

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

**Seventy-Seventh Session
February 6, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:02 a.m. on Wednesday, February 6, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Kristina Pickering, Chief Justice, Supreme Court of Nevada
James W. Hardesty, Justice, Supreme Court of Nevada

Chairman Frierson:

[Roll called.] We have a couple of presentations today and will begin considering bills tomorrow. We will be discussing two bills tomorrow, Assembly Bill 40 and Assembly Bill 43. I would encourage you to take a look at them and let me know if you have any questions, or you can reach out to the sponsors of the bills so we can have a productive discussion on those two bills tomorrow. The first item on our agenda today is a briefing for the Committee on the basics of criminal procedure and court system overview. That will be provided to us by Mr. Ben Graham, who is well regarded here. I learned the ropes from Mr. Graham in 2007, and we are fortunate to have him provide us the background and a perspective on the criminal justice system.

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:

I would like to take the liberty to give you a little of my history. I grew up on a farm in Oregon; that is still where a lot of my heart is. I attended Oregon State University for a year and then an opportunity came along and I ended up in Washington, D.C. going to school at American University. My senior senator from Oregon, who was another maverick, allowed me to trade chickens for some sheep to go to the American University, where I graduated a long time ago with a degree in Government and Public Administration. I went back to Oregon to go to law school at Willamette University in Salem where I practiced law for a number of years. Then a friend that I went to law school with talked me into coming to Nevada. I was with the Clark County District Attorney's Office for over 30 years. I taught at the university and community college for 29 years. I have had the opportunity to be before this body for quite a while representing the Nevada District Attorneys' Association and then recently for

the Administrative Office of the Courts. I have John McCormick with me who is my lifeline in regards to computers. I would like to emphasize that I will be talking about background information. It is not necessarily the opinion of the court. This is mainly for your understanding. The Judiciary Committee is probably the busiest one in the building.

The first document that I would like to review is titled "Criminal Law Jurisdiction, Procedure, and the Courts" ([Exhibit C](#)). You are going to hear about laws that affect people. The first item I want to cover is what an arrest is. Fortunately, most of us may never have to know what an arrest is. It is probably the most dramatic seizure that we find in the *Constitution*. Officially, it is basically described as a person who is taken into custody for a criminal violation. If convicted, you are subject to punishment. An arrest may be made without a warrant. You may be arrested without a warrant if you committed what appears to be a crime in the presence of the person arresting you. We will also talk about the magic words "probable cause." You can be arrested on probable cause without a warrant for a felony. It should not be a long discussion. Basically, if you are arrested or searched without a warrant, it is probably presumed unreasonable.

When arrested, you will be sent to court. We have listed four courts ([Exhibit C](#)), the first being municipal court. Municipal court has jurisdiction within the boundaries of the city or town. The municipal court has jurisdiction over misdemeanors. Most of us who would be given a traffic citation are going to end up with a misdemeanor. If it happens in the city, we will probably go before a judge in a municipal court. In a few of the larger jurisdictions, there are law judges, but most of the municipal judges are not law judges.

Next we have townships, which include more area than just a city. In townships we have justice courts. Justice courts sound a lot like municipal courts; however, they can do a few more things. In a justice court, they have jurisdiction over misdemeanors committed within the township. They also have some function with regard to preliminary hearings for felonies and gross misdemeanors. There are several justice courts, and you will be hearing measures to consolidate some justice courts, allowing the city to reduce municipal court numbers. Justice courts and municipal courts are instruments of statute. You will not find these courts in the *Constitution* as a constitutional court. They are creatures of statute and are referred to as courts of limited jurisdiction. Early on, when dealing with a domestic relations dispute, I urged amending the courts of limited jurisdiction to courts of competent jurisdiction. Judge Kelly from North Las Vegas asked me what a court of competent jurisdiction was. I was told the change has got to be in the statute.

District courts are many and varied; they are throughout the State of Nevada. There is a handful in the Second Judicial District in Washoe County. In the rural areas, there are two or three counties put together with one district court judge. In Clark County, there are district court judges who, from a criminal standpoint, do the felony trials and sentencing. There are a couple of magic words you need to listen for. If you hear "jail," you are going to a municipal court or a justice court. If you hear "prison," you are going to district court as a felony. A felony is punishable by more than a year in prison, and more than a \$1,000 fine.

There is also the Supreme Court. You are going to hear an overview of the Supreme Court and judicial system after we are through here. There are seven justices who sit on panels. You are going to hear all about that. There is a measure which some of you have supported and you will take another look at. It is for the creation of an appellate court, which is Senate Joint Resolution No. 14 of the 76th Session.

All decisions from district court are appealable to the Supreme Court. Whether it is a driver's license revocation or a death penalty case, it can end up in the Supreme Court. You can imagine what kind of a caseload they have.

Chairman Frierson:

Before we move on, will you talk about qualifications? I am not sure if everyone is aware of whether or not a law degree is required for each level of the court system.

Ben Graham:

The majority of the limited jurisdiction courts do not require law degrees. That is always a big debate. The justice court and the municipal court are the people's courts. In some of the larger jurisdictions you get the preliminary hearings for murders and other serious offenses. Over the years there has been a feeling that some of these courts should be courts of law judges. That is a decision that is made here in this body.

Next we will discuss the misdemeanor, which is listed under the classifications of crimes. Almost anywhere else in the world you will hear the word misdemeanor and it will be defined as one day to one year in jail. Remember: It is not what you get sentenced to, it is what you could be sentenced to, which determines the classification of your crime. Nevada has a misdemeanor which is one day to six months in jail. There is a serious debate as to whether or not it is mandatory that you have a court appointed attorney if it is less than six months. Generally speaking, there was a Supreme Court decision which said no, you are not necessarily entitled to a court appointed attorney for less than

six months. In practice, if a prosecutor anticipates that he or she is going to ask for jail time, a court appointed attorney will represent misdemeanor defendants. In many of the larger jurisdictions, it is a common practice that public defenders will be available for misdemeanor trials.

What about the other six months before you are charged with a felony? Nevada has created a gross misdemeanor. Do not be confused; it is not six months to a year, it is one day to one year. There is an overlap there. With a gross misdemeanor there is a potential for more than six months. You are entitled to a court appointed attorney and you are likewise entitled to a preliminary hearing. If probable cause is found, you are bound over to a district court for a potential jury trial. The caveat here for gross misdemeanors, and I am sure that some of the prosecutors and some of the cops know, is that I have never seen an initial charge under a gross misdemeanor. There may be a few, but generally a gross misdemeanor is used as a tool in plea bargaining to reduce the sentence time.

The big one is felonies. That is one year or longer in prison. This can range all the way from a minor category F felony, such as possession of a controlled substance, to a felony punishable by the death penalty. When we are through, we will discuss the categories A through F which were created in 1995. If you have a chance to look at the criminal statutes, you will see various degrees of felonies from A being the most serious, including potential death penalty, to F, which may be a minor drug charge where probation is mandatory. Even if convicted, the defendant may not go to prison. I am sure you have heard that a prison sentence is running between \$18,000 and \$21,000 per year. A day in the county jail is at least \$95. There is a fiscal impact here.

Assemblywoman Dondero Loop:

I noticed you stated A through F, yet on the handout ([Exhibit C](#)) it states felonies are categorized A through E. Will you please explain F?

Ben Graham:

An attorney put this handout together, and a teacher found the error. It should be categories A through E.

Chairman Frierson:

Before we move away from misdemeanors and gross misdemeanors, I noticed the penalty for a misdemeanor is a \$1,000 fine, and for the gross misdemeanor it is a \$2,000 fine. How frequently is the fine actually implemented?

Ben Graham:

A gross misdemeanor is frequently a charge reduced from a fairly serious felony. By the time someone goes through the judicial system and is charged with a

fairly serious felony which will be reduced to a gross misdemeanor, he has no money left. From a practical standpoint, you very rarely see a fine. The misdemeanors are different because they are the bread and butter in financing the majority of the process. The highest fines that you will generally see, which are mandatory, deal with driving under the influence of intoxicating liquor. The average fine is in the \$600 to \$700 range. If you are in Moapa, along Lake Mead, your fine is going to be \$995. This varies, but that is generally where you will have a significant fine that is actually given and potentially collected.

Assemblyman Carrillo:

In regards to the actual fine amounts, if the person does run out of money, why would they not put a \$10,000 fine on a misdemeanor?

Ben Graham:

Historically from a structural standpoint, a penalty which may have a right to an attorney attached, and the whole scenario of the costs and expenses, you will see that some of these penalties can be a \$50,000 to \$100,000 fine.

Assemblyman Carrillo:

Many times the money is never there and these fines, even for \$1,000, are something they would never be able to pay. Obviously there is restitution or community service. My wife, for instance, will say those guys should be working on the side of the road cleaning up trash to pay off their debt. As we know, there are certain rights that come into play. As to the monetary fine, whatever it may be, where does the money go? Does it pay for court costs, or what is it offsetting?

John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts:

For example a \$1,000 fine, depending on what it was cited under, would go to either the county or the state. The fine comes after administrative assessments, which are what pays for the court costs and also funds some executive agency activities. There is a hierarchy of administrative assessments, and the fine would come next in terms of collection. That fine would go to the county if it was charged under county code, the municipality if under municipal code, or the state if charged under *Nevada Revised Statutes*. There is also the option that the defendant can request the court convert the fine to community service. Community service can be imposed as an additional penalty as well. Also, there is a statutory provision that allows the fine to be served in jail at a rate of \$75 per day.

Ben Graham:

Over the years we have seen various measures to require community service. It is an interesting debate because the law enforcement people sometimes say it is more onerous to try to get someone to clean up a park or perform other community service.

Regarding felonies, you go to district court and you are entitled to a jury trial. If you are convicted, the judge will order a presentence investigation report. You can potentially be sentenced to some type of confinement or other penalty. All of these are appealable to the Supreme Court of Nevada.

John McCormick mentioned briefly the administrative assessments. That is something we are going to see frequently. Oftentimes people who get hit with administrative assessments are the ones who can least afford it. A \$25 traffic ticket can end up costing \$82 by the time the administrative assessments get tacked on. That is a discussion for another time.

Moving on to habitual criminals, this is the "three strikes you are out" concept. There is a criticism you hear in California where someone got sentenced to life in prison for stealing a pizza. Nevada has habitual criminal statutes but they are not applied to lesser offenses such as a minor theft, even though it might be a higher classified theft. The habitual criminal sentence is available and can keep people in prison for a super violation.

I mentioned preliminary hearings or preliminary examinations earlier. If someone is arrested on a felony, he will have an attorney or have one appointed to him. If he stays in jail, a preliminary hearing is set fairly soon; if not, it may take several months before a preliminary hearing occurs. Keep in mind, a preliminary hearing is just that. The proof is different, and all that has to be shown is that a crime has been committed and that this person probably committed it. No explanation, no defense. This is called probable cause. In all the study of judicial procedure, I think probable cause is probably the most important because it hinges on whether you can be arrested, it hinges on whether you can answer in district court, and it hinges on whether you can get searches, fact, and information to establish that a crime has been committed and that this person probably committed it. With that, the justice court holds that person to answer for the felony in district court.

You have all heard about grand juries and indictments. We hear it more at the federal level. There are grand juries in Washoe and Clark Counties. Any county can have them. The grand jury is a constitutionally provided procedure where a group of people, normally 17, meet in secret. They do not talk about what is going on. The state prosecutor presents evidence to this body to establish

probable cause—facts and information sufficient to lead a reasonable person to believe that a crime has been committed.

Assemblywoman Spiegel:

When is a preliminary examination used versus a grand jury?

Ben Graham:

A grand jury would be used when the witnesses are young children who may have been abused. The state can make a decision as to whether the child can testify or not. The state will make sure the child can articulate and truthfully tell what happened. A preliminary hearing is public. There is a defense attorney, the state attorney, the judge, the court reporter, the audience, and the defendant. Innocent until proven guilty; but what decision would you make if you had a choice to take that before a grand jury to get the defendant to district court? He will have a full trial in district court regardless. Would you take it to a grand jury or would you take it to a preliminary examination? You would take it to the grand jury because you would get the child and his testimony up to district court.

Another time they may use it is when dealing with undercover officers. Oftentimes there will be a sting operation with stolen cars, narcotics, et cetera, which is an ongoing investigation. The state will bring the witnesses in several times and get indictments. Then all the indictments will come down and they will send people out and arrest the defendants. I participated in one undercover operation where the defendants were bringing things into a police-set-up shop where we would buy stolen property. People would bring it all in and it was all on video. How are you going to arrest 65 people? We had indictments on all of them. We then tell them that "Mr. Big" is coming in tomorrow and we are having a party at the warehouse. Believe it or not, those people with indictments would show up dressed to the nines with their girlfriends. They thought they were coming to a party to meet "Mr. Big." They would go through one door, out the other door into the Black Maria, and off to jail.

Sometimes a defendant or his attorney will ask for delay after delay. We give them a notice that we will take the case to the grand jury. The defendant will then get an indictment and end up in district court. Getting in district court is where it is really at. The grand jury and the preliminary hearing are just to get the process going.

Chairman Frierson:

Regarding the decision to go to grand jury, could you address the admissibility of the testimony provided, and can I anticipate that issue coming up later?

Ben Graham:

Sometimes you want to go to a grand jury because of the secrecy aspect. Sometimes you may have a victim or a witness that you may lose as a prosecutor. Sometimes you can take it to a preliminary hearing where the defense counsel is there. The person not only testifies on behalf of the state, but is subject to a full cross-examination. All that testimony is recorded and transcripts are prepared. Occasionally, if a victim becomes unavailable, that preserved testimony from a preliminary hearing can be used in district court. If that same scenario were in a grand jury, it probably would not be used because it would not be subject to the right of cross-examination.

Chairman Frierson:

Would you also address the notion of waiving a preliminary hearing, when and why that is done?

Ben Graham:

A defendant and his attorney go to the preliminary hearing. The defense attorney will weigh a case with his client. When you go to a preliminary hearing, the defense attorney can eyeball the witness and see if there are some weaknesses in the prosecutor's case. What has happened in the last few years is the issue of identity. Sometimes the state may have a questionable issue on identity, and ask the victim to identify the defendant at the preliminary examination. There have been times where the defendant is not required to show up. That is another issue to be addressed. Also, the defendant can waive the preliminary examination. The judge will tell the defendant he is entitled to it, and does he want to waive it. If he does, that means the defendant will go right into the district court. He cannot come back for a preliminary examination. Frequently, defendants waive in a plea-bargain situation.

Remember: In this state, if you are charged with going through a stop sign, or committing murder, you are charged with a crime and the evidence of proof is beyond a reasonable doubt.

District court also has a family court, a juvenile court, and a domestic relations court in the larger jurisdictions. Some of the smaller jurisdictions have them combined under one particular judge. The attachments included in the handout ([Exhibit C](#)) are the Classification of Crimes, Procedure Following Preliminary Examination, Degree of Evidence to Warrant Indictment, Finding and Return of Presentation or Indictment, Habitual Criminal Statute, and Reasonable Doubt Instruction. Also, when a jury brings in a not guilty verdict, that does not necessarily mean the defendant did not do it, it meant that the state did not sustain the burden of proof beyond a reasonable doubt.

Chairman Frierson:

At this time I would like to invite Justice Hardesty and Chief Justice Pickering to come forward.

Ben Graham:

I would like to introduce to you Chief Justice Kristina Pickering. Kris Pickering went to school at Yale University, Georgetown University, and received a law degree at the University of California, Davis. Do not be fooled; she is a graduate from Reno High School. She has practiced significant litigation, both in the north and south. She and her husband have a small ranch near Belmont, Nevada, where she exercises her border collies. It is a pleasure to introduce Kristina Pickering.

Kristina Pickering, Chief Justice, Supreme Court of Nevada:

Thank you for affording us the opportunity to give you a brief overview of the Judiciary. With me is my colleague, Justice James Hardesty. He and I will be dividing this morning's presentation. He will address the foreclosure mediation program. We have a handout ([Exhibit D](#)) which begins, appropriately enough, with the *Nevada Constitution*.

Article 3, Section 1, of the *Nevada Constitution* establishes the three branches of government of which the courts are one. We lead off with that for this reason: We are not an agency of the Executive Branch; we are a separate branch of government. Although our budgets are reviewed in the context of agency review and other people tend to think of the courts otherwise, we are an equal and one-third branch of government.

Article 6, Section 1, of the *Nevada Constitution* goes further and says the judicial power of this state shall be vested in a court system, comprising a Supreme Court, district courts, and justices of the peace.

As you all no doubt know, and as Ben Graham alluded to, Senate Joint Resolution No. 14 of the 76th Session would amend that by introducing a court of appeals as well. That takes a constitutional amendment because the courts are all created constitutionally, not through statute.

I would like to give you a bird's eye view this morning rather than go through in detail every page of the handout. However, there is a wealth of information behind what we have presented today in the *Annual Report of the Nevada Judiciary* ([Exhibit E](#)). It gives much more detail than I am able to cover in either the handout or orally today. It has a lot of statistics and background information and, if you want to dig deeper into any of the issues we touch on

today, that is a very helpful resource. It may answer a lot of questions on the important work your committee does.

I will begin with the Judicial Branch Organization, which is slide 3 ([Exhibit D](#)). As provided in Article 6, you will see that the Supreme Court sits at the top; below that are district courts; and below that are the justice and municipal courts, the so-called courts of limited jurisdiction.

The funding for the judicial branch is slide 4 ([Exhibit D](#)). It is prepared in pie chart form. I practiced law for a number of years and I did a fair amount of appellate work as well as district court work and I did not realize until I arrived here the extent to which our court system is funded by administrative assessments rather than the State General Fund. If I knew that, I certainly did not appreciate its significance. Now, having worked on the Supreme Court for more than four years, I have come to have a keener appreciation of that.

You will see that 53 percent of the court is funded by the General Fund; the remainder is funded by administrative assessments and other fees. Why is that significant? The reason is the administrative assessments are not constant and they have been in flux, particularly given the hard economic times. Regarding people working off fines through community service, that directly affects our administrative assessment revenue which in turn funds our courts in large part. With respect to the specialty courts, the administrative assessment funds them 100 percent. So a decline in administrative assessments has a direct impact on the courts.

Also having a direct impact on the courts is a measure that was put into place during a special session that takes \$5 off the top of the administrative funds and puts it into the General Fund. That has further destabilized our court revenue because if the fine is forgiven in whole or in part, what is left is smaller than it would have been had the \$5 not been deferred. My point today is to not dwell on budget issues; I just want to give you an overview. You will see also in the pie chart that we have 1 percent federal funding; precious little in terms of federal funds for the operation of our courts.

I would like to call your attention to the box on the lower right hand corner of the Judicial Branch Revenue slide 4 ([Exhibit D](#)). It shows that although we are an equal one-third branch of government, the Judicial Branch General Fund appropriation is just 1 percent of the total General Fund appropriation contained in the Executive Budget. When comparing the Judicial Branch Budget to all funding sources in the Executive Budget, the Judicial Branch receives a total of 0.6 percent of all funding sources.

Next I will talk about the Supreme Court and what it does. It is tasked with administering the Nevada Judicial System. That means we run our own court, but we also administer the other court systems in the state and work with the Administrative Office of the Courts (AOC) on that work. We have what is called lawyers mandatory appellate jurisdiction. That is to say, we must hear every single appeal that is filed with us from any district court in the state. You are familiar with the United States Supreme Court and how excited people get when they grant a writ of certiorari, meaning they are going to take a case, look at it, hear arguments, and decide it. They have the luxury of choice. That is what allows them to serve at the top of the pyramid of the federal judicial system. We have no luxury of choice. Whatever gets filed in terms of an appeal from a district court comes straight to us and can range all the way from a driver's license revocation to a death penalty case. Here in Nevada we have 79 inmates on death row. In addition to direct appeal, they also have post-conviction or habeas corpus appeals.

We also have very significant commercial litigation that comes up to our Nevada Supreme Court as well as personal injury, family law—the full gamut. We are doing all of the appeals from all of the district courts.

We also exercise what is called extraordinary writ review. The types of writs are on page 5 ([Exhibit D](#)) and are also provided for in the *Nevada Constitution*. Each serves a particular check and balance function on the other branches of government and on the district courts. They are critically significant. A writ can be written in a district court and appealed to us, but also an original writ can be brought in our court that says someone needs to intervene, something wrong is happening, it is unconstitutional, somebody is exceeding their powers, and so on. As the name suggests, extraordinary writ review is just that: extraordinary. But nonetheless, we must assess each of those as they come in and give them their constitutional due. We endeavor to do that. That is a significant additional piece of our jurisdiction and workload.

We are also charged with the licensure and discipline of lawyers. All of the attorneys in Nevada are licensed by the state bar. When there are disciplinary issues, we have review on that. We also supervise their admission to the bar.

Finally, we have appellate review for judicial discipline. That is self-explanatory. We are tasked with administering the foreclosure mediation program as well. That has proven to be a significant responsibility. The appellate review from foreclosure mediation and the judicial review proceedings from the district court have added to our docket and workload as well.

Slide 6 ([Exhibit D](#)) is titled Supreme Court Cases Filed and Disposed, Projections for the 2013-2015 Biennium. I would like to discuss what this means in terms of the quality of justice that we are able to afford. You can see it is ranked in fiscal years, 2010 through 2015, by what we call new cases filed in our court, the cases we have been able to resolve in our court, and the cases that are pending in our court. At the bottom are some notes that reflect this. We number each case as it comes into the Supreme Court, it gets what is called a docket number. Docket No. 1 would have been filed in the 1800s. It has run sequentially ever since. I was licensed to practice law in September 1977. When I was working for Federal Judge Bruce Thompson, the 10,000 mark was hit. It took 112 years to get to 10,000. In the 30 plus years since, another 50,000 cases have been filed in Nevada and this is clipping along at the rate of 2,500 per year. By cases filed in Nevada, I mean filed in the Nevada Supreme Court for decision by this court.

In terms of cases resolved, you will see that it flatlines in our projection after 2012 at 2,270. The reason is not an unwillingness to work on the part of the Nevada Supreme Court; it is that we have implemented every efficiency measure we can think of, including an aggressive settlement program where we mandate people whose case has been decided at the district court, and they have appealed it. These people should have a good idea of what their risks and rewards are, so we mandate a number of civil cases to go into the settlement program. That helps us reduce the docket. We rely on staff counsel; we have 15 in the criminal division, 3 of whom are in the capital case division. We have 13 in the civil division. I am counting supervisors also. We utilize staff as much as we can, but we cannot abdicate the responsibility as justices to review what they are doing. We work in panels of three; all seven of us do not sit on every single case, except the constitutionally significant or widespread public importance cases. We have implemented all the measures we can, and the best assessment of me and my colleagues is more than 2,270 is probably not humanly achievable, even with all of the measures I mentioned.

Slide 7 ([Exhibit D](#)) shows a series of bar graphs. Justice delayed is justice denied in many instances. With this daunting caseload that we have, we still are doing the best we can to deal with the cases as they come in. As time progresses, we will see more green, red, and even gray areas on the chart. This bar graph breaks down into the matter, so it gives you a sense of what our annual docket comprises. This shows the rough percentage in breakdown in terms of our work. The 329 original writ proceedings, or extraordinary writ proceedings, is what that number represents.

Slide 8 ([Exhibit D](#)) is significant. There are very few other courts in the United States like those in Nevada, where the court system does not have a

court of appeals. This slide lists those courts and the workload per justice on each of those courts. As you can see, Nevada is at the head of the class with 357 cases per justice per year. I submit that this number is misleading because we do not work singly. The Supreme Court cannot decide a case with fewer than three justices with some very narrow exceptions. That means, if each one of us is going to give the parties their due, at least three of us on every case are going to look at it, read the briefs, look at the record, read the critical case law and statutes, and give our opinions. We do not always agree. Sometimes we write dissents or concurrences separately. We do not necessarily agree with one another, and have a robust debate among the justices, which is how the *Constitution* sets it up. That work has to be done. So in reality, the 357 cases per justice is closer to roughly 3 cases per day, per justice, per year, every day, day in and day out, with Christmas off. It is daunting when you consider the depth of the caseloads.

Next I will address the district courts and how they work. Their jurisdiction is prescribed by the *Constitution*, and they are all general jurisdiction courts. We do have a family court division in Clark and Washoe Counties. There is a Supreme Court decision that says that they are all equally district court judges. The family court division is simply specialized with family court jurisdiction. There are 82 judges of general jurisdiction. They preside over cases of felony and gross misdemeanor crimes, civil matters where more than \$10,000 is in controversy, and family law cases including juvenile offenses, abuse, and neglect. They conduct jury and nonjury trials, rule on legal issues, and hear appeals from justice and municipal courts. Assembly Bill No. 64 of the 75th Session added ten new district court judges to the ranks. We thank you for that; it has made a difference. You can see it tangibly in slide 9 ([Exhibit D](#)) where you see 127,367 total case filings in the district courts. There is some headway with 131,506 dispositions. Not stunning, but headway nonetheless.

The Clark County Regional Justice Center finished the remodel and addition of new courtrooms on the third floor; that ribbon cutting ceremony was about a month ago. Those judges are no longer sharing courtrooms. We look for them to become more effective as they are now in permanent quarters rather than trying to share courtrooms.

Slide 10 ([Exhibit D](#)) addresses the Senior Judge Program. Justices who served as elected jurists, and were not defeated for the position on reelection, can be called back to service as senior judges. We have 22 jurists in that program. They hear cases in district court due to judicial absence, disqualification, vacancy, or other reasons. The past year has seen a number of retirements. They step in and carry the docket forward when there is a vacancy on the bench. Without their service, we would be in a world of hurt.

They also perform marathon settlement and mediation programs. They have enjoyed tremendous success in both the family law arena as well as the medical malpractice arena. For example in Clark County in December 2012, there was a marathon settlement effort in the family court. Thanks to the service of the senior judges in that program, 94 cases were taken up and 71 of them were settled. That is a 75 percent settlement rate, which is terrific.

The Senior Judge Program represents a considerable cost savings as well because you do not have all of the associated overhead with the senior judge that you would if you were creating 22 new additional positions. They fly solo. They travel to the different courts where they are called into service, but they do not have their own staff that travels with them, so they are one of the better deals in town. They get paid probably 20 percent of what they would get if they were selling their services as private mediators or arbitrators in alternative dispute resolution. Many of them are also mediators or arbitrators and they command upwards of \$500 an hour for that work, but the state is paying them roughly \$100 per hour.

The justice courts slide 11 ([Exhibit D](#)) states there are 67 judgeships. These are courts of limited jurisdiction. Ben Graham has covered their jurisdiction ably, and the subject matter of the criminal jurisdiction in particular. They also hear civil matters up to \$10,000. They issue temporary protective orders and warrants. Of the 67 judgeships, 9 of them are also municipal court judges. There are certain areas where the jurist is both a justice of the peace and a municipal court judge. When you add those 67 judgeships to the 30 judgeships for the municipal court, you must subtract the 9 that are sitting in dual roles.

The municipal courts preside over misdemeanor and traffic cases in incorporated communities and have limited civil jurisdiction. There is a decline in traffic cases filed from 203,310 in FY 2011 to 185,046 in FY 2012. That decline will translate directly to a decrease in administrative assessments as administrative assessments come out of the traffic fines. With fewer traffic cases, it stands to reason there will be fewer fines—not perfect, but the math works. The decline is another reason there are budgetary issues associated with the administrative assessment revenue.

I would like to next address the specialty courts. I urge you to read the sections in the *Annual Report* ([Exhibit E](#)) that address these courts because I cannot do justice to their work and their importance to the state in the few minutes I am allocating here. They are a very important part of the state judicial system.

The goal of the specialty courts is to break the cycle of addiction, abuse, and incarceration that so many people get caught up in. Due to drug addiction, they commit crimes to feed the addiction for which they are incarcerated, and thus are an expense to the system because they are in prison. They serve their time, they get out, and they repeat the cycle. The specialty courts do not have a 100 percent success rate by any means, but they do break the cycle in a number of cases, and those people are returned to a productive role in society at a net benefit both to them and to the system, and a subtraction from the expense associated with the incarceration programs that Nevada runs.

There are numerous statistics as to the number of clients and the number of successes. Nevada has been a trailblazer in this arena. Clark County had one of the very first specialty courts and it has been very successful. Their revenue is a straight pass-through on administrative assessments. They are not funded through the General Fund.

Slide 13 ([Exhibit D](#)) addresses specialty courts by region. As you can see, they are not confined, as so many programs can be, to just the most populous counties; they are statewide. There has been a real effort in the various district courts in the rural areas as well as in the urban communities to pursue these programs. There is more information in the *Annual Report* ([Exhibit E](#)).

Next I would like to talk about the business courts that were established in Clark and Washoe Counties. Slide 15 ([Exhibit D](#)) sets out their workload and the cases and time to disposition. These are important for corporate disputes and business-to-business disputes. It is intended to be a specialized court where business matters receive specialized attention from the judges assigned to them.

Assemblywoman Cohen:

How many appeals to the Supreme Court are in proper person, without attorneys, and do you know how many of those are criminal?

Chief Justice Pickering:

Without citation to exact numbers, there are roughly 900 total appeals with 300 civil and 600 criminal.

Turning to the Administrative Office of the Courts (AOC), their work is important, and again, I urge you to look at the extraordinary breadth and depth of services that they provide to the court system in Nevada. They have a legislative mandate to produce biennial and annual reports. They also assist the judicial branch with its budget, personnel, benefits, and legislative support. They have a judicial education department which is tasked with educating the

new judges as well as providing continuing legal education for the judges in the state. They are also tasked with court interpreter services. There is activity on the federal level with regard to court interpreter services and how that will play out is anyone's guess. They importantly are tasked with technology support for both the Supreme Court and the lower courts, which includes a uniform system of judicial records. They track all the statistics, so if you want information about what categories of cases there are and how long they are taking to disposition, or the like, it is computer driven. There are 17 different counties in this state and each county court does it a little differently. The AOC is trying to put a uniform system together so that we are measuring the same thing the same way and can have a dialogue about what is going on in the court system.

At the Supreme Court level, the information technology (IT) department allows us to be more transparent and more open to the public than many other appellate courts nationwide. If you are interested, the Supreme Court has a page with a public portal. If you have a dispute with someone or are thinking of making a deal with someone, and you want to see what litigation they have in the Supreme Court, you can find that out through the public portal. You can retrieve all the briefs, and all of the orders on the person, and you can do it for free. That is an extraordinarily useful system.

For lawyers, clients, and business entities in Nevada, it is very helpful. When we post opinions, they are available to the public on the same day they are available to the parties and the litigants. When we have an oral argument, there is a live webcast of the argument, so even if you cannot come to Carson City to see your case argued, you can log on, assuming you have Internet access, and you can watch a live webstream of the oral argument. There are technological glitches, but it is a tremendous system and the AOC's IT department has achieved that.

There is also e-filing, where people are filing by electronic means rather than by paper. Each of the seven of us can go online to see them. This is not available under the public portal because of issues with sealed records, but I can get the full case appendix online in my office, so we do not have seven cartloads of records for each chambers. I can go in and get them electronically, which makes a huge difference in terms of the ability to actually look and see if a lawyer is accurate in what he is saying the witness said under oath in the trial because he has to cite the page, chapter, and verse.

The Administrative Office of the Courts also provides trial court support, judicial branch support, and the Supreme Court police. We also now have a security officer as a result of what was passed as *Nevada Revised Statutes* Chapter 2, section 295. There is an issue in our budget for an enhancement on that also.

I would like to skip ahead to slide 23 ([Exhibit D](#)), which discusses the Judicial Council of the State of Nevada. There is a series here dealing with the special council's commissions and the important work they do. The Judicial Council is one of the key ways in which the court system comes together, rural, urban, Supreme Court, trial court, and a council to address the issues that are percolating up throughout the state. There is an entire section of the *Annual Report* ([Exhibit E](#)) that is dedicated to their work.

The Judicial Council develops and recommends policies for the administration of the judiciary. They also consider issues forwarded by the Supreme Court and/or the Chief Justice. They review proposed legislation affecting the courts. The work that your Committee and your Senate counterpart does is to look at and recommend legislation or Supreme Court rules or district court rules to the Supreme Court. The Judicial Council establishes committees to develop minimum standards and recommendations for the improvements of Nevada's court system.

Assemblyman Wheeler:

Currently there are 2,270 cases on average that you can do per year. How much would each caseload be reduced if the *Constitution* were changed to include the appellate court? Also, can you explain to the Committee the process needed to amend the *Nevada Constitution*?

Chief Justice Pickering:

A significant segment of our caseload, somewhere between 700 to 800 cases per year, includes what we call error correction cases. That is, the law is pretty settled and it does not call necessarily for a published opinion clarifying or deciding an issue of law; it calls strictly for application of law to fact and perhaps a mistake was made in the trial court level. That category of cases would be directed to the court of appeals, so they would be subtracted from our caseload of the 2,500 that were filed last year and from the 2,270 that we feel we are able to effectively manage. It would be a relief of roughly a third of our caseload directed to that court of appeals, which would be a three-judge panel.

There are enormous benefits. When we decide a case, we write up why we decided it as we did. We do not hear juries or see witnesses; we explain why someone won and someone lost at our level. In terms of the history of the common law, that was always done by opinion that was binding, so each opinion would become precedential. What has happened as a consequence of the sheer crush of business is that we have become increasingly reliant on memos to the parties, which are public record, so they are published in that sense, but they are deemed unpublished as they do not carry precedential value. What you have seen in Nevada is a tremendous decline percentage-wise of the

total number of cases filed in the Nevada Supreme Court of published opinions relative to the total number of appeals filed. The direct correlation would be that the Supreme Court could have a better chance of doing the work it takes to produce published opinions in every case that explain why, although one case looks similar to another, they are in fact different. That is accountable and we have to apply the same law from case to case. We are still doing that but we are not able to do the published work that a normal supreme court would be doing.

Senate Joint Resolution No. 14 of the 76th Session has passed once; it needs to pass again in the Legislature. If it passes again, it will go on the ballot in November 2014. If passed by the voters, we would be swearing in the court of appeals judges in January 2015. If it does get through the Legislature a second time, we will need to take it to the voters and explain to them in terms they understand why this does not increase, delay, or slow things down. It is not an addition to the bureaucracy. Those cases that are singled out for that court will end there. They will have a writ of certiorari review like you see in the Supreme Court, but analogizing that to our records would be the difference between a three-judge panel and a petition for rehearing. Less than 1 percent of those petitions for rehearing are granted at the en banc level, so it would be a very small number that would not end at the intermediate court. Ultimately you would see faster time to disposition rather than slower. It is not just an intermediate step on the way to a multi-year process.

Chairman Frierson:

For the Committee's edification, there is a bill that was passed out of the Senate Judiciary and has not come out of their house yet, but we will be considering that measure once the house receives it and it is referred to this Committee. We will then have an opportunity to ask more questions about that process.

Chief Justice Pickering:

We were very heartened that it passed unanimously with broad bipartisan support out of the Senate Judiciary Committee. Anything we can do to provide information or testimony, we are more than happy to do so.

Slide 24 ([Exhibit D](#)) discusses the Special Supreme Court Commissions and Committees. These are all described in the *Annual Report* ([Exhibit E](#)). Their work is tremendously important. I would like to emphasize in particular the Access to Justice Commission. My colleague, Justice Hardesty, has been instrumental in increasing the so-called Interest on Lawyer Trust Accounts (IOLTA) for holding money for a client. He led an effort with the banking institutions in Nevada to get a better interest rate on the IOLTA funds. They go

directly to legal aid programs, and it has made an enormous difference. That is just one example of the kind of work that committee is doing. The Specialty Court Funding Committee is very significant. These are all described in detail in the *Annual Report*. You will be hearing from the Commission on Statewide Juvenile Justice Reform at a later time.

Chairman Frierson:

Thank you, Chief Justice. As a former Nevada Supreme Court law clerk, I can certainly empathize with the caseload, and as a practitioner, the frustration of attorneys with the limited ability to have published opinions that can be relied upon for precedential value.

James W. Hardesty, Justice, Supreme Court of Nevada:

I am an associate justice on the Nevada Supreme Court and have the privilege once again to address the Judiciary Committee for this session. I would like to make a few comments and observations regarding the Foreclosure Mediation Program which the court was tasked to manage and operate in the 2009 Session of the Nevada Legislature. Assembly Bill No. 149 of the 75th Session, passed and signed by the Governor, amended Chapter 107 of the *Nevada Revised Statutes* governing the foreclosure process in Nevada. In doing so, it created a requirement that parties in cases in which the foreclosure involves an occupied residence afford to the owner of that residence an opportunity to request mediation with their lender before the property goes to a sale.

The program began on July 1, 2009. At the time it commenced, the court had no money, no mediators, no rules, and no staffing. In 30 days, the court adopted all the rules and, from its own budget, advanced \$300,000 to operate a program that was not initially funded by the Legislature. We were successful in securing the services of up to 289 mediators. We developed training programs for all of them, and started a program which was not funded by the State General Fund, but by a \$50 fee imposed on notices of default filed in every form of notice of default case.

You will no doubt recall that at the time foreclosures were running at a clip of between 6,000 to 11,000 per month. As a consequence, the fees that the court collected built a considerable reserve and paid for a staff that ultimately reached about 22 people. In the 2010 Special Session of the Legislature, the Legislature increased the fee to \$200, appropriated \$150 to go to the State General Fund, and designated about \$4 to support programs that would assist people who were participating in the foreclosure mediation process.

On slide 20 ([Exhibit D](#)) there are some summary statistics of what has happened in the program since it began. For fiscal year (FY) 2011, there were 54,191 notices of default filed for which fees were paid to the program. There were 6,370 mediations conducted. Of those, 3,227 resulted in agreements between the lender and the homeowner. Of those, 1,941 resulted in folks retaining their property through those agreements. Nonagreement outcomes of 3,143 during that year meant that the foreclosure did not proceed because in most cases the lender had failed to supply the appropriate documentation necessary to justify the opportunity to proceed with foreclosure.

A key component of the statute is to require parties to obtain a certificate from the Foreclosure Mediation Program before they can proceed with the notice of sale. The program processed 47,919 certificates before the foreclosures could proceed. Of that group, 45,936 dealt with what are called nonapplicable properties; properties that paid the fee for the notice of default were not subject to the mediation program. In FY 2012, you can see an enormous drop-off in notices of default; there were 16,818 notices of default in that fiscal year. But what I want to mention to you is that in the first three months of FY 2012, between the period of July 1, 2011 and October 1, 2011, of the 16,818 notices of default, 13,127 of them were recorded. In the ensuing nine month period, notices of default dropped off to a total of 3,691. That is connected to the adoption of Assembly Bill No. 284 of the 76th Session which took effect October 1, 2011, and significantly changed the requirements that needed to be satisfied prior to the recordation of the notice of default.

In the last fiscal year there were 4,800 mediations held, and slide 20 ([Exhibit D](#)) shows the results of those efforts and the certificates issued. For FY 2013, some have talked about a bubble, some have talked about increases. In the six month period in this fiscal year, we are clipping along at about 1,400 notices of default per month—substantially lower than the number of notices of default that we experienced in the first year of the program.

On August 23, 2012, the court brought to the attention of the Interim Finance Committee the fact that the decline in notices of default was causing a corresponding decline in revenue that supported the program—a dramatic decline. As a consequence, the reserve of about \$1.5 million that had accumulated was about to be relied upon in order to help support the program.

This program is the Legislature's program, not the court's program, so you must decide whether it should continue, under what terms, and how it should be funded, because over the course of the next two years, operating the program at minimum staffing levels of about nine people, you will continue to utilize and eventually consume the reserve that the court built up from the first year and a

half of its program. The first question facing this session of the Legislature will be a policy decision. What will the make-up and shape or continued use of the foreclosure mediation program be? The second is a fiscal issue. How will it be funded, and from where will the money come?

Slide 22 ([Exhibit D](#)) shows the dramatic change in notice of default fees from FY 2010 when the program began to what we project will be revenue at the end of FY 2015, a decline of more than \$3.6 million during that period of time.

We are not offering any policy or budgetary suggestions because this is a program of the Legislature. As you know, there are cases pending in the Supreme Court that must be adjudicated, so we do not want to comment on any legislation or alterations to it as it affects cases that are pending, including cases that call into question the separation of powers doctrine concerning the Supreme Court's role in managing the program.

Chairman Frierson:

Over the past few years, I have become familiar with the program. I have travelled to other states that have tried to model their program after ours. I think it has done some great things and we certainly appreciate the court's administration of the program. I know there are also another couple of measures that are now before us that I hope will address the decrease in notices of default. Attorney General Catherine Cortez Masto has been working with stakeholders on making some adjustments to A.B. No. 284 of the 76th Session for that purpose as well as some other measures regarding the movement of abandoned property. We are certainly hopeful that that may provide some relief and address the concerns about the next two years and the revenue stream that provides the administration of the program. Are there any questions? [There were none.]

Mr. Graham has a few more measures to discuss regarding the development of the truth in sentencing laws because that is something else I anticipate coming before this Committee.

Ben Graham:

In the handout dealing with procedures ([Exhibit C](#)), probably the most important portion deals with the Bill of Rights. It covers searches and seizures, right to counsel, and the right against self-incrimination. As I have indicated to my colleagues and law enforcement friends, make that Bill of Rights your personal friend, because that is where it all comes from.

About 18 years ago, in 1995, there was an issue with truth in sentencing. We have talked about classification of crimes. We have talked about punishment.

Nevada's criminal law was, and still is, pieced together a little bit at a time. One of our senior Senators, who was chair of the Senate Judiciary Committee, would talk about a "felony creep," where things just creep and creep until they become felonies. Some of us can look at the law and wonder how something became a felony. In 1995, there was a feeling that no one, not the prosecutors, the defense, or the defendant, really knew what it meant when someone got sentenced to a certain term in the Nevada State Prison. It was said in jest, but with some reality, that if a person spent some time in the county jail pending the sentencing, they very well might reach parole status on the bus going to the prison. That was the frustration that was addressed and met in 1995.

In 1995 there was no 120-day legislative session limit. We started in January, and I can remember still being here on July 8. We were still introducing resolutions honoring people who had discovered butterflies. In 1995, Senators Mark James, Clark County Senatorial District No. 8, and Maurice Washington, Washoe County Senatorial District No. 2, put Allison Combs, Ben Graham, and Risa Lang in a room, and for weeks we went through every single criminal statute and tried to make some sense of it. Putting more serious felonies in the A felony category, and going through to E, we tried to give some guidance so that when someone was charged with a crime, he would know what the sentence would be, and when the court gave the sentence out, he would know how much time he would need to spend in prison. That was not meant to be the end of the study; that was a starting off point. Nothing more was done or studied on that for a number of years, and we continue to have new crimes established. The prisons had good-time credits for going to school, giving blood, et cetera. It became very, very difficult to figure out how much time a person would spend in prison.

In the last year or two there has been some discussion to try to revisit this. Maybe some of the crimes that were listed in the higher category should be revisited and sentences adjusted. There is a move afoot by a couple members of the body to also look at the misdemeanor structure and potentially look at what a number of states have done. As mentioned, if I run a stop sign, it is State v. Ben Graham, and I am entitled to a trial; not a jury trial because it is a sentence shorter than six months, but there is still the proof beyond a reasonable doubt. You can bring your defense attorney, but the state has to be there, and the police have to be there. It can be a pretty hefty operation.

Assemblywoman Fiore:

When did we begin changing our civil infractions on traffic violations to criminal offenses?

Ben Graham:

I do not remember that they ever were infractions.

John McCormick:

To the best of my knowledge, it has always been a criminal offense in Nevada.

Ben Graham:

This is what we are leading into. A number of states have reduced more minor traffic violations to civil infractions as opposed to a criminal charge; this excludes reckless or drunk driving, which are still criminal offenses. With the shortness of time, I do not feel that we have the ability to totally visit this subject and make the necessary changes in one session.

It may be time to take a look at transitioning certain minor offenses into the civil arena. There will still be fines and the enforcement provisions can be determined at the time of transitioning. Some states suspend driver's licenses. It is a structure that is set out in many other states. I think if we take a look at it, it might reduce court time, reduce the expense of counsel, and would be more expedient for the individuals charged with these violations. Truth in sentencing is being revisited a little bit. I still defy any of us who have been in the criminal arena to try to understand what is going on when someone is sentenced to prison. You had a presentation from some of the corrections people, and you will hear this discussion throughout this session. I would like to encourage the Committee, if the opportunity comes up, to take a look at potentially converting some of the minor, lessor traffic offenses to infractions or civil violations.

If we were honest about it, one might question the efficacy of a gross misdemeanor. I know both the prosecution and the defense like them, but there are issues that need to be discussed. Legislation should at least provide for a study. There is a commission and an advisory council which I would urge the Committee to consider looking at these issues and possibly coming back next session with some serious amendments for change. Maybe there is a better way to do this if we take a look.

Chairman Frierson:

Thank you for making yourself available. I know there are trends across the country, and concerns within this state, about some adjustments we can make to ensure the public is protected while also being more efficient with the limited resources we have. I appreciate you giving us the background, because I think it will be handy when we consider our options moving forward.

Ben Graham:

Two years ago, if someone was sentenced to life without the possibility of parole for murder, that meant 20 years in prison and he could get out. As part of the changes made in this state, now there is a very high likelihood that if someone gets sentenced to life in prison without the possibility of parole, he will not be let out on parole, but will be taken out of the prison in a body bag. Initially, this reduced the number of death penalties sought. There may be a trend there, but at least you can make a difference.

Chairman Frierson:

Thank you. Are there any questions? [There were none.] This meeting is adjourned [at 10:46 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 6, 2013

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Ben Graham	Criminal Law Jurisdiction, Procedure, and the Courts
	D	Chief Justice Pickering	Judicial Branch Overview
	E	Chief Justice Pickering	Annual Report of the Nevada Judiciary