

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 22, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Tuesday, February 22, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Robin Sweet, Interim Court Administrator and Director of the Administrative Office, Administrative Office of the Courts
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Verise V. Campbell, Deputy Director, Foreclosure Mediation Program, Administrative Office of the Courts

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CHAIR WIENER:

I have Bill Draft Request (BDR) 16-640 revising provisions governing parole.

BILL DRAFT REQUEST 16-640: Revises provisions governing parole. (Later introduced as [Senate Bill 187](#).)

SENATOR COPENING MOVED TO INTRODUCE BDR 16-640.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session. We will begin with Senate Bill (S.B.) 6.

SENATE BILL 6: Authorizes the electronic reproduction of the seal of a court.
(BDR 1-324)

LINDA J. EISSMANN (Policy Analyst):

The Nevada Supreme Court, through John McCormick, proposed an amendment to S.B. 6, [Exhibit C](#), page 2. This amendment would clarify that the rule to be adopted by the Nevada Supreme Court will include necessary safeguards to prevent misuse of the seal. Mr. McCormick also provided an article from the National Center for State Courts, [Exhibit C](#), page 3. This article is about legislation in other states—Oklahoma, Iowa, Michigan and Texas—that provides for an electronic seal. Copies of the bills in those states are included in [Exhibit C](#), pages 4 through 10. In Oklahoma and Texas, the legislation specifically said the rules adopted by the court would provide for safeguards. That was the genesis of the amendment provided by Mr. McCormick.

SENATOR GUSTAVSON:

Do you know of any misuse of the electronic seals? We should have some penalties in this bill for misuse.

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ROBIN SWEET (Interim Court Administrator and Director of the Administrative Office, Administrative Office of the Courts):
We are not aware of any misuse of the electronic seal.

SENATOR GUSTAVSON:

My concern is that people can recreate almost anything on the Internet. I do not want to see that happen. If it does happen, I would like to see a penalty included in the bill.

CHAIR WIENER:

The amendment says, "Any rules adopted by the Supreme Court that are intended to help safeguard a document from being changed" With this language, can we be assured we will be able to protect documents and the electronic seal affixed to them?

BEN GRAHAM (Governmental Relations Advisor, Administrative Office of the Courts):

This bill brings us forward in the technology area. Rules and regulations will be established. The integrity of the electronic seal may be better than the manual seal because only a limited number of people will have access to place the electronic seal on documents. This bill is enabling.

BRADLEY A. WILKINSON (Counsel):

It is a crime pursuant to *Nevada Revised Statute* (NRS) 205.175 to forge or counterfeit the seal of a court. That is a Category D felony.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 6.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 24 ([Exhibit D](#)).

SENATE BILL 24: Revises provisions concerning writs of execution in justice courts. (BDR 6-321)

Ms. EISSMANN:

The discussion on this bill involved whether issuance of writs of execution should be left to the clerk of the court or be flexible enough so either the justice of the peace or clerk of the court could issue writs of execution. Following the hearing on this bill, Mr. McCormick submitted an amendment allowing that flexibility, [Exhibit D](#), page 2.

You asked for a comparison between the district courts and justice courts. The relevant statute for district courts is NRS 21.020. It provides for issuance by the clerk of the court. The relevant statute for justice courts is NRS 70.010, which provides for issuance by the justice of the peace. Both those statutes were enacted in 1911 and have remained unchanged.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 24.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address S.B. 26 ([Exhibit E](#)).

SENATE BILL 26: Revises various provisions relating to judicial administration. (BDR 14-323)

Ms. EISSMANN:

William O. Voy, District Judge, Department A, Eighth Judicial District, proposed an amendment, [Exhibit E](#), pages 5 through 19. This amendment involved juvenile courts and the ability to pay for indigent representation. Because that amendment was lengthy and members of the public did not have it in advance, Orrin Johnson from the Washoe County Public Defender's Office requested the opportunity to review the amendment. He reviewed District Judge Voy's

amendment and submitted an additional amendment, [Exhibit E](#), pages 21 through 23.

Mr. Johnson was concerned the original language in the amendment would have allowed the court to withhold the driver's license application of a parent or guardian in addition to that of the child. Mr. Johnson was concerned that would hinder the ability of that parent or guardian to get to work. He suggested striking that part of it. You could still withhold the driver's license application of the child, but perhaps not that of the parent or guardian.

Mr. McCormick and District Judge Voy provided a short bulleted highlight of [S.B. 26](#) with the amendment, [Exhibit E](#), pages 3 and 4.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

After reviewing the amendment, our concern is in the cover letter, [Exhibit E](#), page 20. Our concern is that if a child incurred a restitution amount because of an action he took, it is unjust to require the parents to pay it. They can be required to pay it if a judgment cannot be issued against the child because he is too young. But we are concerned that if the parents' ability to make income to pay it is inhibited by taking away their driver's licenses, it will be less likely the victims of the crime will be made whole. That is an injustice to everyone. Because of that, justice demands that we take away the children's driver's licenses but not the parents'.

We noted our concerns about the standards for those indigents. We do not oppose the amendments. We want to note for the record there is enough wiggle room that if the parents are an adverse party to the children—if the crime was committed against the parents—it becomes less appropriate to use the parents' income to determine whether the child qualifies for a public defender. Hopefully, judges will exercise their best judgment in those cases.

SENATOR COPENING:

Did you talk with District Judge Voy? I know you are making a minor change. Has the person bringing this forward been notified?

MR. JOHNSON:

No, I did not talk to District Judge Voy directly.

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MR. GRAHAM:

We have talked with District Judge Voy off and on over the last couple of weeks. This is a minor portion. That would not be anything to hold this bill up. I am sure District Judge Voy would agree with that.

SENATOR COPENING:

Was there any other opposition concerning the amendment?

MS. EISSMANN:

I would like to clarify for the record that when I received Mr. Johnson's amendment, I provided it to the Supreme Court. I believe they provided that to District Judge Voy. It is not that he has not seen it.

CHAIR WIENER:

We have two amendments to the bill under consideration—one provided by District Judge Voy and one provided by Mr. Johnson.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 26 WITH THE TWO AMENDMENTS PROVIDED.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 57.

[SENATE BILL 57](#): Expands the circumstances pursuant to which a court is authorized to issue certain warrants. (BDR 11-289)

MS. EISSMANN:

Senate Bill 57 replaces statutory provisions allowing a court in a dissolution of marriage proceeding to enter an order providing that a party may obtain physical custody of a child under certain circumstances with the assistance of law enforcement. The bill would set forth a new procedure expanding the circumstances in which a court is authorized to issue a warrant to take physical custody of a child. Victor Schulze proposed an amendment ([Exhibit F](#), page 3).

You will recall the testimony when we discussed pick-up orders of the children, and Mr. Schulze had explained his amendment at the time. It includes some technical changes and takes out some references to the "Agency which provides child welfare services," [Exhibit F](#), page 3, to allow the process to continue without change because the process is apparently working. That is part of the amendment.

The amendment talks about the petitions in the bill and that they should be filed with the Attorney General's Office as a safeguard measure.

CHAIR WIENER:

This measure was provided by the Office of the Attorney General. The Attorney General sent us a letter that we heard in the meeting held on February 9, of the Senate Committee on Judiciary. That letter addressed their constitutional concerns this bill has been brought forward to address.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 57 WITH THE AMENDMENT FROM THE OFFICE OF THE ATTORNEY GENERAL.

CHAIR WIENER:

We have seven amendments, [Exhibit F](#), pages 2 and 3. Do we take this as seven different amendments?

Ms. EISSMANN:

This could be considered as a single amendment with seven parts.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. SWEET:

The Foreclosure Mediation Program was an Assembly bill (A.B.) more than two years ago. After working its way through the Assembly and Senate, the bill received final legislative approval on May 23, 2009. It was approved by the Governor on May 29, 2009, and became effective 32 days later.

The new law required the Nevada Supreme Court to adopt rules for the Program. The Administrative Office of the Courts (AOC) served as the mediation administrator and worked hard to get the program started.

VERISE V. CAMPBELL (Deputy Director, Foreclosure Mediation Program, Administrative Office of the Courts):

Our Foreclosure Mediation Program is known nationally. Other states wish to model their program after ours.

The first slide ([Exhibit G](#), page 2) shows our notices of default. When the bill was first introduced, we had 5,250 notices of default. In August 2009, the number of notices of default spiked, page 2. It was anticipated the number would increase after A.B. No. 149 of the 75th Session became effective. Nevada is the No. 1 foreclosure mediation state. We are also the No. 1 state for foreclosures.

The State of Nevada Foreclosure Mediation Program became effective on July 1, 2009. We started the Program with no staff, trained mediators, rules, funds, forms, office or equipment, [Exhibit G](#), page 4. The Administrative Office of the Courts loaned us \$130,000. We paid that back in three months because of the funding structure you put into place. We now have offices in Carson City and Las Vegas, and we have 293 trained mediators.

[Exhibit G](#), page 22, outlines the mediation process. The Mediator's Statement is an important tool of the Program, page 23. The Mediator's Statement reports the outcome of the mediation. It allows the Program to determine whether a certificate will be issued. A certificate is required on all owner-occupied residences in Nevada. This is an important rule, and other states saw it was effective. They are looking at that part of our Program as having a kick so their programs would also be successful. The Mediator's Statement helps determine whether a loan modification was reached and whether an agreement to relinquish the home was reached. In some cases, the home will not be saved, and that information is included in the Statement.

Mediators serve at the pleasure of the Nevada Supreme Court. They are independent. The Program is a community service tool. Mediators are in charge of the process. However, the parties are in charge of the outcome. The mediators stress the process over agreement. They assist the parties in finding and analyzing options and report outcomes to the Program.

We developed a training program, and in three months, we had trained mediators. Over time, we solicited other states and came up with a training model that is used throughout the State with other foreclosure mediation programs. Our training program is outlined in [Exhibit G](#), page 9. We independently observe mediators to keep abreast of what is happening and to refine our Program. Our training partners are shown on page 9.

The Program is cost-effective. No tax dollars go to support this Program. Other states were surprised this is how our Program is funded. The Program is quick and efficient, [Exhibit G](#), page 10.

The first-year outcomes, fiscal year (FY) 2010, were surprising and are shown on page 11 of [Exhibit G](#). Fifteen percent of mediations completed resulted in homeowners vacating their home, page 11. However, these were graceful exits. The homeowners knew when they were leaving their homes. They negotiated cash for keys or short sales. These are good outcomes when you consider outcomes of other states. When we started our Program, there were between 12 and 15 other states with mediation foreclosure programs. There are now 26 states with a program. These programs have been embraced by the United States government.

The FY 2011 first-quarter outcome statistics indicate an acceptable percentage rate of homeowners who remain in their home, [Exhibit G](#), page 12. The number of agreements to vacate the home increased. More homeowners are upside down in their homes because of the economy and home values in Nevada, and they are deciding to leave their homes, page 12.

We discovered a gap in the Program. The public was not educated. Homeowners were unprepared because they did not know what type of mortgage they had. They were not aware of the foreclosure process. The Program implemented a grant program, [Exhibit G](#), page 13. We earmarked \$300,000 to help educate the community. The grants awarded are shown on page 13. The outreach video is geared to the rural areas where homeowners cannot readily get to a courthouse.

The results of a customer survey are shown on page 14 of [Exhibit G](#). Throughout this process, the courts held public hearings in anticipation of changing the rules to improve the Program, [Exhibit G](#), page 15. The issues raised include a lack of resolution at the table, lenders' failure to provide proper

documentation, too few options offered by the lenders, lack of lender participation and lack of education of homeowners. The Program needs to be accessible electronically, page 15. The outcomes of those public hearings are shown on page 15 of [Exhibit G](#). Our latest rules are shown on page 31 of [Exhibit G](#) as published on February 16. They authorize the creation of an official advisory board for the Program, which will get stakeholders' input to help improve the Program.

We were invited by the Vice President of the United States, Joe Biden, to participate in the Middle Class Task Force meeting in November 2010, [Exhibit G](#), page 16. We have done presentations before key groups in Nevada and across the Country, page 16.

We have been contacted by 17 of the 26 states that have some form of foreclosure mediation, [Exhibit G](#), page 17. Our Program is 100 percent electronic. Our focus this year will be to create detailed statistical reports and a document management system. We are looking to develop e-filing and e-payment, which is critical to our Program, a stakeholder web portal and an advisory board.

CHAIR WIENER:

Please explain how the fees work and your revenue source.

MS. SWEET:

The Program is largely funded from notice of default filing fees the lender must pay when they file a notice of default on any property—residential or commercial. The filing fee is \$200. Approximately \$50 of that funds the Program, and \$150 goes to the State General Fund.

SENATOR COPENING:

Please explain how we arrive at mediation.

MS. CAMPBELL:

A homeowner receives a notice of default. An election form is included in that packet. The homeowner will then elect mediation through that form. The original form comes to our office, and a copy is sent to the trustee. When the Program was created, the form and fees went to the lender. We determined the fees and elections were not coming to the Program. Until December 2010, we received elections where the lender had received the funds in 2009 with the

original election. It was not passed on to the Program. We adapted the rules to say the original would come to the Program.

SENATOR COPENING:

Have you received calls from homeowners who have not defaulted but cannot get their bank to work them? Have they asked to enter the Program? If so, is there a rule that there must be a notice of default before mediation takes place?

MS. CAMPBELL:

Yes, we receive those calls daily. There is a rule that a homeowner must receive a notice of default before they are eligible for the Program.

SENATOR COPENING:

How do you find the mediators, and what qualifications are required?

MS. CAMPBELL:

The qualifications are outlined in the rules, [Exhibit G](#), pages 35 and 36. We have a training program. They must be an attorney, settlement conference judge or have a background in real estate or the mortgage industry. They are not automatically appointed as a mediator by going through the training program. After going through the training program, we assess them and make a recommendation to the court for their appointment.

CHAIR WIENER:

Are all the mediators equally busy?

MS. CAMPBELL:

We are in the process of working out the scheduling. We have trained mediators as part of our mediator pool. In the beginning, everyone was busy. Right now, we are addressing how to better manage the caseload.

SENATOR KIHUEN:

You have a high percentage of houses that have been saved. Do you have a breakdown between the primary residences and nonprimary residences?

MS. CAMPBELL:

It is difficult for our county recorders to break those down. We want to see how we can better refine those statistics so we can equate them to our successes.

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SENATOR KIHUEN:

I was interested in knowing how many of those houses were inhabited by the homeowner and how many were purchased by investors. Do you give preference to those who actually live in the home?

MS. CAMPBELL:

The Program is only applicable to owner-occupied housing.

CHAIR WIENER:

In my district, approximately 10 percent of the people have received notices of default.

The hearing is open to public comment.

There being nothing further to come before the Committee, we are adjourned at 8:48 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 22, 2011

Time of Meeting: 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 6	C	Linda Eissmann	Work Session Document
S.B. 24	D	Linda Eissmann	Work Session Document
S.B. 26	E	Linda Eissmann	Work Session Document
S.B. 57	F	Linda Eissmann	Work Session Document
	G	Verise V. Campbell	Foreclosure Mediation Program