

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

**Seventy-Eighth Session
April 14, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, April 14, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Senator Joseph (Joe) P. Hardy, Senate District No. 12



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Elizabeth Neighbors, Director, Lakes Crossing Center, Division of Public and Behavioral Health, Department of Health and Human Services
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office
Christy Craig, Attorney, Clark County Public Defender's Office
Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Heather Proctor, Senior Deputy Attorney General, Office of the Attorney General

Chairman Hansen:

[Roll was called and protocol was explained.] We will not be having any more meetings this week. This will be our only hearing. All of the bills that are scheduled for Wednesday, Thursday, and Friday will be rolled. We probably will not have another meeting until Wednesday of next week. This is primarily to allow staff to get all the amendments. We have a ton of amendments for our own bills, so we want to try to allow them a chance to get caught up for floor. Once Wednesday rolls around, we are going to have a lot of stuff, because we are going to basically compact two weeks into one.

We have two bills up today, and the first one is Senate Bill 10 (1st Reprint), which revises provisions relating to incompetent defendants. The bill will be presented by Senator Hardy.

Senate Bill 10 (1st Reprint): Revises provisions relating to incompetent defendants. (BDR 14-68)

Senator Joseph (Joe) P. Hardy, Senate District No. 12:

Senate Bill 10 (1st Reprint) provides that the Division of Public and Behavioral Health of the Department of Health and Human Services may establish a program for certain defendants who have been declared incompetent to stand trial or receive judgment. What they do is they have a little room where they keep people and say, "Okay, we are evaluating you, and you are incompetent to stand trial." Having been found to be incompetent to stand trial or receive judgment, yet determined not to be dangerous to themselves or others in society, they would be treated to competency while in jail or prison. If the Division establishes such a program, it must specify the qualifications for participation and the types of treatment that will be made available. If the treatment includes forced medication, regulations adopted to establish the program must require that a determination be made that the medications are medically appropriate and unlikely to have side effects that will undermine the fairness of a trial necessary to further governmental interests after accounting for available alternatives. Required staffing must be available at any facility which participates in such a program. The regulations must also provide that the program be independently monitored and lay out the manner in which the program may be held accountable. Finally, the regulations must ensure that appropriate access to a court is provided in order to challenge such a determination.

Many states have done this kind of thing. Georgia, Tennessee, California, Virginia, and Colorado are implementing something. Texas has a pilot program. By some estimation, there may be up to 30 percent of the people who go to jail that are eligible for this kind of care in jail. Inasmuch as there is a lag between the time a person is determined to be incompetent and they go to Lakes Crossing Center in Sparks, that time is ill-spent, where there is no treatment going on while they are waiting to go up to Lakes Crossing to be treated. That time ill-spent could be better spent, and many times the people will be restored to competency because they get back on their medications. Our jails in Nevada, as you are well aware in this Committee, are the largest mental hospitals we have in the state.

This has been shown to be effective, not only in other states, but also to have savings for the county and the state. The restoration of competency for those who are incompetent to stand trial has been shown to reduce up to half of the days that it takes a person who is incompetent to stand trial to be adjudicated competent to stand trial. The California forensic system, for instance, has taken, before restoration of competency programs, 767 days on average to be

returned to competency, and after the program, 296 days. You can see the huge savings in the institutional method of treating people.

Our Division of Internal Audits, Department of Administration said in their September 2013 report that the Division can save up to \$1.2 million annually by implementing urban jail-based competency programs. They found that Lakes Crossing officials estimated as many as 30 percent of patients could be treated in jail-based competency programs in urban counties, and the Las Vegas Metropolitan Police Department would save about \$36,000 annually just in transportation costs by not flying some patients from Las Vegas to Sparks for competency restoration treatment in the determination.

When you are incompetent to stand trial and you go up to Lakes Crossing, you go on a plane, and there is a wait list of how many people can go on the plane. You are basically in shackles and you are guarded as you go up there. You now have a new lawyer. You now are not near your family so your support system is nowhere near you. You get restored to competency over a period of months, and then you come back in that same plane in shackles. You are now able to be restored to competency and have your trial. Unfortunately, when you are flying back and forth, you have a new lawyer again and you have new dynamics happening in your family. So uprooting both directions is not necessarily a way to treat people. Restoration of competency is important, as many states have found, not just for the savings, but for the humane treatment of people who have challenges with their mental health.

Assemblyman Nelson:

I read the bill, the fiscal note, and your response. It seems like there is a minor disagreement. Apparently, you think the savings will eclipse what is set forth in the fiscal note.

Senator Hardy:

I will answer the question eventually. This is a "may" that the Division can figure out what they will do and what they will not do. If you look at the fiscal note, it is the cost of taking care of everyone that they take care of anyway. We have silos in the state, so you have the county and the state, and depending on which way you approach it, one costs more and one costs less. The states who have done this have found that it saves the county money as well as the state. The track record shows a savings whereas the projection shows a fiscal note of \$3 million, which means that they are taking care of the person anyway.

Assemblyman Elliot T. Anderson:

Senator Hardy, I want to congratulate you and your son on his recent appointment to be a district court judge. I want to ask you about space, particularly in the Clark County Detention Center (CCDC). I am wondering if we are not moving people out of there to go to Lakes Crossing. I know we are already overcrowded over there. How will this bill affect CCDC's space?

Senator Hardy:

You will probably hear from the county, who will be more accurate than I am, but they are already overcrowded. You will probably hear from the Stein Hospital, that is going to come on board as well. We do not have enough room anyway. While they are sitting in an overcrowded jail and they are not being treated, they will stay there longer. If you keep people longer, you will contribute to the overcrowding. If you treat them to competency and get them out sooner, then you will decrease the burden on keeping people in jail, which is what other states have found when they have done this.

Assemblyman Jones:

In San Bernardino, California, they went from 765 to 296 days. If an inmate has a mental illness and is treated for the mental illness, does he just get to go out when the psychiatrist says he is competent? Is that how the restoration works? He does not have to serve out his full sentence? I am not quite understanding how that flow works.

Senator Hardy:

What happens with a restoration of competency is, that is all it is. It is not an adjudication. In other words, people who are psychotic are not in a position to participate in their own defense. So they are not able to stand trial until competent to do so. The trial is then postponed until they can actually be competent to participate in their own defense and in their own trial. This is before a trial and before they are adjudicated as to where they go and what they do. This is not to turn them loose as much as to allow them to participate in the trial.

Chairman Hansen:

My questions were addressed. I wish Assemblyman Ohrenschall were here as we have had several discussions on competency and incompetency, because what it sounds like it means does not really necessarily mean that. The point is, once they are judged competent, they can be brought back to face trial.

Senator Hardy:

Correct.

Chairman Hansen:

Obviously, you do not want to have someone who is not mentally capable making that determination independently like that. Are there any other questions at this time? [There were none.] Senator Hardy, is there anyone else you would like me to call?

Senator Hardy:

Yes, Ms. Neighbors would like to say something.

Elizabeth Neighbors, Director, Lakes Crossing Center, Division of Public and Behavioral Health, Department of Health and Human Services:

We are currently the agency which provides all competency restoration for the State of Nevada, and I am here representing the Division of Public and Behavioral Health in support of S.B. 10 (R1). Looking at this bill from the perspective that it is permissive legislation, it would allow us an additional tool to deal with the ever-increasing demands that we are having for evaluating and treating individuals who are not competent to stand trial. Those numbers in the last decade have increased significantly in Nevada, and we have had to expand our bed space significantly as well to deal with it, and we do have a waiting list. We understand the concerns of the county in regard to their space, but again, I would underscore that this is permissive and we are available to work with the county.

In most states where they do this, there is a collaborative effort between the state and the counties to provide this service. As Senator Hardy pointed out, it has been fairly successful in states like Georgia and California in helping to expedite the delivery of this service to individuals who are defendants waiting to be adjudicated. It really does make sense that while they are incarcerated in the jail, if there are not beds available and they are receptive to beginning this process, we should move it along and help them get through their legal entanglements faster.

There are a couple of things about the bill that I would note, which is that we currently already do most of these things. The protocol for the involuntary medication is something that resulted when we responded to the requirements of *Sell v. United States*, 539 U.S. 166 (2003) a number of years ago, and it is nice to have it codified in statute. Also, the quality assurance requirements are things that the Division already requires. The bill as it is presented with the amendments is something that we would support. While we have not had an opportunity to discuss the fiscal issues or analyze it, we are certainly available to do so.

Chairman Hansen:

Are there any questions for Ms. Neighbors at this time? [There were none.] Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 10 (R1)? [There was no one.] Is there anyone who would like to testify against S.B. 10 (R1)?

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:

I am here in opposition to S.B. 10 (R1). We met with the sponsor several times to discuss and address our concerns over the past couple of months. We continue to oppose this bill for three reasons. The only thing that we see permissive in this bill is that the state may establish a program. There is nothing that says if the state establishes a program, then the county can elect to participate or not. If the sponsor and the state believe that this bill was permissive for the county, then they should have no problem with the amendment that we proposed to the sponsor. It says that if the county is required to participate in such a program, they then will reimburse us for the cost of the inmate to be in our facility. If there is no intention to require us to participate in this program, then we believe that they should accept this amendment that we proposed.

Secondly, we are concerned with section 1, subsection 6 on page 2, which states, "If the Division establishes a program described in subsection 5, the Division must specify in the regulations..." and then go to page 3, paragraph (c), lines 4 and 5: "The required staffing that must be available at a jail or prison to participate in the program." We thought this program would be sending program staff in to treat the inmate with the goal of rendering them competent to stand trial. We did not believe that program staff would be permanent staffing at the jail. This is not program staff that would just be coming in and out of the jail.

Lastly, even though this is a policy committee, there is a fiscal impact to the county. The Clark County Detention Center on average houses approximately 16 inmates per month awaiting beds at Lakes Crossing. This equates to approximately 192 or so inmates per year. Once an inmate has arrived at Lakes Crossing, the inmate stays an average of 60 to 90 days while being assessed and restored to competency, if possible. This bill states that this restoration process for those staying 60 to 90 days occurs in our facility instead of a state facility, hence, the fiscal note that we have submitted.

It may be true that the fiscal bill may shorten the entire length of the process, but all the savings, if any, go to the state and not the county, which picks up the cost. The county does not pay the daily cost of the 60 to 90 days at

Lakes Crossing. I cannot speak specifically about the detention center and its operational aspects, but Chuck Callaway from the Las Vegas Metropolitan Police Department will do it on our behalf.

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are here today in opposition to S.B. 10 (R1). We share the same concerns that the county just expressed. We certainly support the intent of the bill and we understand that the language is permissive the way it is intended, but the fact of the matter is that the Clark County Detention Center—a jail—is not the proper environment for mental health treatment and competency evaluation. We believe that ideally it should be done at the Lakes Crossing facility, and I know it is not the ability of this Committee, but ideally we need a southern Nevada facility similar to Lakes Crossing.

There are a couple of issues that were not expressed by the county. The way the bill is written, it says "in jail or prison," but, as I think this out, unless the person committed their crime while incarcerated in prison, it seems like almost all of these individuals will be in the jail because they have not gone to trial yet and they have not been adjudicated. The whole purpose of the competency evaluation is to determine if they are fit for trial. So they will be in the jail. They will not be in the prison. Any cost savings for transport back and forth to Lakes Crossing will be eaten up by the roughly \$135 to \$140 per day it costs us to keep an inmate in the Clark County Detention Center. For those reasons, unfortunately, I am here today in opposition to the bill.

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:

We are opposed to the bill, and with the Chairman's permission, I would like to go down to Las Vegas. One of my colleagues, Christy Craig, is at the table there. For a number of years, she was the one in my office who was involved in competency court and these kinds of questions. She probably has a bit more concise and pertinent thoughts on the bill than I do.

Christy Craig, Attorney, Clark County Public Defender's Office:

I have dealt with competency matters for over a decade. I think that this bill is a solution in search of a problem. We have sued the State of Nevada because of the delay in getting inmates from the Clark County Detention Center to Lakes Crossing. As a result, the Governor has agreed to open Stein Hospital. Stein Hospital is due to open in September of 2015, and it will essentially be a Lakes Crossing for southern Nevada.

Under the law, they are required to transport people once they have been determined to be incompetent and in need of treatment within seven days of

that finding. That means we will no longer be flying people to Lakes Crossing. There will be a Lakes Crossing in southern Nevada. There will not be a waiting list to get people in for treatment. It just is not necessary for them to be treated in jail once Stein Hospital opens and gets running. The Legislature has provided funding to staff Stein Hospital. It is due to open, and it is part of a settlement agreement that it will open.

Secondly, you cannot compare what occurs during treatment at Lakes Crossing to what can happen inside the jail. They are two entirely different facilities and they are not the same standard of care. I would be opposed to defendants being treated inside the jail to a lesser degree than what they could get at either Stein Hospital or Lakes Crossing. If they stay in the jail and are treated in the jail, the jail then bears the burden of security, feeding, housing, clothing, and taking care of them 24 hours a day. It is not entirely clear to me how Lakes Crossing will provide appropriate treatment inside the jail facility. Will there be an outside company that comes in and provides a couple of doctors? Will they send staff? It frankly does not make sense to me, particularly in light of the fact that Stein Hospital is due to open in the fall of 2015. I think that it has a fiscal impact to the Clark County Detention Center and to the county. I think it raises the number of people who are already in the jail. They would remain in the jail. I just do not think that S.B. 10 (R1) solves any problem that is not already being solved by the fact that Stein Hospital is built and will be open this year.

Assemblyman Thompson:

We are hearing that Stein Hospital will be open in 2015. In the bill, it states "upon passage and approval." If the effective date was moved out, would that help or still would not help?

Christy Craig:

I do not think that the bill would have any impact no matter when it is implemented. When Stein Hospital opens, the delay in getting people to Lakes Crossing goes away. People are going to be transported from the detention center within seven days. That is what the federal law requires for treatment. They should not be in the jail anyway.

Assemblyman Elliot T. Anderson:

Is jail a good place to get people up to competency and help them get through their mental health issues? If someone is in jail and they have mental health issues, it would just be a tough environment for anyone, but especially for someone who is having problems. I cannot imagine that it is conducive to getting people competent. Are you familiar with the success rate of anyone in that environment with mental health problems? I know we do not exactly do

that now, but there has to be some sort of data that shows something in this regard.

Christy Craig:

I am sure there is. I can tell you that I go to both Lakes Crossing and the detention center's psychiatric ward. There is an enormous difference between the way Lakes Crossing is and the way the jail is. The jail is there to house people for trial. Lakes Crossing is intended to treat people to competency. Every staff member, other than security and administrative staff, are trained psychiatric personnel. People are moving around and there is something that Ms. Neighbors calls the milieu, which is part of the treatment. None of that exists in the jail. If mental health treatment was simply a matter of giving people medications while they sat quietly, then you could do that anywhere. The jail is intended to be a place that holds people, constrains them, and keeps everyone safe until they can get to trial. It is not what was intended or best for treatment to competency.

I can also tell you that many people who are going to Lakes Crossing are on medications inside the jail. They are taking their medications and yet they are still incompetent and in need of more extensive treatment. While I do not have any statistics in front of me, I think you are absolutely right. The jail is not the best place for mental health treatment.

Assemblywoman Fiore:

I do not want to go backwards. Back in the 1980s, the state closed most all of our mental health facilities, and now we are literally using our county, city, and state jails and prisons for mental health patients. I do not think that as we care for the mentally disturbed that they need to be cared for with officers with guns versus men with white jackets and taking care of them as doctors. I am afraid that when we see legislation like this, instead of our rolling our sleeves up, redoing our public safety, and really separating out and getting our mental health facilities back on track where they were in the 1980s, and getting out of incarcerating the mentally ill, this is problematic.

Chairman Hansen:

Currently, Clark County facilities have nothing for dealing with psychiatric inmates? Literally, all of the jails are exactly the same? There are no facilities at all? Every single case is shipped to Lakes Crossing?

Chuck Callaway:

No. We have medical staff in the jail. I think the averages are about 26 percent of our jail population is suffering from some type of mental illness and receiving psychotropic medications. We provide a level of treatment to our inmates, but

it is not to the level of a mental health facility where it is their training and job to determine and evaluate someone's competency.

There are two issues when it comes to the waiting period. When someone is booked into the Clark County Detention Center, they first have to go to a competency hearing at the court, so there may be a length of time they stay in the facility prior to even going to the hearing. Once they go to the court hearing and determine that they need to be evaluated, then there is the period of time where they have to wait to go into Lakes Crossing. It is a double-edged sword as far as if they need a competency evaluation, and once it is deemed they do, there is a wait for them to go to Lakes Crossing.

Chairman Hansen:

Ms. Craig testified that as of the fall of 2015, you will have the Stein facility. Is there a window in between now and then with this law that is necessary to assist in these situations? It is a fairly narrow window. Assuming this passes and the Governor signs it in the middle of May, between the middle of May and November 15, you have about a six-month window. Is there some value in this during that window?

Chuck Callaway:

In my opinion, no. I believe that if we started to treat inmates for competency in the Clark County Detention Center, there may be some cases where those inmates achieve competency or are deemed to be competent, but I think in most cases, the question becomes when a bed is available at Lakes Crossing, do we interrupt the treatment they are getting at the Clark County Detention Center to then move them to the proper facility for the follow-up treatment, or do we continue to try to treat them at the Clark County Detention Center? In my mind, if a facility is opening in the fall of 2015, implementing the law like this—although I realize it is permissive—I do not believe accomplishes anything.

Chairman Hansen:

Did all four of you testify in the Senate on this bill?

Chuck Callaway:

We did.

Assemblyman Gardner:

The testimony in support of this bill says that this has been done in a lot of other states. Are you saying that it is not being done competently in those other states? It sounds like you are saying there is no way for this to work in

our prisons. Are our prisons that much different than California or the other states that have done this?

Chuck Callaway:

I believe it is not a one-size-fits-all approach. I cannot speak for what the other states have done as far as how successful it has been. Understanding how the Clark County Detention Center works and the challenges we have here in our own state, I believe there would be problems associated with S.B. 10 (R1).

Chairman Hansen:

This only applies to jails. It says prisons, but you do not have anything to do with prisons down there. I am not sure why that is in there, but we can probably get it straightened out.

Are there any further questions? [There were none.] Is there anyone else who would like to testify against S.B. 10 (R1)?

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

I, too, testified in opposition to S.B. 10 (R1) at the previous proceeding. We are in opposition. All of my points have basically been covered by Mr. Yeager, Ms. Craig, and Mr. Callaway. We also believe that jail is not the best place for treatment to competency.

One point that was not covered that I think I need to touch on is that pursuant to *Nevada Revised Statutes* 178.425, subsection 3, the defense bar can petition the court to have someone who has been deemed incompetent to be treated on an outpatient basis. Logistically speaking, I do not know how we would accomplish it. I would submit to this Committee that it is rare; I have only seen it happen once or twice in my 10 years as a public defender. Two years ago, I had a woman who was deemed incompetent; I petitioned the district court to have her remain out of custody, and she was able to go to Lakes Crossing Center while still living at home with her family, taking care of her grandchildren, paying the bills, doing everything she needed to be doing, checking in with her social worker at Lakes Crossing, and it worked out quite well. I do not know if someone was deemed incompetent and the defense attorney was able to petition the court to have them remain on an outpatient basis, how they would get to the jail to check themselves in and out of the jail. I think logistically it would be very difficult.

We are also in opposition to section 1, subsection 6, which deals with the forcible administration of medications. I have talked to the mental health

attorneys in my office and vetted this issue with them. This was codified in the *Sell v. United States*, and we are in opposition to this language.

Chairman Hansen:

Since you are in Washoe County where Lakes Crossing is located, I assume it greatly facilitates the occasional cases you have to send there versus Clark County, which has to fly them up in shackles?

Sean Sullivan:

It does. I never really thought about the issues that Clark County was facing until I testified at the previous hearing on the Senate side, and it is unfortunate. I do not share those same concerns. I am able to go visit a person at the jail or at Lakes Crossing if I see fit. They remain with me. They do not get a different lawyer. They do not have to take that plane ride shackled up, their families still remain in town, and they have their support system, so it works out very well for the persons in Washoe County. I sincerely hope that the Stein Hospital in Clark County is up and running this fall, because it will alleviate a lot of these concerns. I think it is unfortunate and there is disparate treatment between the patients who are deemed incompetent up north as opposed to those patients who are deemed incompetent down south. That is just my understanding.

Chairman Hansen:

That is pretty much based on the logistics; it is not some flaw in the system?

Sean Sullivan:

No, it is just the logistics of flying them up, shackling them, putting them on the airplane, and making sure they are guarded while they are away from their family. Having a family support system while the person is deemed incompetent and being treated to competency is a huge benefit to that person, so I would agree it is just the logistics of the matter.

Chairman Hansen:

Is there anyone in Carson City or Las Vegas who would like to testify against S.B. 10 (R1) at this time? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify in the neutral position? [There was no one.] Senator Hardy, would you like to come up and tie up any loose ends before we close the hearing?

Senator Hardy:

I did not mean for this to be easy. I have no problems taking "prison" out of the bill. I have no problems allowing the county to have a "may" on their acceptance of this if it is not something that would be imposed on them.

Obviously, it would require some cooperation with the county and the state. I have no problems with that being worked out.

I recognize the reality that there is about a 50 percent rate of return to competency in the jail in the California system, and recognizing that the average of the 179 people—83—will return to competency within a very short period of time. I think it was less than three months that they were returned to competency. I thoroughly agree that jail is not the best place for mental health treatment, yet that is what we do. I appreciate Washoe County being close to Lakes Crossing, so the reality is that they have a waiting list to get into Lakes Crossing, as well as the rurals. When you look at medication, much of what we do with psychotic behavior is treated with medication, so there is an advantage to treating people while they are acutely involved.

There is a waiting list for time for the court hearing, and a waiting list for another hearing for competency, and a waiting list to get the care they need. That is the task this body is trying to figure out—how to do humane treatment with people who need to be able to be adjudicated and get on with their lives and let their families do the same.

Chairman Hansen:

I think we have covered it all. We will close the hearing on S.B. 10 (R1) and open the hearing on Senate Bill 55, which revises provisions governing waiver of the right of a criminal defendant to be present during sentencing proceedings. It will be presented by Mr. Kandt from the Office of the Attorney General.

Senate Bill 55: Revises provisions governing waiver of the right of a criminal defendant to be present during sentencing proceedings. (BDR 14-432)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

With me this morning is Senior Deputy Attorney General Heather Proctor. Ms. Proctor handles extradition matters for our office and is the subject matter expert who will take you through the particulars of this process and why this bill is so important. The bill revises the statutory provisions that are set forth in *Nevada Revised Statutes* 178.388, which authorizes a criminal defendant incarcerated in another jurisdiction to waive the right to be present during sentencing proceedings in Nevada, to include a waiver of all procedures related to that extradition. [Mr. Kandt submitted a letter ([Exhibit C](#)).]

Heather Proctor, Senior Deputy Attorney General, Office of the Attorney General:

When a defendant is charged with a crime committed in Nevada but is physically incarcerated in a jail or prison in another state, that defendant may

waive his presence in Nevada for a sentencing on the Nevada crime. This is called a sentencing in absentia. To request a sentencing in absentia under our current law, the defendant must be represented by counsel in Nevada, and that counsel must present to the Nevada judge a written knowing waiver of the defendant's physical presence for the Nevada sentencing. The Nevada judge may order the sentence on the current crime to run concurrent to the sentence in the other state, meaning that the sentence in Nevada will run at the same time the defendant is serving his sentence in the other state, or to run consecutive, meaning that the sentence in Nevada will not begin to run until the defendant completes his sentence in the other state. The Nevada defendant thus remains physically incarcerated in the other state, but receives a sentence on his Nevada crime.

The problem arises when the defendant completes his sentence in the other state but has not yet completed his Nevada sentence. Under normal circumstances, once a defendant is sentenced, he is immediately transferred to the Department of Corrections to begin serving his sentence. When the defendant is sentenced in absentia because the other state will no longer have physical custody of the defendant, the defendant must be returned to Nevada to complete his Nevada sentence. The process to transfer a defendant from one state to another is called an extradition.

An extradition can be a time-consuming and costly process in which the offices of the attorney general and governor in both Nevada and the state which has current custody of the defendant must coordinate their efforts to transfer the defendant back to Nevada. The cost of this process in a sentencing in absentia will never be recouped from the defendant as the process will occur after he has been sentenced.

Senate Bill 55 would amend the sentencing in absentia statute. As part of his written waiver of his physical presence for the sentencing in absentia, the defendant would also agree to waive the formal extradition process and permit Nevada to pick him up without the extensive proceedings otherwise required. This process would be analogous to the rights waived by a defendant when he enters probation, parole, or bail in which the waiver serves as a condition of his probation, parole, or bail. At the time he signs his written waiver to appear for the sentencing in absentia, the defendant would also knowingly waive the right to a formal extradition proceeding for his return to serve his remaining Nevada sentence. This process preserves the defendant's ability to be sentenced in absentia and to knowingly waive a formal extradition proceeding without the state incurring the costly process of a formal extradition. Senate Bill 55 promotes judicial economy while still preserving the constitutional rights of the defendants.

Assemblyman Thompson:

Would this not have to be case by case depending on the state where the person is incarcerated when they have to be in agreement to do all these proceedings while they are in their jurisdiction?

Heather Proctor:

In terms of the sentencing in absentia or the extradition after the sentencing in absentia?

Assemblyman Thompson:

Either or both. It just sounds to me like there has to be some type of connection with whom they are incarcerated with at the moment, and that they have to be in agreement to do what we are trying to do on our end.

Heather Proctor:

When we enter into any type of formal extradition proceedings, it requires cooperation from the governments of both states. They have to complete certain paperwork, and it goes through the governor to complete that paperwork. What we are talking about here is that the defendant himself would be waiving the requirement for that formal paperwork, so the governments would not be involved. Let us say the defendant still owed time to Nevada once he completed his sentence in Colorado where he was physically incarcerated. Once he completed his sentence in Colorado, if he proceeded under the amended statute as we are proposing, he would have waived his right to go through this formal process, and as long as Colorado was accepting of that waiver, we could just go pick him up and transport him back to Nevada. If we did not have this process in place, we would have to go through the formal extradition process where we would have to get all the governments involved. Again, this type of waiver is often used for probation and paroles.

Let me give you another example. We also have another process which is an Interstate Agreement on Detainer (IAD). That is also a process where the defendant is physically incarcerated in Colorado and is wanted in Nevada; however, the difference in that situation is he is facing untried charges. He has not been found guilty or he has not pled guilty. He has been charged with a crime, but he has not been convicted in Nevada. Under an IAD, the parties will complete paperwork. He comes to Nevada and is sentenced. He is returned to Colorado but that IAD serves as a double waiver. Once he is done with his Colorado sentence, because he went through an IAD process, he automatically waives his right to an extradition proceeding and he is transported back to Nevada. This would be something very similar. The problem is that an IAD does not apply to a sentencing only under state law. You have to have untried charges. It is basically taking an IAD one step further. He still has the

protections because he has to have the written waiver for the sentencing in absentia. As long as Colorado accepts that waiver that is in the form of the sentencing in absentia, there will be no problem with the transfer. Extradition is a very confusing subject. I teach a class on this, which takes six hours, so I am trying to condense it.

Assemblyman Araujo:

Have there been any express concerns by other states whether this process would be the most effective or whether there would be any type of roadblocks, depending on the process the other state may pursue?

Heather Proctor:

There are a handful of states—perhaps five—that do not accept presigned waivers, and that is what this would be considered. It is the same as the probation and parole. They require you to go through the formal extradition process. If we had a defendant in one of those states, we would certainly go through the extradition process, and this statute would not impede it. It would simply add to the process if we were in any other state but those five.

Assemblyman Jones:

Why would a defendant want to do this? Do they not usually want to fight and try to put up any legal obstacles that they can? Why would they want to waive rights; is it because they save time served? Would the judge not normally say, oh, well, if you have already been in jail for three years, we are going to give you time served anyway? It just seems odd that a defendant would want to waive all these rights.

Heather Proctor:

The reason an inmate usually pursues one of these is because he is hoping to get concurrent time, namely, that the court will order that his sentence be served at the same time as Colorado. That is a chance he takes. There is certainly nothing that requires the court to order the sentences concurrent. They can always be run consecutive, which means he has to wait until he finishes Colorado time to serve his consecutive time in Nevada. However, he is taking that chance and hoping for a favorable ruling, so he will initiate this as an early "let us get this over with."

In addition, a lot of prisons will use this as it affects their ability to program at certain levels. If you have charges pending in another state, they can get rid of those charges and it allows them to proceed with certain programming in that prison. Programming means that they can participate in certain classes or be put in certain levels such as medium level of security versus minimum level of security. That is what I mean by programming.

Chairman Hansen:

This is a bit of a gamble for the defendant. I assume these decisions are made with counsel for the defendant?

Heather Proctor:

Yes.

Assemblyman Elliot T. Anderson:

When someone is charged with a Nevada crime but they are incarcerated in a different state, do they have a Nevada lawyer who could help them go over this? The Chairman's question just popped that up in my head, because obviously, say they are in California, they have a California lawyer, and that California lawyer cannot give them advice on Nevada charges. How does that currently work?

Heather Proctor:

For the sentencing in absentia statute, it requires that the defendant be represented by a Nevada attorney, and the Nevada attorney must speak with his client in whatever state he is incarcerated in order to go through the sentencing in absentia statute. I would also note that for an extradition proceeding, if he completed his sentence—if it was a state that did not accept presigned waivers, or this bill did not go through and we had to do a formal extradition once he finished his time in the other state—under Nevada law, a defendant is not entitled to an appointment of counsel for an extradition proceeding because it is not deemed a critical step in the criminal process. That is because the defendant cannot challenge his Nevada charges while in California. California has no jurisdiction to do anything about his Nevada charges. He has to return to Nevada to face those charges and to challenge those charges in Nevada.

Chairman Hansen:

Is there anyone in Carson City or Las Vegas who would like to testify in support of S.B. 55?

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:

We are in support of this bill. It is a commonsense, cost-saving measure. To give a quick example of how this might work in real life, I had a client a couple of years ago who was originally from Oregon, and he was here in Nevada. He ended up being charged with some crimes and negotiated a plea deal, so he was not in jail at the time, but before his sentencing, he was brought back to Oregon to face some charges there, and was ultimately incarcerated. He had a problem in that he needed to be sentenced in Nevada but he was not physically here. He was incarcerated somewhere else. We were able to say that he waived his presence and the Nevada judge was

able to sentence him and say, "I am going to give you this sentence and run it concurrent." It essentially saved Nevada some money because he was able to do his sentence in Oregon.

What this bill would do is just say, "If you finish this sentence in Oregon and you still have some time to do in Nevada, you automatically come back here." You do not get to then say in Oregon, "Wait a second. I am fighting that and I do not want to go back to Nevada." It is a sort of quid pro quo. To be able to have the ability to serve time concurrently, you give up the right to fight the extradition. The bill makes a lot of sense. It is good for the state, typically good for criminal defendants, and good for attorneys because we can get these cases moving and taken care of.

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

I, too, support this bill, for the same reasons articulated by Mr. Yeager. The last time I dealt with this issue I had a client who was in California with tuberculosis and he was set for a sentencing on an unrelated matter in Nevada. I could not get him over from California to Nevada because of the tuberculosis. I wanted to go before the district court judge and have him do a sentencing in absentia, and that could not happen. I was frustrated. We had to wait a year for him to be quarantined and then have him brought back to Nevada. I believe that this bill makes a lot of sense, and we would support it.

I am also considering taking Ms. Proctor's six-hour course on extradition. I think she did an excellent job.

Chairman Hansen:

Are there any questions? [There were none.] Is there anyone who would like to testify in favor of S.B. 55? [There was no one.] Is there anyone who would like to testify in opposition to S.B. 55? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify as neutral on S.B. 55?

Brett Kandt:

Here is one piece of information to help frame this in the proper perspective. Our extraditions unit handled 609 transfers last year, so if you approve this piece of legislation, it will promote some judicial economy and cost-savings to the state.

Chairman Hansen:

We will close the hearing on S.B. 55 at this time, and open up public comment. Is there anyone in Carson City or Las Vegas who would like to take advantage of our public comment period? [There was no one.]

Assemblyman Thompson:

On behalf of my family, I want to express our thanks. Thank you so much for all your thoughts, and the flower arrangement was beautiful.

Chairman Hansen:

Thank you for sharing that with us. Is there any further Committee business at this time? Just a reminder that we will not meet again until Wednesday of next week. With that, I will close the meeting [at 8:57 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 14, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 55	C	Brett Kandt, Office of the Attorney General	Letter of explanation