MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 1, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:06 a.m. on Wednesday, May 1, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41
Assemblywoman Michele Fiore, Assembly District No. 4
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Steve Yeager, Clark County Public Defender's Office
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court
John T. Jones, Jr., Nevada District Attorneys Association

Eric Spratley, Lieutenant, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Andres Moses, Eighth Judicial District, Clark County
Tom Ely, Headquarters Captain, Division of Parole and Probation, Department of Public Safety
Quentin Byrne, Acting Administrator, Offender Management Division, Department of Corrections
Heather D. Procter, Senior Deputy Attorney General, Office of the Attorney General

Chair Segerblom:
I will open the hearing of the Senate Committee on Judiciary with Assembly Bill (A.B.) 97.

ASSEMBLY BILL 97 (1st Reprint): Revises provisions governing habitual criminals, habitual felons and habitually fraudulent felons. (BDR 15-680)

Assemblyman Paul Aizley (Assembly District No. 41):
This bill requires a prosecuting attorney to inform a defendant in a reasonable amount of time before trial if that prosecutor is going to seek a penalty enhancement pursuant to Nevada's habitual criminal statute. I have heard the prosecutor can sometimes wait until after trial, before sentencing, to inform the defendant this penalty enhancement is being sought. This seems to me to be an unfair practice.

Steve Yeager (Clark County Public Defender's Office):
This bill deals with habitual criminal treatment in Nevada by statute, specifically *Nevada Revised Statute* (NRS) 207.010. If you have two prior felony convictions from any state, and you are convicted here in Nevada of a felony, you are then eligible to be treated as a small habitual criminal. That would make your sentence 5 to 20 years. The sentence on a small habitual enhancement replaces the sentence otherwise prescribed for the conduct, which is usually less.

We also have a large habitual criminal enhancement—if you have three prior felony convictions, the prosecutor can seek to treat you as a large habitual criminal. In that penalty range, the judge can choose from three sentencing

options: 10 to 25 years; 10 years to life in prison; or life without the possibility of parole. Those penalties exist in statute.

Here is how this would work: a criminal complaint would be filed with the normal criminal charges. At some point, the prosecutor would file a separate document known as a "notice of intent to seek habitual criminal treatment." That document would alert the defendant and counsel that if a conviction ensues in the case, they will be asking the judge to treat the person as a habitual criminal. That document would list the prior convictions from Nevada or other states. If there is a conviction, at the time of sentencing the parties argue whether habitual criminal treatment is appropriate. The judge makes the final decision.

There are some exceptions. In Nevada, we have a mandatory habitual criminal enhancement. If you are a violent habitual criminal with three prior convictions for certain enumerated violent offenses and you are committed of another violent offense, the judge must sentence you under that habitual criminal enhancement.

The cases that A.B. 97 applies to are not necessarily cases like that, but the more run-of-the-mill cases. Under statute, notice can be filed any time prior to sentencing. This bill directs the prosecutor to file that notice at least 2 days before trial. Parties can agree that filing can be delayed; if the notice is not filed 2 days before trial with good cause, the district attorney (DA) can seek to file later and the judge can approve that extension. Good cause could be that someone is using an alias or there is a mistake on the fingerprinting, both of which could result in the DA not knowing if the defendant has enough prior felonies. This bill would allow an amendment to the notice if, for example, the description of the prior felonies is incorrect because of a clerical error.

The premise behind this bill is fairness and information. It is important for a defendant to know realistically what he or she is facing in a case. If the charge were a Category C felony, the penalty range would be 1 to 5 years. If you add the habitual criminal enhancement, it can increase the sentence to 5 to 20 years or more. Since better information can lead to making better decisions, this allows DAs to have a conversation with our clients about whether to negotiate a case based on the realistic expectations for the trial. We always like to tell clients that they are eligible for habitual criminal, but some of them do not believe it until they see it in writing.

As a defense lawyer, I do not always know how many prior convictions my client has. Sometimes the client is a bad historian, getting confused about convictions versus charges or arrests. Sometimes the client is simply not honest about their history. Additionally, if their convictions are from out of state, it can be difficult for me as a defense lawyer to obtain information about those convictions.

Originally, this bill was drafted to require that notice be provided very soon after arraignment, which would make the process more expeditious. The language in the bill is a compromise between the district attorneys and the public defenders. We are in agreement with an amendment provided by the Nevada District Attorneys Association (Exhibit C). That organization supports this bill.

We agreed on 2 days before trial for notice to be given because by that time, the DA has typically checked the National Crime Information Center (NCIC) to look at the defendant's criminal history. At that point the attorneys will know enough whether to seek the habitual criminal notice. At 2 days before trial, this information would already be in place and would not be a burden to obtain. A defendant can go to trial on the underlying charge, get convicted, and before sentencing, the notice can be filed. It does not seem right that a defendant should go to trial assuming there will be one penalty range and later learn the penalty will be higher because of the habitual criminal enhancement.

Chair Segerblom:
It makes sense that someone should know what he or she faces before trial.

Senator Ford:
It seems like the person should already know. The statute says a person can be charged as a habitual criminal. Frankly, I do not find it persuasive that your client might lie about prior felonies. It does not sound to me like this is an issue of fairness. They know there is always the possibility they will be charged as a habitual criminal with their third felony. I do not think they need more notice than that.

Chair Segerblom:
It sounds like it is discretionary with the DA to pursue it and discretionary with the judge to go with it. The defendant would not know the DA intended to go with the habitual criminal component until he or she saw that piece of paper.

Senator Ford:
Is this some form of constitutional analysis, where due process is violated if you do not know if someone may exercise that discretion?

Mr. Yeager:
I do not think so. Some clients know they have prior convictions, but I can honestly say that some do not. You may wonder how that is possible, but some of my clients are not sophisticated about their interactions with the justice system. Some think they have convictions when it was only a charge, not a conviction. Some are not clear about whether their charge was a felony or something less. The way the statute reads, it would have to be a felony conviction under the laws of the State. There are situations where the person's crime is a felony in another state but not a felony in Nevada. As an attorney, I can say it is always helpful to have that in writing. Some individuals are extremely distrustful of the system, particularly of public defenders, however unwarranted.

If I can show my client a written notice to convince the person it is true and that I am not joking or getting them to take a deal, it is more fair. The DA does not often seek habitual criminal treatment; this is a small subset of cases. The hope is that we can operate with more information, smoothing the process. This notice also eliminates the potentiality of a case going to trial, a conviction ensuing, and a prosecuting attorney filing for habitual criminal afterward because he or she is not happy with the trial outcome. I do not know of any instance where this has occurred, but we want to prevent it and, in the process, have a better discussion with the client and a better resolution in the case.

Senator Ford:
Those are decent examples. I still do not think it is a matter of fairness so much as a matter of convenience.

Senator Hutchison:
To me, this is just about plea deals. It benefits both the prosecution and the defense because both will acquire as much information as they possibly can and the clients will understand the process. I was surprised you settled on 2 days because that is pretty close to trial. Why is it only 2 days and not 2 weeks?

Mr. Yeager:
From a defense perspective, we would like it a little earlier than 2 days. In criminal cases, it is not unusual to be negotiating these cases the morning of trial. The bulk of the work happens between the calendar call and the trial, which spans 3 to 4 days. This will help with plea negotiations and put the judge on notice that this is a serious case. This was a compromise, but if we find we need a different time, we will negotiate it down the road. This is at least an improvement on what the statute currently stipulates.

Senator Brower:
I wanted to address Senator Ford's question about fairness versus convenience. In my experience, there is often a difference between what a defendant and defense counsel know and what the government knows. In this context, the government knows the truth. It is important for the defense to know what the government knows. I agree that this bill's intent is about fairness. It is not a constitutional issue, but I agree that some of the criminal defendants know more about their history in the system than others. Some have no clue—they have a long record and do not think they do, or they do not really have a serious record but think every arrest is a conviction.

When you are in a sentencing hearing in a State court and there is a dispute about whether the habitual criminal statute applies, what is debated?

Mr. Yeager:
Usually the argument is whether there is adequate proof of underlying prior convictions. In the last sentence of section 1, subsection 2 of the bill, when habitual criminal enhancement is sought at a sentencing, there is a 15-day window where the judge postpones the sentencing after the separate filing. This allows the prosecutor to get proof of convictions.

Section 1, subsection 5 stipulates that a certified copy of the felony conviction is prima facie evidence of that conviction. At that sentencing, the prosecutor has to file with the court the certified judgments of conviction in the adequate number. The only disputes I have seen are whether there is a conviction, and this is usually from out-of-state convictions. Once the judge determines there are an adequate number of convictions, we go forward and argue whether it is an appropriate sentence.

Defense lawyers do not have access to the NCIC, known as the federal database. When I look up a client's criminal history to see whether they have prior convictions, I look in Nevada because I have access to Odyssey, a system that shows Nevada convictions. I have almost no way to access California or any other state. That is a piece of the fairness also—realizing that a defense attorney does not have easy access to this information. If a client says he or she might have a conviction in another state, I can telephone and try to get that information, but it is difficult. By the time we are close to trial, the prosecutor will have accessed the NCIC because they want those convictions to impeach that defendant at trial if the defendant testifies.

Assemblyman James Ohrenschall, Assembly District No. 12:
We hope this will benefit both prosecutors and defense attorneys; it has the potential to conserve judicial resources.

Chair Segerblom:
Seeing no more testimony on this bill, I will close the hearing on A.B. 97 and open the hearing on A.B. 248.

ASSEMBLY BILL 248 (1st Reprint): Creates a statutory subcommittee of the Advisory Commission on the Administration of Justice (BDR 14-616)

Assemblywoman Michele Fiore, Assembly District No. 4:
This bill is intended to change minor traffic violations from criminal to civil. Under current law, if you are cited for any traffic violation, you may be placed in jail. I have submitted my written testimony (Exhibit D).

Chair Segerblom:
Is the fiscal note still applicable?

Assemblywoman Fiore:
I do not think so. Originally, the main objectors to the bill were the judges thinking it was a money grab. When we explained it was not a money grab and that we would delay implementation until July 2015, the judges were okay with it. As we later presented it, they no longer supported it.

Chair Segerblom:
If it is a civil penalty, people will not be afraid to cheat the government; therefore, the courts would lose revenue. Is that a concern?

Assemblywoman Fiore:
We corrected that. If you do not pay your fines, your license is suspended. If you drive with a suspended license, it is revoked and you go to jail and the whole process begins again. This does not take away from any fines—you have to pay your fines.

Chair Segerblom:
What is the advantage to it being a fine instead of a criminal penalty?

Assemblywoman Fiore:
Our jails are overcrowded. A constituent in my district, a hospital administrator, told me of getting a speeding ticket a couple of years back and paying it. We know from testimony in other committees that records were lost in 2007, and this is what happened to this person.

This bill allows a person to pay their prior speeding tickets if he or she is stopped for a traffic violation.

Chair Segerblom:
Are you saying that right now if a police officer stops you for reckless driving, that officer has the option to arrest you, but under this bill, he or she could not?

Assemblywoman Fiore:
Correct. I know a woman who was pulled over and handcuffed on the side of the road because of an outstanding speeding ticket.

Senator Brower:
Why was the woman handcuffed?

Assemblywoman Fiore:
She had a speeding infraction and there was no record of her paying the fine even though she had. A warrant was automatically issued. She eventually proved she had paid the ticket, but not during the time she was handcuffed on the side of the road.

Senator Hutchison:
Who will appoint the committee?

Assemblywoman Fiore:
I am hoping to be appointed. It is the Advisory Commission on the Administration of Justice. I am not sure who the chair is, but someone from the Legislature has to be appointed.

Nick Anthony (Counsel):
This is a statutory committee identified in NRS 176. There are 17 members on the Commission, ranging from the Attorney General to members of criminal justice including DAs, defense attorneys and some appointed by the Governor. There are four Legislators appointed—two from the Senate and two from the Assembly. The committee chair rotates and is voted on by the members at the first meeting.

Ben Graham (Administrative Office of the Courts, Nevada Supreme Court):
This bill provides for a very important study. When the bill hit the Assembly, there was concern from all over the State. If we are to make major changes in our system, it is appropriate to have a good review prior to implementation in 2015.

Chair Segerblom:
Do all Western states have civil penalties?

Mr. Graham:
It appears so. That would reduce the burden of proof from beyond a reasonable doubt to a preponderance of evidence. It could possibly lessen the need for defense attorneys and prosecutors in traffic matters. From the State's viewpoint, the important thing is to preserve the deterrent and economic benefits.

John T. Jones, Jr. (Nevada District Attorneys Association):
I want to confirm that we support A.B. 97 with the friendly amendment we proposed. We support A.B. 248 too. We were originally neutral because many of our members had questions. We support the study because once we get some of our questions answered with respect to burdens of proof, collections and a few other issues, we will likely be in support of this idea.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association):
I support this bill. In my career in law enforcement, I worked for 7 years as a traffic cop. I will be a lieutenant over the traffic unit when this Legislative Session ends. We have no issue whether it is civil or criminal.

However, I am not sure this bill will prevent the woman who has been stopped on the side of the road from being handcuffed. Our actions are based on the warrant we see for the person at the traffic stop. The warrant says, "The law enforcement officer shall ..." so at that point, we take people out and put them in handcuffs. We try to verify every detail before making an arrest. If this bill passes and the person does not pay their ticket or it does not get entered into the computer system as being paid and a warrant is stipulated, we will still take the person out of the automobile and use handcuffs. This study may help us clarify that situation in the future.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):
We support this bill. We think the study will work out the kinks.

Mr. Yeager:
We supported the original bill and we support this version, especially the part about the study.

Chair Segerblom:
I will close the hearing on A.B. 248 and open the hearing on A.B. 64.

ASSEMBLY BILL 64 (1st Reprint): Revises provisions concerning the delivery of copies of reports of presentence investigations and certain judgments of conviction. (BDR 14-338)

Andres Moses (Eighth Judicial District, Clark County):
This bill clarifies and modernizes how record transmissions from the court are being delivered to prisons and county jails. The Eighth Judicial District has been committed to taking steps to be efficient and be good stewards of our resources.

Section 1 allows the court to electronically transmit a defendant's presentence investigation report to the Department of Corrections (DOC), either by secure

transmission or by affording access to our Court Case Management System, Tyler Technologies' Odyssey, to access that presentence investigation.

Sections 2 and 3 essentially do the same thing for judgment of convictions. This language also eliminates the need for the sheriff to issue the presentence investigation report to the DOC.

Chair Segerblom:
Is a hard copy of the presentence investigation report now required?

Mr. Moses:
Yes. The DOC requires a hard copy.

Chair Segerblom:
Could we just make a law to say that any time a hard copy is required, you can do it electronically?

Mr. Anthony:
We would have to research this issue. Potentially it could go in the preliminary chapter of *Nevada Revised Statutes* 0.010 to 0.060.

Mr. Graham:
The sooner we could do this, the better to serve the public. I would recommend making it effective on passage and approval so we could do it before October, when it is scheduled to go into effect.

Lt. Spratley:
We support any electronic transmission of documents. It makes our life easier.

Tom Ely (Headquarters Captain, Division of Parole and Probation, Department of Public Safety):
We are neutral on this bill because we are already doing this to the best of our ability. Between the Division of Parole and Probation, DOC and the State Board of Parole Commissioners, we have allowed interdepartmental access to our computer systems, which require secure access. We also engage in electronic transfers with Clark and Washoe Counties and are working the bugs out of doing it with the smaller counties.

Quentin Byrne (Acting Administrator, Offender Management Division, Department of Corrections):
We are neutral on this bill, but we are already moving forward to prepare to make these changes. We have identified the staff who will need Odyssey access, and we are rewriting regulations in our procedures to implement this.

Chair Segerblom:
Did you submit a fiscal note on this?

Mr. Byrne:
No.

Chair Segerblom:
Seeing no more people wanting to testify on this bill, I will close the hearing on A.B. 64 and open the hearing on A.B. 307.

ASSEMBLY BILL 307 (1st Reprint): Revises provisions governing victims of crime. (BDR 16-743)

Heather D. Procter (Senior Deputy Attorney General, Office of the Attorney General):
Assemblyman William C. Horne, the primary sponsor of this bill, is the chair of the Advisory Commission on the Administration of Justice. Attorney General Catherine Cortez Masto is the chair of the Commission's Subcommittee on Victims of Crime. As a result of the Subcommittee's meetings, recommendations were made to the Commission that led, in part, to the creation of this bill.

This bill addresses Nevada's compliance with the federal Violence Against Women Reauthorization Act. I have submitted my written testimony (Exhibit E). An amendment approved in the Assembly removed the need for a fiscal note.

Senator Hutchison:
Will counties have to pay anything beyond what they are currently paying?

Ms. Procter:
No.

Senator Hutchison:
Are you saying we are just moving some of these things into different provisions of statute as well as bringing our State requirements into compliance with federal law?

Ms. Procter:
That is correct. The county obligation is already in statute. The only addition is that victims are not required to cooperate with the police to have the exam by a health care provider conducted.

Mr. O'Callaghan:
We support this. It is about the victims.

Chair Segerblom:
I will close the hearing on A.B. 307. Seeing no one with public comment, I will close the hearing of the Senate Committee on Judiciary at 9:52 a.m.

RESPECTFULLY SUBMITTED:

_____
Linda Hiller,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
A.B. 97	C	1	Nevada District Attorneys Association	Proposed Amendment
A.B. 248	D	2	Assemblywoman Michele Fiore	Testimony
A.B. 307	E	2	Heather D. Procter	Testimony