges and would have created an intermediate Appellate Court were also handled in that other committee. They

went to the voters in the 2010 General Election and were rejected by the voters.

In terms of what we can expect for the 2011 Session, I will go through the headings listed on page 7: "Corrections," "Crimes and punishments," "Criminal procedure," and "Property," including CICs. Those four topics consistently have the largest number of bills. Last session, there were 12 bills on CICs. There is another group involving "Business associations," "Domestic relations," "Gaming," "Judiciary," and "Legal proceedings" that also typically have a lot of activity in this Committee. There are also others that do not fall into these categories such as estates, juvenile justice, liens, probate, Uniform Commercial code, et cetera. The message I would leave you with is there is a lot of legislation heard on a lot of different topics.

In terms of deadlines that are coming up, one is coming up very soon. The deadline for legislators to submit bill draft requests (BDR) to the Legal Division is February 14. On February 25, Committee BDRs need to be submitted to the Legal Division. This Committee will have a few more BDRs that we can utilize under the discretion of the Chairman and the rest of the Committee. The legislators must introduce their bills on the floor by March 21, and the Committees must introduce their bills by March 28. As we get into April and tax day, we will be facing some strenuous deadlines in this Committee. The date for passage of bills out of the first house is April 15. Speaking for staff, this is possibly the biggest deadline in the entire session.

In the back of this document, there is key contact information.

Chairman Horne:

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

Next up is Nick Anthony who is our Committee Counsel.

Nick Anthony, Committee Counsel:

Before each of you on NELIS is a document ([Exhibit E](#)) briefly outlining several Supreme Court cases and one Federal District Court case, which have either ruled a Nevada statute unconstitutional or given an opinion that might invite the legislature to further act upon the statute.

The Chairman has directed me to review all of the court cases since the conclusion of the 2009 Session. I actually went back prior to the start of the 2009 Session to see if there were any cases that we might have missed last session. Those are all included in your document.

I will highlight a few of the cases, and I would like to spend a little bit more time on the *ACLU of Nevada v. Masto*, 2:08-CV-00822 (D. Nev. Oct. 7, 2008), which is the case dealing with Adam Walsh. If at any time you have any questions, please feel free to stop me.

The first case I would like to point out is *Berkson v. LePome*, 126 Nev. Adv. Op. 26 (2010), which was handed down by the Nevada Supreme Court. In this case, the Nevada Supreme Court struck down *Nevada Revised Statutes* (NRS) 11.340 as a violation of the separation of powers doctrine. Under NRS 11.340, that statute allowed a plaintiff to bring a subsequent action if in the first action they received a judgment and that judgment went up on appeal and was subsequently reversed, then this statute allowed the plaintiff to again bring another cause of action. The Supreme Court, in their reasoning, held that it was an unconstitutional interference with the separation of powers doctrine in that they felt that power should be vested in the judiciary to review and determine whether or not a claim and issue preclusion would prohibit bringing another action.

As such, in light of the Supreme Court's ruling, the Legislature is left with several policy decisions. Just because the Supreme Court has struck down a statute, the statute is not automatically removed from the NRS. Whether that is still on the books as law, it is just unenforceable. Thus, the Legislature may wish to repeal NRS 11.340, let the statute stand as unenforceable, or amend NRS 11.340. The Supreme Court, in its opinion, somewhat invites the Legislature to consider statutes of other states that have been found constitutional, wherein they allow a plaintiff to bring a subsequent action if their action was reversed, not on the merits. So if your underlying judgment went up on appeal and it was reversed on a technical issue, then you would be invited to again bring another action. That could be one clarification this Committee may wish to consider.

Turning our attention to the second case, *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. Adv. Op. 39 (2009), this is a case dealing with the Nevada Clean Indoor Air Act (NCIAA). As you may recall, the NCIAA was brought by initiative petition and approved by voters in 2006. It was not passed by this body, but is codified in State law at NRS 202.2483. The NCIAA prohibits smoking in most indoor places throughout the state. When considering that, the Nevada Supreme Court upheld a lower District Court decision, which found the statute was constitutional as to civil enforcement but unconstitutionally vague as to criminal enforcement. The Nevada Supreme Court upheld that decision, and as it stands now, you can be guilty of civil penalties if you violate the statute. However, you cannot be held criminally liable. This was an initiative petition action. The three-year period has passed

since that was enacted, and the Legislature may wish to amend that statute as they see fit.

The last Supreme Court case is *Rivero v. Rivero*, 125 Nev. Adv. Op. 34 (2009). In this case, the court considered the definition of joint physical custody. Ms. Rivero and her husband originally had a custody arrangement where Ms. Rivero had custody of their minor child five days a week with the husband having the child two days a week. There was no child support order, and Ms. Rivero brought it before the court to have a child support order issued, based on her having physical custody five days a week.

The Supreme Court looked at our statutory scheme in custody and determined Nevada law is largely silent as to the definition of joint physical custody. The Supreme Court fashioned an opinion in which they stated that joint physical custody means at least 40 percent of the time. Each parent must have the child at least three days a week, 40 percent of the time.

In their opinion, the court also invited the Legislature to amend our statutes as it sees fit. This was an interpretation issue with the courts somewhat filling in the blanks in our statute, so it provides the necessary clarity to all litigants in the future. Thus, the Legislature can either choose to amend our statutes by codifying the Supreme Court decision or amend our statutes by some other rationale. If they choose to make it exactly a fifty-fifty definition for joint physical custody, the Legislature is certainly free to do so. The Legislature could also simply decide not to do anything, and the Supreme Court decision would stand as the law in Nevada.

Lastly, is the Federal District Court case *ACLU of Nevada v. Masto*, 2:08-CV-00822 (D. Nev. Oct. 7, 2008). This is ongoing litigation that arose out of the 2007 statutory scheme that was enacted by the Legislature. As you may be aware, back in 2006, the federal government adopted and enacted the Adam Walsh Act, which required states to comply under threat of losing certain Byrne grant funds. States would lose 10 percent of their Byrne grant money if they did not comply with the Adam Walsh Act. The Adam Walsh Act is an act aimed at sex offenders and strengthening those laws. Under the prior existing scheme, after a conviction, a sex offender was classified as either a Tier 1, Tier 2, or Tier 3 offender, based on the risk of reoccurring offenses. Basically, it is based on the risk of recidivism and the likelihood to commit another act in the future.

Part of what the Adam Walsh Act did, among a number of other things, was require states to now make tier assessments based on the nature of the crime. Depending on the level and severity of the sexual offense, one would then be

classified as a Tier 1, Tier 2, or Tier 3 offender. Also, that new classification system would apply retroactively for people who committed a sexual offense in the past, and they would now be classified based on the nature of their offense.

With that being said, the Nevada Legislature enacted Assembly Bill No. 579 of the 74th Session to comply with the Adam Walsh Act. They also enacted Senate Bill No. 471 of the 74th Session, which was a companion sex offender bill dealing with sex offender residency requirements, GPS monitoring, and DNA database collection. Both of those bills were challenged by the American Civil Liberties Union (ACLU). Prior to the bills going into effect in 2008, the ACLU filed suit, and Judge Mahan of the federal District Court in Las Vegas judged that both bills were unenforceable and unconstitutional based on a number of reasons including procedural due process, ex post facto, the contracts clause, double jeopardy, and a number of other constitutional concerns. As such, the Office of the Attorney General immediately filed an appeal to the Ninth Circuit Court of Appeals. Since 2008, that appeal is still currently pending.

Through legal opinion, and also the Attorney General's opinion on the subject, both of those bills were enjoined before they became effective, and we are currently operating under the 2007 statutory scheme as it existed prior to A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session. With that said, that statutory scheme is no longer in the blue binders. However, it is in a subsequent document that was created and published by our office, and it is also available on the Legislature's website. Those prior pre-existing 2007 laws are available to the public, and, until the litigation is resolved, those are the laws our state is operating under.

Thus, the policy consideration for the Legislature to decide this session is whether you want to leave the current laws as they are, or do you wish to repeal the entire statutory scheme of current law as enacted by A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session and replace the prior existing law. That decision may have policy impacts on the current case and also may jeopardize future federal funding. Another option would be to repeal and replace certain provisions that are non-substantive and, in our opinion, would not be in violation of the standing order and what is being challenged by the *ACLU of Nevada v. Masto* case. The last option would be to repeal A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session and try to fashion a statutory scheme that complies with the Adam Walsh Act and addresses the retroactivity question.

Chairman Horne:

Are there any questions for Mr. Anthony?

Assemblyman Segerblom:

It is my understanding that the part of the bill that was struck down by Judge Mahan deals with DNA testing. Is that correct?

Nick Anthony:

That is correct.

Assemblyman Segerblom:

Right now, the state cannot DNA test sex offenders?

Nick Anthony:

The DNA testing portion that was in A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session was just a small portion. I believe we still do have DNA testing. There is some question as to which offenders it applies to.

Assemblyman Segerblom:

To the extent that there is an issue with that, we could enact a new law to just deal with DNA testing?

Nick Anthony:

Certainly the Legislature is free to pass any law as it sees fit. Whether that law will again be challenged is unknown. We look at each and every law the Legislature enacts as constitutional, and we will certainly defend it.

Assemblyman Sherwood:

Are there other states that enacted statutes and laws and were subsequently challenged that are now in the process of appeal somewhere else?

Nick Anthony:

There are several states. When the federal law came down, there were four states that have been found in compliance through the federal Sex Offender Registration and Notification Act (SORNA) office and Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) office, including Ohio, Florida, South Dakota, and Delaware. Since that time, the Ohio Supreme Court has ruled their statute unconstitutional on the separation of powers issue. That leaves three other states that arguably are in compliance. You are looking at 47 states that are not in compliance. The federal government has extended the deadline for compliance to July 2011.

Assemblyman Sherwood:

Are the federal funds in jeopardy if we do not comply by 2011? If that is what you are saying, would one of the options be to adopt the laws of one of the three states that are in compliance?

Nick Anthony:

The Office of the Attorney General has been working with the Federal SMART office closely. That federal deadline has been a moving target. It has moved a couple of times, and I am not sure where it will move in the future or if the federal deadline will remain July 2011 or not. I can tell you that in terms of the amount of the federal funding the State of Nevada is looking at losing, it has been pegged somewhere between \$180,000 to \$225,000 a year, depending on the amount the federal government sets our Byrne funding at. It is 10 percent of that number.

Chairman Horne:

To add to that, I serve as chairman of National Conference of State Legislatures' (NCSL) Criminal Law and Justice Committee, and this is a big issue for that committee as well. One of the many complaints of various states is this is an unfunded mandate in that the Byrne money we are in jeopardy of losing actually does not exceed the money it costs to implement the program. It is a common complaint from members of that committee in various jurisdictions across the country. It is one both they and the federal representatives are struggling with. The new chairman of Judiciary out of Texas wants to revisit that this session. Even in his state where the Byrne money is greater than ours, he is getting complaints from the Texas legislature that the implementation of the program exceeds what the Byrne money is. Some of them have actually said to me they would rather lose the Byrne money than spend the money to implement.

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

Next up is Mr. Ben Graham who will go over criminal law, jurisdiction, and procedure ([Exhibit F](#)).

Ben Graham, representing Graham Solutions, LLC:

I would like to go over some aspects of criminal law, courts, and procedures. For a number of years, I practiced in a private practice of law, 30 years with the District Attorney's Office, and now for several years at the Supreme Court as a governmental relations person. I had the privilege of teaching in the university system for more than 30 years, and I have an undergraduate degree in Government and Public Administration from American University in Washington, D.C. and a law degree from Willamette University in Salem, Oregon.

There is a folder being handed out with a handout included. Mr. Anthony reviewed case law and items the Legislature may consider. As an aside, a long time ago, this Committee was sometimes referred to as an appellate court in itself because some court decisions and concerns of the people of the State of

Nevada would be heard in this Committee, and you were asked to address those concerns.

I want to talk about some of the initial procedures we run into in criminal law. The first item is an arrest, which is a search and seizure. It is about the most radical seizure you can have because it seizes your person to answer for some type of judicial proceeding. Theoretically, an arrest cannot be made without probable cause, which is a burden of proof and an articulable reason why the person arresting you believes you committed a crime. It is constitutionally mandated that there be probable cause for an arrest. There are ways to challenge an arrest if it is not based upon probable cause just like search warrants are sometimes rejected because the information leading to that search warrant is not valid.

We talk about courts a lot in our system. You have been hearing about this from time to time as we have gone through the process here. Probably the most common courts for most of us are the Municipal Court and Justice Court. The Municipal Court deals with misdemeanors committed within its jurisdiction only. Justice Court has jurisdiction over those same misdemeanors, and most of our traffic offenses are misdemeanors within a particular township. You will probably be hearing from a Municipal Court judge as indicated by your staff. Justice Court people will be here on a couple of issues as well. Justice Court also holds preliminary hearings, which deal with gross misdemeanors and felonies. District Court has statewide jurisdiction, and there are many of these judges, and you will be hearing about that as we go along. District Court has jurisdiction from a criminal standpoint over gross misdemeanors and felonies. A magic word to tell the difference between classifications of crimes is whether they use the word "jail" or "prison." If somebody says you are going to "jail," that means you committed a misdemeanor. If somebody says you are going to "prison," that is a felony.

Of course, the Supreme Court has seven justices, and you have been exposed to the Chief Justice a time or two. They sit north and south in panels and en banc in the building across the way.

On the next page, we see the classification of crimes. A couple important things to note for our state is that our misdemeanors are punishable by a day to six months in jail and fines. I put an asterisk there, and at the bottom you will see what administrative assessments are. It is monies you will be hearing about. They are not actually part of the fine, but they can have a significant impact.

Misdemeanors are handled in Municipal Court and Justice Court. In Las Vegas, sometimes a person will be arrested on the south side of Sahara and be taken to Justice Court, but if a person is arrested on the north side of Sahara, he will be taken to Municipal Court. It is a jurisdictional issue.

Gross misdemeanors are punishable by a day to a year in jail and fines. You will very seldom see a person go to trial on a gross misdemeanor. Gross misdemeanors are used more for plea bargaining. In misdemeanor cases, you have a judge trial and never a jury. For gross misdemeanors, you would be entitled to a jury and would be in District Court.

Felonies are heard in District Court and are punishable by a potential prison sentence or even death. Those are appealable to the state Supreme Court. It has been many years since felonies A, B, C, D, and E were created. You will be asked from time to time to review those penalties to see if they need to be updated, downgraded, or potentially eliminated.

We have not had a lot of talk about habitual criminal statutes in the last few years. Nevada is fairly progressive with regard to habitual criminals. There may be a case or two, but I do not know of anyone being sent to prison for any long period of time for stealing a pizza or VCR. Serial criminals, who are committing crime after crime, and habitual criminals could be sentenced to additional time in prison for those repeated offenses.

We talked about probable cause when we talked about arrest. When there is an arrest, if there is probable cause police can take you into custody either on a warrant or if the crime is committed in their presence. Preliminary hearings are held in Justice Court, and you appear as a defendant with an attorney before a judge. The state has to put on sufficient evidence to establish a crime has been committed and that you committed it. No plea is entered in Justice Court. If the state has enough evidence to convince a judge that you committed the crime during the preliminary hearing, it gives the defendant the opportunity to see some of the evidence and witnesses against them. It also gives the state the opportunity to see if it has a strong enough case. That is when there may be negotiations and plea bargains, but that is a whole other issue.

Next is grand jury and indictment seen on page 4. If you see someone that has been indicted, that means they are facing prison time. The grand jury meets in secret, and currently there are only grand juries being held in Clark County and Washoe County. A bill passed out of the Senate today dealing with grand juries. That will probably be headed your way, and it is very technical. Whether a grand jury is used is a decision of the prosecutor. A grand jury is frequently used if you have young witnesses or victims. If undercover officers

were used, and the state does not want them exposed to a preliminary hearing which is open to a public, the state will bring the defendant before a grand jury. The defendant would rarely give or offer any evidence to the grand jury. Probable cause must be established in a grand jury as well, and 12 or more of the jurors must agree that probable cause has been established.

For burden of proof, probable cause must be shown for arrest, search and seizure, preliminary hearings, and indictments. When you go to trial for a criminal matter, whether it is a jaywalk or murder trial, the burden of proof must be beyond a reasonable doubt. That is an example of a beyond a reasonable doubt instruction, which is given to a jury after a trial. In a civil case is preponderance of evidence. Sometimes you will see a civil judgment for something where a criminal judgment for the same act may not have resulted because of a higher burden of proof needed for a criminal case.

The next portion deals with Family Court. There are Family Courts established in several of our more populated districts. In our other judicial districts, regular District Court judges have all of the authority and handle Family Court proceedings including divorces, et cetera. Juvenile Court is also part of District Court. You will see items here on certification of young people into adult court.

Next is a flow chart that shows the whole process from committing a crime up until release from jail or prison. Then there are statutes dealing with classification of crimes, preliminary hearings, and indictment. This is a quick handout as a reference for all of these things. The most important portion of this handout is the back two pages, which are the *United States Constitution Bill of Rights*. It is fun to look at these so we learn where our rights come from.

Chairman Horne:

I do not see any questions. The reason for that presentation is because there will be quite a number of bills heard in this area. Sometimes it can get heady, and there are only a couple attorneys who sit on the Committee. In fact, Assemblyman Frierson and I are the only practicing attorneys. You can come across bills that sound like a good idea but have a constitutional issue. I wanted you to have that kind of overview because you will see these themes come up over and over again.

Last up is Mr. Keith Munro from the Office of the Attorney General. We will then open it up for public comment.

Keith G. Munro, First Assistant Attorney General, Office of the Attorney General:

The Office of the Attorney General is a constitutional office charged with upholding the laws of the State. We work to uphold this State in order to protect Nevadans. The Office provides legal counsel and represents state agencies and boards and commissions. We work to protect consumers and citizens, and we investigate and prosecute state crimes. Catherine Cortez Masto has organized her office into four major areas to accomplish that task. The Bureau of Government Affairs provides legal advice and counsel to state agencies and boards and commissions to assist those entities in carrying out their mission. The Bureau of Criminal Justice is the Office's prosecution unit. For lack of a better term, they prosecute the bad guys. The Bureau of Consumer Protection educates, advises, and protects Nevada consumers. The Bureau of Litigation is the civil litigation component of our Office, and they focus primarily on civil cases.

[Continued reading from prepared testimony ([Exhibit G](#)).]

If any of you who are new to or are veterans of this Committee need help or need someone from our office to talk with you and give you some background, we would be happy to do so. We consider that to be part of our role.

[Continued reading from prepared testimony.]

Chairman Horne:

Are there any questions? [There were none.]

As you can tell, the Office of the Attorney General also has a wide swath of different issues they cover. You will see Mr. Munro or others before our Committee on several occasions this session.

At this time I will open it up for public comment. I do not see anyone else signed in to speak. I neglected to mention the sign-in sheet at the entry way as you come in. If you plan on testifying for a bill, you can fill your name in and what bill you wish to speak on or are interested in. Especially for the general public, even if you do not want to speak on a bill, it is not a bad idea to sign in to say you were there and if you are supportive or not in support of a certain bill. If you do wish to speak, please check the box for you to speak. I will receive the sheet to call people up to speak. They do the same thing in Las Vegas and fax it here so I know who wishes to speak on a particular measure.

I would like to make a couple other remarks before we adjourn. When testifying, you do not have to direct your responses through me to answer the Committee member who asked a question. I will remind those testifying we require truthful testimony at the witness table. I do have the power to swear people in. If it comes to my attention you are not being truthful in your representations, I may use the authority to do that. Phones and computers must be on silent when you come in, and that is in any committee.

For the members of the Committee, when we hear a bill or have a work session, we will have floor statements. I will assign members to defend the bill on the floor. You will see a red binder on your desk on the floor, which contains the floor statements and who is assigned to defend the bill. You will only be assigned to defend a bill if you voted in support of the measure in Committee. If you are going to be absent or tardy, let me know. There will be times when you are presenting a bill in another committee or the other house, so let me know that you will not be here on time. As you heard, we can only process bills with a quorum or simple majority of the Committee on some bills. It is important that I know who will be here in order to process the bills.

It was a good first day.

Meeting adjourned [at 10:47 a.m.].

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 8, 2011

Time of Meeting: 9:27 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Dave Ziegler, Committee Policy Analyst	Assembly Standing Rules Excerpt
	D	Dave Ziegler	Committee Brief
	E	Nick Anthony, Committee Counsel	Court Case Outline
	F	Ben Graham, representing Graham Solutions, LLC	Criminal Law, Jurisdiction, Procedure, and the Courts
	G	Keith Munro, First Assistant Attorney General	Prepared Testimony