

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 6, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:03 a.m. on Wednesday, April 6, 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:

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Peter I. Breen, Senior District Judge
Jackie Glass, District Judge, Department 5, Eighth Judicial District
John Tatro, Justice and Municipal Judge, Justice Court II, Carson City; President, Nevada Judges of Limited Jurisdiction
William O. Voy, District Judge, Department A, Eighth Judicial District
Christy Craig, Office of the Public Defender, Clark County
Robert Hadfield, Douglas County; Lyon County; Storey County; Carson City
Alex Ortiz, Department of Finance, Clark County

Senate Committee on Judiciary
April 6, 2011
Page 2

Kevin Schiller, Director, Washoe County Social Services
Carey Stewart, Director, Department of Juvenile Services, Washoe County;
Nevada Association of Juvenile Justice Administrators
Bart Mangino, Legislative Representative, Community and Government
Relations, Clark County School District
Kristin Erickson, Nevada District Attorneys Association
Diane J. Comeaux, Administrator, Division of Child and Family Services,
Department of Health and Human Services
Frances Doherty, District Judge, Department 12, Second Judicial District
John B. Simms, Chief Juvenile Probation Officer, Juvenile Probation
Department, Carson City
Leonard Nevin, Nevada State Law Enforcement Officers' Association; Nevada
Association of Public Safety Officers
Wes Henderson, Deputy Director, Nevada Association of Counties
Fritz Reese, Director, Juvenile Justice Services, Clark County; Nevada
Association of Juvenile Justice Administrators

CHAIR WIENER:

I will open the hearing on Senate Bill 469.

[SENATE BILL 469](#): Revises provisions relating to programs for the treatment of
mental illness or mental retardation. (BDR 14-1201)

HAROLD COOK, PH.D. (Administrator, Division of Mental Health and
Developmental Services, Department of Health and Human Services):
I will read from my written testimony ([Exhibit C](#)).

CHAIR WIENER:

What impact will this recommendation have on services? You mentioned the
Division would bill counties for some, but not all, of the services.

DR. COOK:

Nevada has three mental health courts. The counties would be billed for
approximately \$7 million for services.

CHAIR WIENER:

What impact would this have on services to those in current programs?

DR. COOK:

If the counties cannot pay, approximately 240 to 250 individuals would no longer receive residence and support and coordination of specific services designated for the mental health courts—approximately 150 in Reno, 70 to 75 in Clark County and the remainder in Carson City.

CHAIR WIENER:

What would happen to those people?

DR. COOK:

That would depend on whether the court system continues the programs without this support. We would continue to serve these individuals if they would voluntarily participate in mental health services. They would continue to receive medication and other services for which they are eligible. The coordination with the district courts would cease.

PETER I. BREEN (Senior District Judge):

With Senior District Judge Archie Blake, we preside over most of the specialty courts in northwestern Nevada—drug courts, mental health courts, felony DUI courts, veterans' courts. John Tatro, Justice and Municipal Court Judge, presides over the Carson City mental health court.

I oppose Senate Bill 469. When we started our mental health court in 1999, we were not given any money. With community effort and volunteers, we started a mental health court in the Second Judicial District with 20 to 30 members. We proved the worth of this type of court. We came to the Legislature in 2001 and were able to get substantial support from the State government.

This court was started to save money. Today, the State government is seeking to eliminate support for this program to save money. Everyone from State government who has testified has said the mental health courts are good and have saved money. This line in the sand is not the way to look at this particular program.

Make no mistake about it, we are adrift in a sea of uncertainty. I have heard many ideas of how to try to implement this, including combining mental health court with other courts, which is not a good idea. When we appeared before the Senate Finance Committee and Assembly Ways and Means Committee, we did not have this statistic. I say this for the benefit of the rural Legislators. In the

last ten years, Senior District Judge Blake and I have transferred 212 people from the rural courts into our specialty courts in the Second Judicial District. Approximately 70 of those people are mentally ill and in our mental health court. It was an easy transition because they were supported by the State.

If the Second Judicial District has a mental health court when this is all over and the obligation is transferred to Washoe County, it will be difficult, maybe impossible. The funding and availability of resources for the rural counties will not be there. I guess these people will be on the streets in Elko, White Pine County, Humboldt County, Pershing County and Mineral County, to name a few of the counties that have sent their people to our mental health court.

The mental health court has eased the burden of prison costs for the State. In the last two or three years, 204 people in Washoe County did not take advantage of the services of our mental health court. They stayed in the criminal justice system with a combined total of 331 years in prison, which made up their minimum sentences. They served in the State penitentiary. Where is recognition of the State's benefit from our mental health courts?

This bill proposes shifting costs to the local government, which is strapped for money. I do not see how the Second Judicial District Court's budget can absorb a \$1.2 million cut from the State's share of these benefits and services to its mentally ill clients. It is an unjust shift and puts the cost on the backs of people who cannot support it. We would have a diluted and less strong mental health court. I hope you come to a better, more reasonable and evidence-based approach regarding who should pay for this. Nobody disagrees this is a great benefit and economical to the people. It is just that someone else has to pay for it.

JACKIE GLASS (District Judge, Department 5, Eighth Judicial District):

I supervise the specialty courts in the Eighth Judicial District. I oppose this bill, and I echo everything Senior District Judge Breen said. We have 100 people in our mental health court, many of whom will be homeless on July 1 if this program no longer exists. Many of these people's families have cut ties with them. Our program has been successful, and people are in our program because we have been able to provide them with housing. We are able to connect them with their medications and provide the counseling and wraparound services and supervision they need. If they are not in our program, they will most likely be in our jails, prisons, emergency rooms and out on the street unsupervised and

committing more crimes. We know this program works. We know it significantly reduces the number of arrests and crimes committed ([Exhibit D](#)). If 144 mental health court people are diverted from an average three-year prison sentence, we would save 432 years of prison time. From 2003 to 2010, we have graduated 6,144 participants in all our specialty courts, [Exhibit D](#), page 2. These diversion and treatment programs keep these people out of our prisons and jails.

This is also a public safety issue as well as a monetary issue. These people commit crimes because of their mental illness. They break into people's homes, steal cars and identities and get into altercations. You cannot put a cost on that to the people impacted in our respective jurisdictions if these people do not receive the treatment they need.

We started these programs to stop the revolving door of these people continually coming through the criminal justice system. They have many contacts with the system in order to be in our programs. By intervening and providing these wraparound services, they stop committing crimes and getting arrested. That is an outstanding part of this program. In addition to connecting them with the services they must have to be productive individuals, we provide them with housing. We do not want to house them forever. Our goal is to reunite them with their families once they are on their appropriate medication and are stabilized. We help them obtain jobs in the community and become productive so they are not a burden to the State in the future.

I urge this Committee and the Legislature to find a way to continue funding this program. Every time I do mental health court, I walk out of that courtroom and say, "This is the best program we run in this court system." You actually see the results with the population we work with. It is an amazing transformation. If the State does not pay for this and the counties cannot pay for it, the program will no longer exist in Clark County.

JOHN TATRO (Justice and Municipal Judge, Justice Court II, Carson City; President, Nevada Judges of Limited Jurisdiction):

I have been a judge for over 16 years. Mental health court is the one thing I do where I feel like I have made a difference. The team makes a difference in the lives and families of our clients. We started mental health court in Carson City in 2005. I went to Senior District Judge Breen's court and learned from him. I attended the National Judicial College at the University of Nevada, Reno, and took classes on co-occurring disorders and how to conduct mental health court.

I serve in Carson City as a Master for the District Court judges, and that is how I conduct mental health court. I see felons from our district court and misdemeanants from the justice and municipal courts. We have clients in our mental health court in Carson City from Douglas County and Lyon County because of the State funding, and I graduated one from Washoe County two days ago. A broad spectrum of people comes in. If you eliminate the funding and Carson City has to finance this program, it would be hard for Carson City to take care of the people from the adjacent counties. Approximately 40 people are in the program, and approximately 100 have graduated since 2005.

I invite all of you to visit any Monday at 9 a.m. to see what we do and the effect it has. If you visit any of the jails, you can see someone suffering from a mental illness. That person is usually in a cage or cell near booking where he or she is under observation 100 percent of the time. I go into the jail on weekends to pick up police reports, and I always know when a mentally ill person is in there. He or she is screaming and yelling and bashing his or her head against the wall. The jailers become oblivious and callous to it. That is the way these people live their lives until they come to mental health court. We have a psychologist on our team who arranges for medication and gets them calmed down and stabilized. Then they start coming to court. We get them out of jail and into housing. They come to court every week. That is the key because they see the probation officer. There is alternative sentencing. Everyone is there—the counselors are there from Carson City Mental Health Regional Center, the Division of Parole and Probation, the District Attorney and the Public Defender. Everyone works together to help the client. Everything else is adversarial, but in this court, we are all there to help. We make a difference.

If the funding is shifted to the counties, I can guarantee our court will stop in Carson City. We cannot afford to maintain this court. We may be able to do it with perhaps five people in an abbreviated fashion.

SENIOR DISTRICT JUDGE BREEN:

This specialty court movement was brought here by former District Judge Jack Lehman from the Eighth Judicial District a long time ago. It was correctly touted as the best thing the American judiciary has done in the last half of the twentieth century and first part of the twenty-first century. It was American ingenuity and innovation at its best. Now we are here 20 years later. Saving

money was the reason it was sustained, and here we are cutting it off, for what?

SENATOR GUSTAVSON:

Thanks to Senator Sheila Leslie, I had the opportunity to visit Senior District Judge Breen's mental health court. I was impressed with the way he handled the program. I would hate to see this program go by the wayside. I know money is very tight, but if there is a way, I would like to see this program saved.

WILLIAM O. VOY (District Judge, Department A, Eighth Judicial District):

I am concerned about the mental health funding issues. When the framers of the Nevada Constitution dealt with the issue of responsibility for mentally ill persons, the State was responsible. They called it institutions for the insane. Back then, that is all they had. Modern psychiatry did not exist, nor did the mental health practices we see today.

CHRISTY CRAIG (Office of the Public Defender, Clark County):

If mental health court did not exist, many people with mental illness and criminal sentences hanging over their heads would no longer get services. By services, I mean medication. If they do not have medication, they become incompetent again and end up in our emergency rooms. From there, they are generally transported to Southern Nevada Adult Mental Health Services for treatment. That costs the State money while they are there. They usually end up back in the jail. If they are still not competent, they are sent to Lake's Crossing Center. Lake's Crossing Center costs approximately \$500 a day for an inmate. The stays average approximately six weeks, but many stay longer, particularly for the mentally ill who end up in mental health court.

I am thinking of one young man in mental health court who has cost the State approximately \$40,000 for his stay at Lake's Crossing Center to become competent. He spent some time at Southern Nevada Adult Mental Health Services. If he was not in mental health court, he would continue that loop. He would not be successful on probation without the assistance of the people in mental health court. He would likely fail probation and end up in prison and cost Nevada money. Prisoners who suffer from mental illness cost more than prisoners who do not. My understanding is it costs roughly \$88 a day for a prisoner inside the prison system. This young man, who has already cost the State a significant amount of money just to get him competent, has spent

approximately the last two years in mental health court. During that time, he has not been in jail, at Lake's Crossing Center for \$500-plus a day or in prison. You can see how much it costs for someone to become competent at Lake's Crossing Center in a short period of time. It is almost the amount it takes to fund mental health court. It is a significant amount of money.

At sentencing, I try to convince a judge of the appropriate sentence to fit the crime and protect the community. If I do not have mental health court in my arsenal to make the judge feel comfortable about someone with a mental illness, we are likely to see judges default to prison. Without the support of a mental health court program, these people are not likely to be successful on probation because it is so difficult to remain competent traversing through the mental health system.

The State of Nevada can pay the money up front for mental health court or pay for stays at Lake's Crossing Center and a higher census of prisoners with mental illness who cannot be in the community. We do not have alternatives. Please do not pass S.B. 469 and pass the costs on to the counties.

ROBERT HADFIELD (Douglas County; Lyon County; Storey County; Carson City):
I support what the judges have said. From a rural perspective, these judges have collaborated and come up with a system where counties without the caseload to justify the expenditure at the local level could have access to these services. They have come up with a program that works well and saves the State money in the long run.

You need to understand while you are talking just one bill here for \$7 million, the total transfer proposed is in the neighborhood of \$200 million to local governments. You will end up with none of these services or higher tax rates. We cannot absorb all the changes proposed to be shifted to county governments statewide. It is a State responsibility. It provides a standard way of dealing with people throughout the State. That cannot happen if you put it onto the local governments.

When you pick up the newspaper, you read the tax rates have destroyed local governments' revenue. In the past 20 years, people in this building have wanted the State to get into the property tax business and get local government out. I venture to say you are lucky you did not do that or you would be in worse shape today than you are because property taxes continue to fall. When the

abatements run out—and they will run out in Douglas County, Lyon County, Carson City—the revenue will drop even further.

Please consider this as a State responsibility where everyone benefits, and there are savings in the long run.

ALEX ORTIZ (Department of Finance, Clark County):

I concur with the judges' comments and Mr. Hadfield's comments. This is an unfunded mandate we cannot take on. We do not know what would happen if these costs are shifted to the counties because we do not have the capacity to take this on. We urge you not to pass this bill.

KEVIN SCHILLER (Director, Washoe County Social Services):

Social Services serves primarily statutorily mandated indigents, and indigents are the main beneficiaries of the mental health courts. Washoe County is anticipating a \$27 million impact in passdowns. We can appreciate the need to do business differently. In Washoe County, we expend \$22 million on indigents. The impact of this mental health court passdown would be more than \$1 million because that becomes compounded when combined with the other services for indigents that are also being reduced and/or passed down. We have made significant progress in transitional housing programs and collaborating with community providers. The only way to meet the needs of this population is through intensive collaborative case management. Mental health court is a prime example of that. I urge the Committee to try to prevent this from occurring. The ultimate impacts will be higher than expected because of the compounding effect.

CHAIR WIENER:

In light of what is going on and the significant policy considerations before us, it is important we bring this measure to our Committee to hear this piece of the decision making we must do in the next half of this Session. Though we have heard the issue, we are limited in the actions we can take because this bill belongs in Senate Finance. We need to rerefer the bill.

SENATOR GUSTAVSON:

Would that be rerefer to Finance with or without a recommendation?

BRADLEY A. WILKINSON (Counsel):

It could be referred with or without a recommendation.

Senate Committee on Judiciary
April 6, 2011
Page 10

SENATOR COPENING:

Would you entertain a motion for a recommendation?

CHAIR WIENER:

When we refer a bill, can we attach more language to the motion with or without recommendation as it goes forward?

MR. WILKINSON:

There is rerefer or do pass and rerefer.

CHAIR WIENER:

Or amend and do pass? The motion and the discussion take place now, and we establish record now. The recommendation itself or the action we take will be an action. If there is discussion the Committee would like to get on the record, now is the time.

SENATOR COPENING:

For the record, I am opposed to this bill. I am opposed to transferring these services and taking the risk they will not be available to people in need of mental health care.

SENATOR GUSTAVSON:

For the record, I am opposed to this bill. These people need the help and in the long run, the programs save the State money. It is an unfunded mandate to the counties, which I do not agree with. We need to find a way to work this out. I recommend a rerefer with strong opposition.

CHAIR WIENER:

For the record, as a member of the Committee and not as Chair, a strong case was presented to us for the fiscal responsibility of this program. The impact it would have, not just in urban areas but also rural centers, will be difficult to deal with very quickly and for a long period of time. This program is cost-effective and pays for itself in dollars and cents. But it also has a piece of humanity we often do not have the opportunity to execute in such an extraordinary way. If we could indefinitely postpone this bill, I would make that motion. As a chair, I cannot make motions. We should keep this program whole. Mr. Hadfield commented on the need to establish statewide standards and practices to deal with populations. Everyone who came to the table represented pieces of the State—the State as a whole, the urban areas, the rural areas and

voices of people who do this every day and know much more about it than we do. We only get snapshots once in a while. I am taking my stand not as Chair but as a member of this Committee.

SENATOR BREEDEN:

I oppose this measure. I believe in doing what is right and being humane. We need to provide front-end help so individuals with these types of illnesses may become productive citizens.

SENATOR COPENING MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 469 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE).

* * * * *

CHAIR WIENER:

I will open the hearing on S.B. 277.

SENATE BILL 277: Revises provisions governing certain acts by juveniles relating to the possession, transmission and distribution of certain sexual images. (BDR 15-10)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

I urge your support for Senate Bill 277. Often, when I present legislation before committees, I like to give some history. For many sessions, I have worked on technological crimes or cybercrimes. Almost every session, I have brought at least one measure in this arena. I serve on an advisory committee created by the Legislature, the Technological Crime Advisory Board. The Attorney General is the Chair, and I am the Vice Chair. I am the longest-serving member on the committee. Of all the meetings I go to, this is one I do not look forward to every quarter because of the things I learn are going on.

I introduced S.B. No. 163 of the 75th Session addressing cybercrime and cyberbullying and did a lot of work with education in the preventative arena as well as working with teachers and staff to create more awareness. I became

aware of the issue of transmission of sexual images, often referred to as sexting, by juveniles. When I started working on this measure, I realized how substantial this is. In researching, one national study states 20 percent of teenagers in our Country have engaged in sexting. Another study states approximately 25 percent of 14- to 17-year-olds have engaged in sexting. If that many young people are admitting to it, that many more may be engaged in that activity and not admitting to it.

I put in a bill draft request for S.B. 277 a long time ago. In the interim, I put together a meeting that was videoconferenced between Las Vegas and Carson City. We had more than a dozen participants from law enforcement, the Attorney General's Office, the public defender's office, the district attorney's office, the schools, SAFE School representatives, the American Civil Liberties Union of Nevada (ACLU), juvenile justice and the courts. We received many interesting and important ideas and have had communication since then.

There are suggestions from those who work with this on a daily basis. I am happy to entertain what the professionals bring to the table because many have approached me with important pieces we need to consider. I received a letter including some suggestions from the ACLU ([Exhibit E](#)).

I will give you an overview. It was important to have a preamble in this bill. I will read the last two paragraphs of the preamble into the record because this sets up the need for this measure.

WHEREAS, Children often act without fully contemplating the potential grave consequences of their actions, including, without limitation, the serious penalties imposed for violating child pornography laws, the requirement to register as a sex offender for violating such laws, the negative effect on relationships, the loss of educational and employment opportunities, the use of such materials in bullying and cyber-bullying, and the distribution of such materials on the Internet to a worldwide audience; and

WHEREAS, It is important to educate children about the serious consequences of engaging in sexting and to provide an effective and measured response to children who engage in such behavior without imposing penalties on these children which will severely,

negatively and, in many cases, permanently alter these children's lives; now, therefore,

That is what this bill is about, addressing those choices and decisions of children under the age of 18, those spontaneous decisions they make that can have lifelong impacts. If I could pass a law that would require every technology manufacturer and software developer to change the design of the send button and put the word "infinity" or "forever" or "eternity" on it, I would do it. The consequences of pressing that button to trigger transmission can be extraordinarily grave.

We have stringent laws about child pornography and registering as a juvenile sex offender. As a Legislator, when I had the opportunity to work on an issue to prevent something from happening or allow for early intervention, I have engaged in that opportunity. This bill does that. We want to do everything we can to redirect bad thinking and bad choices as early as we can so we encourage young people to think before they act, especially if it is something as devastating as this. We go a little earlier into the process. The first act of sending an image of oneself would be a child in need of supervision. A second act of sending an image of oneself would be a delinquent act, but it would not involve registering as a juvenile sex offender. The bill includes a provision for possessing an image with some affirmative defenses, and sending an image of someone else would be a delinquent act.

Some people want to come to the table regarding the possession piece. I am happy to receive that input because I am probably on the same page. There is some concern about what we suggest in the bill for possession. Another important piece is that we have not taken away prosecutorial discretion in those cases where behavior is out of control. We are trying to get in early to redirect, but certainly the prosecutors still have the discretion based on the facts before them with other alternatives in place.

What is also important in this bill, as I mentioned earlier about S.B. No. 163 of the 75th Session dealing with cyberbullying, this measure includes sexting in the definition of cyberbullying. We will educate children about this throughout their school life, school years up through Grade 12 as we do with cyberbullying. That will be up to the curriculum developers. It is important to teach responsibility in what young people do with technology. We do that with cyberbullying in the schools.

CAREY STEWART (Director, Department of Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators):
Juvenile Justice supports this bill. However, we have recommendations regarding the possession components. This bill allows several things. First, it keeps this type of behavior out of the whole juvenile sex offender realm, where it does not belong. Second, it gives probation departments discretion in handling these offenses so our response can be proportionate to what the child is doing. It provides us the opportunity for educational programs as well as early intervention and prevention so this behavior stops.

Regarding possession, we recommend the Committee consider either eliminating the sanctions for possession or put it under the category of the child in need of supervision.

SENATOR WIENER:

That is the one piece most people have talked to me about; it is great to have that additional conversation. I am open to the needs of the professionals. What is your thought? For example, a new girlfriend gets her hands on the new boyfriend's phone. She sees a provocative picture of his former girlfriend on the phone. The new girlfriend decides to send the picture to 1,000 of her not-so-close friends. That would be 1,000 people who could potentially be in need of supervision. What is your suggestion?

MR. STEWART:

That is our concern. We could have an incident just as you mentioned where potentially 1,000 kids in a school could get this image. Our concern is the mere possession of the image. If those children do not resend that message, to hold them accountable either as the child in need of supervision or the misdemeanor component is probably not where our attention should go at that time. That is why we would like you to consider eliminating that whole possession. This bill adequately addresses the situation of the new girlfriend sending the picture of the old girlfriend because that behavior would be a misdemeanor. It keeps it out of the sex offender realm but allows us to intervene with appropriate resources so that behavior stops.

BART MANGINO (Legislative Representative, Community and Government Relations, Clark County School District):

We support S.B. 277. We are looking at the recommendation in section 1, subsection 3, paragraph (b). We request expanding the reporting opportunities

of a minor to include a school administrator or official because often these infractions occur on a school campus. We would appreciate the opportunity to intervene early as far as the student is concerned.

SENATOR WIENER:

If we entertain the removal of possession altogether, how would you feel about that?

MR. MANGINO:

We would support that because we would be able to handle it in-house also.

SENATOR WIENER:

You would be dealing with the transmission part?

MR. MANGINO:

Correct.

KRISTIN ERICKSON (Nevada District Attorneys Association):

We support this bill.

SENATOR WIENER:

How do you feel about amending out possession?

MS. ERICKSON:

I would like to bring that discussion to the juvenile prosecutors because I practice in adult criminal prosecution. The ideas brought forth do not seem to pose much of a problem. The concerns have all been voiced here today. It is a matter of which direction to go.

MR. SCHILLER:

I support this bill. Over the last year, we have approximately \$1.3 million in counseling contracts in the community, and this issue has come up several times specific to children we are serving both on a service caseload and children in custody. I defer to Mr. Stewart on the amendments.

SENATOR COPENING:

I will close the hearing on S.B. 277.

Senate Committee on Judiciary
April 6, 2011
Page 16

CHAIR WIENER:

I will open the hearing on S.B. 476.

SENATE BILL 476: Makes various changes concerning the juvenile justice system. (BDR 5-1216)

DIANE J. COMEAUX (Administrator, Division of Child and Family Services, Department of Health and Human Services):
I will read from my written testimony ([Exhibit F](#)).

CHAIR WIENER:

Help me understand what you said about the repeal.

MS. COMEAUX:

Section 6 of the bill asks to repeal *Nevada Revised Statute* (NRS) 62B.150, which requires the counties to pay a certain portion of the regional facilities. Those are China Spring Youth Camp and Aurora Pines Girls Facility in Douglas County and Spring Mountain Youth Camp in Las Vegas. The Division recommends this be removed from the bill and this section in the law not be repealed.

FRANCES DOHERTY (District Judge, Department 12, Second Judicial District):

I am the presiding judge over the juvenile court in Washoe County. Regarding S.B. 476, this bill is necessary for purposes of passing the Governor's budget. The Governor's budget, respectfully, is an annihilation of the juvenile justice system as we function because \$12 million is being deducted from the juvenile justice system at the State level for each of the two years of the next biennium, for a total of approximately \$25 million. The budget and what this bill allows the budget to accomplish are the elimination of financial responsibility for the State's position as the placement of last resort for children whose acts are so serious they can no longer be kept in the local regional oversight. The Youth Parole Bureau of the Division of Child and Family Services of the Department of Health and Human Services, which this bill addresses significantly, is the Division that oversees children the court has transferred for serious offenses. The State does this in two ways. The State, at the direction of the court, will commit a child or place a child in the commitment facility—Caliente and Elko—or the State may, because of the child's severe psychiatric impairments, be directed under NRS 62E.520 to place that child in an appropriate psychiatric facility.

The bill, in these various sections, prevents our court from allowing children to receive necessary and appropriate psychiatric care if their level of offense is high and their level of psychiatric mental health dysfunction is high. In juvenile court, our main goal is to keep children as close to their community as possible, not to commit them or detain them unless their condition or behavior merits the same. The children who are committed to the State are the children placed there as a last resort, placed in psychiatric treatment as a last resort. Commitment to youth parole and the detention centers is a last resort. This deduction of funds takes away the court's ability to place children.

This bill, under section 1, tells the counties to pay for youth parole. That is a \$6 million bill statewide. Family court judges in our State indicated at a recent conference in Ely that it is an inappropriate transfer of responsibility. It is a burden and debt the counties cannot assume. It dismantles the structure this Legislature has created to serve our children in our juvenile justice system in an appropriate and least restrictive manner. It will not remain the same system. Our ability to reform, rehabilitate and protect our communities will be disadvantaged if you allow this shift of \$6 million each year of the biennium to the counties.

This bill takes away the ability of the court to place those children who are in the middle of psychiatric breaks, who are identified as schizophrenic children and whose acting out behavior has led them to detention but whose treatment has not yet been available to them. We try to keep those children close, some of them we cannot. Section 3 of the bill regarding NRS 62E.520 deletes the ability of the court to place children in the care of the State for appropriate psychiatric treatment.

The State is also directing the court to send only those children for whom beds exist for placement at the time of commitment or to retain those children in our local facilities. If we were in criminal court in the adult system and one of the district judges sentenced an individual to Nevada State Prison, this is like telling those judges, "You cannot do that. You cannot sentence to Nevada State Prison. You have to wait until we get an empty bed." Recognizing the pressure of bed space, the court has reduced State commitments in the last two years by 50 percent in Washoe County and similarly in every other county in this jurisdiction. We know the pressure of bed placement. We know that is a placement of last resort, and we have not taken advantage. In fact, we have reduced our placements because of those pressures and because we are trying to rehabilitate our children closer to home. We are now being told by State

budget direction that we cannot commit those few children, and we better wait until a bed is available before we make that judicially independent decision. That is not how the adult system works. This is an inappropriate and unfair imposition on the method and manner in which we function in juvenile court.

Safe facilities will be packed with children who would otherwise be more appropriately placed in less restrictive environments because of these other cuts. Juvenile detention centers will back up because of the lack of funding this budget will cause to our system. We are going to have a system that is different in every respect from what we have achieved, which receives national recognition in Clark County, Washoe County and our rurals for the initiatives we have undertaken to appropriately rehabilitate children and keep them in less restrictive placements. But you are pulling the rug out from under us with this bill, which allows this budget reduction to occur.

One of the most significant things is the very innocuous repeal language in section 5 of the bill eliminating the State funding formula for our youth camps. Our youth camps include the China Spring Youth Camp as well as the Spring Mountain Youth Camp. There is a legislatively created formula to fund those camps. That formula is in NRS 62B.150. The bill repeals that entire section, thereby eliminating the responsibility of the State to contribute toward the youth camps.

This bill is directly related to the reduction of \$25 million in the juvenile justice budget that will impact and impair our ability to function. It will impair our ability to reform children, keep our children and communities safe and treat our mental health children in a dignified, respectful and appropriate manner. I ask you to oppose this legislation because it enables a dismantling of our juvenile justice system. Yesterday, the Second Judicial District bench voted unanimously to oppose this bill. The family court judges at the Ely Family Law Conference in March agreed. We will not be able to sustain this in a reasonable manner consistent with human rights, community safety and child reformation.

CHAIR WIENER:

In the 15 years I have been here, you have always come to the table with the best interests of children. Also thank you for your input on S.B. 277.

MR. STEWART:

The Nevada Association of Juvenile Justice Administrators (NAJJA) is opposed to this bill from several aspects. One, it will gut our whole criminal justice system for children. If this bill passes, counties will be assessed the cost of youth parole. The NAJJA feels youth parole is a State function and should be funded by the State. By passing those costs to the individual counties, the counties will have to cut the early intervention and prevention programs that keep kids at the community level. Instead of a system where we try to keep kids out of correctional care, we will fund the system and have case management so we work to have kids in correctional care.

Over the past ten years, through our collaborative partnership with the State, we have reduced the need of correctional beds from 396 to approximately 250. Funding has been part of that collaborative partnership. Because of that early intervention, the State has acknowledged, at the county levels, if we invest up front, we will be able to save at the back end of the system. However, by passing the costs for the youth parole services to the counties, we will have to cut early intervention and prevention programs. We oppose this bill because it will radically change our business.

JOHN B. SIMMS (Chief Juvenile Probation Officer, Juvenile Probation Department, Carson City):

I want to give a smaller jurisdiction's point of view. I echo everything my colleagues say. The crippling of what we have set over the last several years is disheartening. For a jurisdiction our size, these types of pushdowns would reduce staff or services. Those are the same staff or services that have reduced the number of kids committed to correctional care. We are a treatment-based agency. We like to keep kids in our community. We like using China Spring Youth Camp. We like keeping them close to home. We spent a lot of our resources in the partnership with the State to do just that. My fear is by eliminating funding to camps and pushing down costs for youth parole, we will not be able to continue our local program or community-based program that keeps our kids here. We would be more dependent on State correctional care, and this would put us back 10 or 15 years. It scares me to see it shifting away from giving kids the care they need, keeping them close to home and supporting families as well. I ask you to consider that. The smaller the jurisdiction, the harder it would be to absorb costs. For our jurisdiction, it would be approximately \$135,000, based on the formula the State presented to us. That \$135,000 would eliminate services or the staff to help provide those services.

Think about the impact on smaller jurisdictions. We have committed one child to State correctional care in two years. To pay \$135,000 when we have only sent one child to correctional care in two years is an unfair burden.

MR. HADFIELD:

I echo the comments made by the judge, pointing out we have spent many years with collaborative efforts to create a system that works. Now, this bill proposes to undermine two critical areas of that collaboration. I mentioned a cumulative impact of all these cuts is \$200 million. It is \$350 million total for the counties. It undermines the statewide system. Without these resources, it will not be a statewide system. It will be piecemeal. That is not justice for the kids across the State.

LEONARD NEVIN (Nevada State Law Enforcement Officers' Association; Nevada Association of Public Safety Officers):

Nevada youth parole officers are trained like everyone else. They can carry weapons off duty, not on duty. It could be a serious situation when a youth parole officer goes to a home to check on someone, and that person has a gun. He is stuck and cannot do anything about it because he is not armed. I was a police officer for 24 years, and I was taught I could be shot by a 6-year-old just as fast as I can by an 80-year-old. We are putting these people into a bad situation. We should look at the youth parole and probation officers and address this. I would not want to go to a house and have a situation where the person is armed and cannot protect myself because I am not armed.

WES HENDERSON (Deputy Director, Nevada Association of Counties):

We oppose S.B. 476. This is just one piece of the bills being considered to transfer additional burdens to counties. This is an important statewide system and needs to remain a statewide system.

MR. ORTIZ:

I concur with the comments made before me. I defer our position, which is in opposition to this bill, to District Judge Voy and our Director of Juvenile Justice Services in Clark County, Fritz Reese.

DISTRICT JUDGE VOY:

I oppose S.B. 476. Of all the bills I have testified for or against, this is probably one of the worst I have ever seen. Even if the counties had the money and could afford to pay this shift, this is a bad bill. It fundamentally changes the

discretion you have granted to the courts. Remember, juvenile justice is a partnership between the Legislature and the courts. I can only do what you grant me the authority to do by statute. This is a creature of statute.

This drives a wedge between the authority you have given the court in dealing with our youth and taking away the discretion we must exercise on a case-by-case basis. You would be leaving it to the sole discretion and veto power of bureaucrats who are not elected or accountable to the public in Carson City or wherever they may be making decisions about children's lives. I encourage you to look at this bill. When you send it to the money committee, I recommend your Committee make a recommendation to that committee about the substantive nature of the changes proposed in this bill.

I do not understand some of the provisions. For example, section 2, subsection 2 says, "If a delinquent child is 12 years of age or older, the juvenile court shall not commit the child to a private institution." I do not know what that means. What is committing to a private institution? The original provision had a better explanation. By gutting that out, I do not know what that means.

In section 3, the court is supposed to audit the State? I am supposed to determine they have adequate room and have allocated enough resources. That is not my function. I do not understand who sat down and wrote this proposed amendment. I can understand shifting the burden to the counties. I do not understand preventing me from the ability to place a child—even a child I have no other place for because he does not qualify for another regional treatment center paid by Medicaid—under the age of 12 in a mental health institution. Now, I can only force the State to take that child into Desert Willow Treatment Center, which is clinically appropriate. I will only have this much leverage when I am dealing with the State in cases like that. The child languishes in detention, and I finally have to force the State to take the child. This bill removes the leverage I have. What am I supposed to do with these kids who need this help? This bill takes away whatever leverage I had to convince the State to provide the resource needed for that child. This is a bad bill.

FRITZ REESE (Director, Juvenile Justice Services, Clark County; Nevada Association of Juvenile Justice Administrators):
Regarding section 4, subsection 2, we all know the State is challenged regarding graduation rates. To me, that makes no sense. Even though Clark County's percentage is under 75 percent, the need for correctional beds is

above that. More kids are disenfranchised from school in southern Nevada than the quota would allow. What you have demonstrated this morning is the collective statewide approach to juvenile justice. This is not county against county. It is the integrity of our system statewide. I would appreciate your consideration.

CHAIR WIENER:

This is a measure we have the opportunity to review for policy purposes.

I am speaking as a member of this Committee, not as Chair. I have worked with the people in this system since I was first elected in 1996. For the first half of my legislative career, approximately 60 percent of the work I have done has addressed juvenile justice issues. I know some of the issues this collaborative statewide effort of professionals work with regarding juveniles in every capacity. The system works. This is an extraordinary demonstration of how our professionals, in whatever capacity, have pulled together looking out for the best interests of the State when our young people make bad choices, get into trouble and need redirection. We have been recognized nationally for this. It saddens me to experience this type of legislation coming before a Committee. It saddens me that this is even under consideration.

SENATOR BREEDEN:

I have participated as a court appointed special advocate and worked with two young men who had to participate in this program. It has helped shape them, which is wonderful. This program was beneficial and I do not recommend seeing it destroyed.

SENATOR BREEDEN MOVED WITHOUT RECOMMENDATION TO
REREFER S.B. 476 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senate Committee on Judiciary
April 6, 2011
Page 23

CHAIR WIENER:

I will open the hearing for public comment. There being nothing further to come before the Committee, we are adjourned at 9:38 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 469	C	Harold Cook	Written testimony
S.B. 469	D	Jackie Glass	Material Supporting Mental Health Court
S.B. 277	E	ACLU of Nevada	Letter of Support
S.B. 476	F	Diane J. Comeaux	Written testimony