

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

**Seventy-Eighth Session  
February 9, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 9 a.m. on Monday, February 9, 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](http://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](mailto: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 James Ohrenschall  
Assemblyman P.K. O'Neill  
Assemblywoman Victoria Seaman  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Melissa Saragosa, Judge, Las Vegas Justice Court  
Lorne Malkiewich, Director of Public Policy, Nevada Collectors'  
Association  
Regan Comis, representing the Nevada Judges of Limited Jurisdiction  
Kevin Higgins, Justice of the Peace, Sparks Justice Court  
Chris Wilson, Justice of the Peace, Sparks Justice Court  
John Tatro, Justice of the Peace, Carson City Justice/Municipal Court  
Sean Sullivan, Deputy Public Defender, Washoe County Public  
Defender's Office  
Ben Graham, Governmental Relations Advisor, Administrative  
Office of the Courts

**Chairman Hansen:**

[Roll was called and protocol was explained.] I would like to make a special thank you to Vice Chairman Nelson who took over for me on Friday. As many of you have heard, my son-in-law was in a terrible car accident, and he remains in a coma as we speak. He has stabilized, but it has been a very traumatic weekend. He and my daughter had been married a total of 28 days on the day of the accident. I appreciate everyone's love and support. I have a ton of outpouring of prayers, emails, and thank you's, and I want everyone to know how much my family and my young daughter appreciates it after going through this horrendous experience.

The best thing I can do at this point is immerse myself in work as much as I can to take my focus off of it. You do not have to bring it up at all. I appreciate all the support I am getting, but we just need to go forward at this point.

We are going to take the bills a little out of order. We were originally going to have Mr. Ben Graham of the Nevada Supreme Court do a presentation, but instead we are going to hear Assembly Bill 44. Before we get to that, I have a bill draft request, BDR 2-546, for introduction.

**BDR 2-546**—Revises provisions relating to displaced homemakers. (Later introduced as [Assembly Bill 132](#).)

**Chairman Hansen:**

I will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 2-546.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will now open the hearing on [Assembly Bill 44](#).

**[Assembly Bill 44](#):** Revises provisions governing judgments by confession.  
(BDR 6-491)

**Melissa Saragosa, Judge, Las Vegas Justice Court:**

[Assembly Bill 44](#) applies to a narrow area of civil law of judgments by confession. In this particular case and the reason for this bill, there is another statute in the books, which is *Nevada Revised Statutes* (NRS) 64.010, that limits the applicability of other sections of titles 2, 3, and 4 to the limited jurisdiction courts, such as the Las Vegas Justice Court. Therefore, Chapter 17 and its language has very specific requirements for a judgment by confession that apply to the district court. They do not apply to the justice court because we currently have a statute, NRS 68.050, that simply reads, "Judgments upon confession may be entered up in any justice court specified in the confession." It is very simple and it does not give us the procedural requirements that would mimic the district court requirements, two in particular that this bill covers.

One, it requires a judgment by confession to be signed by the defendant under oath. It requires it to be verified. That is required under the district court rule, and we would like that applicable to the limited jurisdiction courts as well. The second is that it requires the writing, which is the judgment of confession, to have a concise summary of the facts of how this debt arose. It is important to review the judgments by confession because there are other provisions in various sections of the NRS that prohibit a confession of judgment.

One example is under NRS Chapter 604A. Deferred deposit loans—also referred to as payday loans—are prohibited to have a judgment entered by confession. If we do not have that concise statement of the facts in the judgment of confession presented to the limited jurisdiction court, then we cannot tell

whether it would be prohibited or not. Those are the two main focuses. The language mimics almost identically that which is already in existence in NRS Chapter 17.

I have looked at a proposed amendment. I do not know if you want me to comment on that now or hold off on my thoughts. I am happy to do it either way you choose.

**Chairman Hansen:**

Have you given that amendment to anyone, or is it out of the blue?

**Judge Saragosa:**

It is not my amendment, sir. It is an amendment that was proposed by some debt collection groups. I have seen it, and I have a copy that was provided at the table here this morning. Mr. Graham brought it to my attention late last week and we chatted about it, but it is not my amendment.

**Chairman Hansen:**

Please go ahead and comment on it.

**Judge Saragosa:**

As I read it, it is a fairly simple amendment ([Exhibit C](#)). The proposal asks that it not be retroactive. For example, there are many cases in which a judgment of confession is signed by a defendant and in the context of that judgment, it lays out a payment plan. The plaintiff will hold onto that document, not file it with the court, and not have a judgment entered as long as the defendant is continuing with the payment plan. As soon as he defaults in his payment plan, at that later point in time, the plaintiff will then file the judgment of confession previously signed and have it entered into the justice court as a judgment. They are asking that in the event they already had a defendant sign a confession of judgment, that this bill not be retroactive. I have no issue with it.

**Chairman Hansen:**

So you are okay with the amendment?

**Judge Saragosa:**

I am okay with it, sir.

**Chairman Hansen:**

Do you have any other comments on this?

**Judge Saragosa:**

No, unless there are questions for me.

**Chairman Hansen:**

Is there anyone in Carson City who plans to testify in favor of this bill? [There was no one.] Are there any questions for Judge Saragosa at this time?

**Assemblyman Thompson:**

I would like to target on the area of payday loans. Would you explain how this speeds up the process in the event there is a default?

**Judge Saragosa:**

This will not apply to payday loans at all. They are already prohibited from entering a judgment by confession in those types of loans under NRS Chapter 604A. By looking at a confession of judgment today, I will not know unless there is a statutory requirement to have a concise statement of the facts. I am asking for the facts to be in the confession of judgment so that I can tell whether it is appropriate or not. It does not speed up any process. A confession of judgment is an agreement by a defendant in any given case that they owe the debt and they are agreeing to have a judgment entered against them. It is usually a single document signed by the defendant. Once that document is filed with the court, it is immediately entered as a judgment and the case basically opens and closes with a single document. The plaintiff is then free to execute upon that judgment as they would in any other case, whether it be by verdict or otherwise.

In many cases, we have plaintiffs who utilized the judgment of confession and they have a defendant sign that confession of judgment. The defendant is agreeing to have a judgment entered against them for an amount, say \$3,000, inclusive of all costs, attorney fees, and everything. That would be the amount of the judgment. But in order to facilitate getting payment, they do not file that judgment with the court so I do not even know it exists. It exists in their file and they use that as a means of leverage to get the payments and they do not have to go through a writ of execution to execute on that judgment. At the same time, the defendant does not have a judgment entered against them, so their record is clean in terms of no judgment. As long as they make the payments, the plaintiffs never file that document with the court, I never know it exists, the defendant never has a judgment, the plaintiff gets the money that they are owed, and we never even see it as an open case.

However, there are some who fail to pay and then the plaintiffs file it with the court and the judgment would be entered minus any payments they have made.

**Assemblyman Elliot T. Anderson:**

Is there any functional difference between a judgment upon confession and a settlement agreement? It sounds like these are more consumer transactions

or not with parties that are both capable and represented by counsel. Do I understand when these processes are used differently?

**Judge Saragosa:**

A judgment by a confession in the Las Vegas Justice Court is typically a consumer-type debt. That is just the nature of the cases that come to justice court because of our \$10,000 jurisdictional limit. So almost every case in front of us is more of a consumer-type debt. I would agree that yes, the majority of the defendants who appear at the justice court level are pro per. They are not represented by counsel.

In terms of your question as to whether or not a judgment by confession differs from a settlement agreement, yes and no. A settlement agreement is to have a judgment entered against them, but a judgment by confession is essentially the opening and the closing of the case with one single document. It differs in that there is no complaint filed with the court, there are no summons issued, and the defendant is not formally served with a summons and complaint in the normal course of civil procedure. Instead, this one document or one signature is what closes a case and enters a judgment against the individual. A settlement agreement normally comes after a complaint is filed and someone has been served, and then there is a meeting between the parties where they settled the case. Many times they do that in what we call a stipulation of judgment or a settlement agreement, but the confession of judgment is different in that it never has a complaint filed.

**Assemblyman Nelson:**

You said this is mainly to make the process exactly the same as it is in district court, correct?

**Judge Saragosa:**

Yes, sir, for the most part. There might be one slight difference. For example, the district court has a fee attached to a judgment of confession within NRS Chapter 17. Our fee schedule is in NRS Chapter 4 for a confession of judgment, so those types of things are a little different. In most other areas, it would be consistent with the district court.

**Assemblyman Nelson:**

So a judgment under this statute would be limited to \$10,000, correct?

**Judge Saragosa:**

Correct.

**Assemblyman Nelson:**

Are you concerned about someone attempting to file a judgment for \$15,000 and file it with the wrong court?

**Judge Saragosa:**

I am not concerned about that. With the number of cases that we see, we look at that in every case. It would be rejected if they filed in the wrong court, and we would not enter it. We have procedures in place for it. I cannot think of an instance that I am aware of in all the cases that I have seen where that has happened.

**Assemblyman Nelson:**

In section 4, it says that it may not be amended. What is the reason for that, and is that the same under the district court rubric?

**Judge Saragosa:**

That is not the same under the district court statute. I am glad you asked that, because I neglected to discuss it earlier. The reason for that section is that, in my experience, I have seen judgments of confession entered, which in their very nature are intended to be a complete understanding by the defendant of what the judgment is going to be in the exact dollar amount. I have seen judgments of confession that will have language such as, "I confess the judgment in the amount of \$3,000 plus attorneys' fees and costs." But the attorneys' fees and costs are not outlined. They have no idea what they are going to be.

The idea of a judgment of confession should be that the defendant, upon signing it and agreeing to this judgment against them, knows exactly what dollar amount they need to pay and if they do not, that is the judgment that is going to be entered and that is what can be collected. I have found that there are plaintiff attorneys who will utilize the judgment by confession, get a defendant to authorize that and sign it, file it with the court when they fail to make those payments, and then they try to increase the amount by attorneys' fees and costs. I think that is stepping aside from the intent of a judgment by confession. A defendant is entering an agreement to a specific dollar amount.

**Assemblyman Nelson:**

Even if the defendant and the plaintiff agreed to a revised amount, they would need to file an additional confession of judgment. Is that correct?

**Judge Saragosa:**

If the defendant wants to agree to it.

**Assemblyman Nelson:**

Then that would be all right?

**Judge Saragosa:**

I think that would be fine as long as the defendant agreed.

**Assemblyman Nelson:**

The whole rationale behind this is to speed things up and have less court time. You can imagine a case where a plaintiff did not make payments and then agreed later to add something like \$500 for attorneys' fees and costs.

**Judge Saragosa:**

If the defendant agreed to that at the time of the judgment, then yes. I think that would fall under the guidelines of a judgment by confession as long as the defendant has agreed and signed to it. But that is not what I see in practice. They do not agree to it. It just happens and the plaintiff asks for it after the fact.

**Assemblyman Nelson:**

I can see your point there, but what if everyone agrees to it subsequent to the first confession of judgment being filed and then later they amend it? Is that what this section is for?

**Judge Saragosa:**

I do not think it is getting it once it has been filed. It is geared toward these cases where the plaintiff never files it with the court. They have a defendant sign the confession of judgment and then they hold onto it. They never file it. When there is a default in payment, they file a confession of judgment with the court, and then they file an extra document where they want more money than what is in the confession to cover attorney fees and costs. I am envisioning all of those factors be considered at the time of the signing or amended by a new signing by a defendant.

**Assemblyman Gardner:**

Based on your testimony, it is my understanding that this will provide more protection for consumers. Is that correct?

**Judge Saragosa:**

I think in some ways it will in that the requirement of the verified signature under oath of a defendant who might be a consumer in a case, as well as the concise statement of facts so there is not a judgment of confession inadvertently entered in a case where it is not authorized by statute, then yes, it



would provide certain protections. It would also require the defendant to know what costs are going to be included in the confession of judgment.

**Assemblyman Gardner:**

I did not see any penalties for not complying in this bill. If someone does not do this, what would be the penalty for it? Where would they find the penalty?

**Judge Saragosa:**

I do not think there would necessarily be a penalty per se. The remedy for failure to comply would be that the court would not enter the judgment. If it did not comply with the statute and they submitted a judgment of confession to me that was signed by the defendant but not under oath, then I would return it to them and say, "Judgment may not issue pursuant to this statute" because the signature of the defendant is not under oath. I would send it back and not enter a judgment, and that would essentially be the remedy or the sanction.

**Assemblyman Elliot T. Anderson:**

If I read it right, it is there for res judicata purposes to close out the issue so everyone can move on to prevent chicanery if it were to go around again on the part of the parties. Is that how you understand it? Just to settle things for good?

**Judge Saragosa:**

That is my understanding. The intent was that when the clerks have to enter the judgment, there is a fixed dollar amount attached to it.

**Chairman Hansen:**

Are there any further questions? [There were none.] I have a quick question. We had a bill last time which bumped up the amount that you could sue for in small claims to \$7,500, and here there is a \$10,000 number floating around. Where does this bill fall in relation to those two numbers?

**Judge Saragosa:**

It would not apply to either of those numbers because a plaintiff has a choice of seeking small claims procedures or a true civil procedure in a civil case. Even if their debt was \$6,000, they are not required to file a small claims action in lieu of a civil action. We have civil cases that are as small as \$200 debts and we have small claims actions that are as high as \$7,499 debts. It would apply across the board. You typically do not see a judgment of confession in a small claims case because of the process that case follows. This would really be applicable to the civil case regardless of the dollar amount. It could be a civil case at a very low \$200 or up to the \$10,000 maximum.

**Chairman Hansen:**

So there is a limitation of \$10,000 on civil cases in small claims courts. If they had to go above that, they would have to go to district court?

**Judge Saragosa:**

Yes, any action above \$10,000 would have to go to district court.

**Chairman Hansen:**

Thank you, Judge Saragosa. Is there anyone in Las Vegas who would like to testify? [There was no one.] Is there anyone in Carson City who would like to testify? [There was no one.] Is there anyone in opposition to A.B. 44? [There was no one.] Is there anyone in Las Vegas or Carson City who would like to testify in the neutral position?

**Lorne Malkiewich, Director of Public Policy, Nevada Collectors' Association:**

I do not think I could do a better job of explaining our amendment ([Exhibit C](#)) than Judge Saragosa. She explained exactly the situation we are concerned with. Clearly the bill does not apply to a judgment that is entered before the effective date and applies to something that is entirely after the effective date. In this amendment, we are trying to address the situation she described where a debtor and a creditor sign an agreement before the effective date but do not file it. This is a benefit to the debtor. The debtor does not have a judgment entered against him or her. If they continue to make the payments, the judgment is never entered. Theoretically, if they default, this judgment could be filed after the effective date. This amendment clarifies that situation, as this new law would not apply to a confession of judgment that was signed before it took effect.

I spoke with Mr. Graham about this and would like to thank him and Judge Saragosa for agreeing to allow us to add this amendment to clarify the matter. Mr. Graham also thought to try and cut this off as soon as possible, so by proxy and on his behalf, I am requesting that this be changed to a July 1, 2015 effective date. Therefore the transitory provision that we are putting in would also have a July 1, 2015 effective date. I will be glad to answer any questions.

**Chairman Hansen:**

Are there any questions for Mr. Malkiewich? [There were none.] At this point in time and seeing no further testimony, we will close the hearing on A.B. 44 and open the hearing on Assembly Bill 66.

**Assembly Bill 66: Revises the qualifications of justices of the peace in certain townships. (BDR 1-492)**

**Regan Comis, representing the Nevada Judges of Limited Jurisdiction:**

Today I am representing the Nevada Judges of Limited Jurisdiction. To my immediate left I would like to introduce Judge Kevin Higgins, and to my far left Judge Chris Wilson. They will be going through the bill with you and, with your permission, I will step back from the dais so Judge John Tatro may also come and present.

**Kevin Higgins, Justice of the Peace, Sparks Justice Court:**

Assembly Bill 66 would amend *Nevada Revised Statutes* (NRS) 4.010 to include Sparks in the category of large urban justice courts where you have to be an attorney to become a judge. The way the statute is written now, it only applies to the Reno, Las Vegas, North Las Vegas, and Henderson justice courts. But for the 2011 omnibus amendment that pulled all of the population numbers up in NRS, all of the 400,000s became 700,000s, et cetera, we would not need this bill because Sparks would already be included. We are in a county of over 400,000 and a township of over 100,000, and that was the way this statute was previously written.

This amendment would change it so that in any county over 100,000, or any township over 100,000, you would have to be a licensed attorney to become a justice of the peace. This brings us into the same category with the other large justice courts. Currently, 39 of the 67 justices of the peace statewide are attorneys, so 58 percent of our sitting justices of the peace are attorneys. Our bill has been endorsed by the Washoe County District Attorney, Christopher Hicks; Washoe County Public Defender, Jeremy Bosler; and Alternate Public Defender, Jennifer Lunt.

We have included a set of statistics that I believe Judge Wilson is going to be spending a minute looking at, but the numbers tell the tale. We have the second-highest caseload for judges in the state after the Las Vegas Justice Court of 3,500-plus nontraffic cases. If you include traffic, Judge Wilson and I hear about 7,000-plus cases a year. We also hear all of the serious cases.

Sparks is the town that I grew up in the 1960s. It is a big city now with all of the same big city problems of gangs and murders. We had three murders and multiple sexual assaults last year, and those are the type of huge volume of technical cases that appear in front of us today. We anticipate that the growth in Sparks will continue. I hear that the number of building permits has been pulled with the anticipative population growth and all of the growth out at the U.S.A. Parkway, and it is really time to make sure that the judges sitting in justice court have the same legal qualifications as all of the other judges in the large courts.

Our association has also endorsed this, which is telling, because the Nevada Judges Association comprises all of the municipal court judges and justices of the peace statewide. There are over 90 of us—about half statewide are attorneys and half nonattorneys. Both types of judges have unanimously agreed that it is appropriate for Sparks to become an attorney-judge jurisdiction. That system works very well in a great part of the state where lay people, many times part-time judges, serve in those capacities and in their other capacities at the same time.

I remember the stories about Judge Lehman in Ely being out on his swather and the Sheriff's Department behind him with a squad car with the lights and siren on to get his attention so he could stop cutting hay and get down and sign a search warrant and an arrest warrant. Then he would get back to work and justice would continue in White Pine County. That is a different volume of cases in those counties, and these are full-time jobs with full-time legal issues, and I think it is a good joint system. I think it works well in both circumstances to have lay judges in many jurisdictions, but I believe it is time to include Sparks in the same category. This would not affect any sitting judges today. Both Judge Wilson and I are attorneys. I know the effective parameters of the bill say it would not affect any sitting judges that were seated as of October 15. There are not any judges in any of those jurisdictions who are not an attorney at this point.

**Chris Wilson, Justice of the Peace, Sparks Justice Court:**

If you look at pages 4 and 5 ([Exhibit D](#)), basically you are going to see that based upon the population over 140,000 is Sparks Township. When I stepped into the job—and that was a year ago February 11—within a number of weeks I had to preside over a case involving a murder. Simply stated, that is something that you just cannot walk in and do without experience. I came in with 16 years of experience, so I knew what I was doing. I could not imagine being a lay judge and walking into that same situation.

The page titled "Sparks Justice Court Fiscal Year 13/14 Felony and Gross Misdemeanor Crimes Against Persons" breaks down the details. In that year we had 3 murders, 2 attempted murders, 3 statutory sexual seduction under 21 cases, 5 sexual assaults with children under 21, 6 sexual assault cases, 2 lewdness with a child under 14, 1 case of promoting sexual performance of a minor, sexual assault with a child under 16, 11 possessions of visual pornography with a person under 16, 1 kidnapping with sexual intent, 20 batteries with a deadly weapon, 31 assaults with a deadly weapon, and 12 robberies with a deadly weapon.

With the frequency of these cases, this is what requires the experience. This is what requires the legal education and background. Lay judges in the smaller areas—if you will look at the Supreme Court—have a total number of cases in some of these townships of 500 and 196, whereas we are dealing with thousands and thousands. As the population is larger, the frequency of complex cases increases, so it does not afford you the time to be able to sit back, contact everyone you know who may have handled the issue before, and then try to learn on the job. You have to come in knowing how to do the job from the get-go, as you do not get an opportunity to learn on the job.

Judge Deriso is the judge that I replaced. She was a lay judge and had been in place a number of years. She spent 18 years as a clerk in the Reno Justice Court, so she had been in court every day. She already had some on-the-job training, but in her letter ([Exhibit D](#)) she recommends that Sparks be treated the same as the other large communities and that it require lawyers to become future justices of the peace.

**John Tatro, Justice of the Peace, Carson City Justice/Municipal Court:**

I have been a justice of the peace in Carson City for 20 years. I was appointed in 1995 and have run through four elections since then. Prior to becoming a judge, I worked at the State Gaming Control Board. At first, I was an agent with the Gaming Control Board, went to Peace Officer Standard Training, conducted criminal investigations, and learned about criminal law. After a few years of that, I became a hearing officer at the Gaming Control Board for eight years. During that time, I literally conducted over 2,000 hearings. I counted on that to impress the Board of Supervisors that might appoint me at the time. When I started in 1995, it was a different world. The caseload that I had to jump in and hear was at least half of what it is now, and the interesting part is the cases were much less complex. I think that a large part of that is attributable to minimum mandatory sentences, such as driving under the influence (DUI) and domestic batteries. In those cases, they are misdemeanors and they are facing serious consequences. I think the attorneys have stepped up their game.

When I first started, as an example, I maybe had a motion to suppress once every six months. I had plenty of time to study and understand and know what I needed to know. Now, 20 years later, there is one a week—at least one a month. I am constantly conducting motion to suppress hearings and reading all sorts of different motions that we just did not have back then. If I were to apply for this job now based on the experience that I had—at the time I thought it was pretty good as I did know how to conduct a hearing—I would not be able to jump in and hit the ground running, and that would be at the expense of defendants, victims, and families. It is just a different world. I know I could not

do it. The difference is that back then I had time to basically learn on the job and be prepared as they came in. I could not do that now. We will have 15 to 20 custody arraignments and then we jump right into preliminary hearings and trials. Every single day we are in court all day long. I had to think about this before I said yes to these men and if I supported this.

When an opening for a justice of the peace became available in Carson City recently, a few friends of mine were going to apply for this job based on their law enforcement background and I said, "I just do not think you would be able to come in, and the learning curve would be terrible." One of my biggest fears is not understanding what is going on, and I take great pride in trying to be up to speed. Basically, if I were to start today with the same background and understanding, I would not apply.

I will say—as Judge Higgins pointed out—there are areas where it works fantastically, such as Camille Vecchiarelli in Dayton, Max Bunch in Battle Mountain, or Larry Graham in Wadsworth. In the beginning, they had the time to get up to speed. You just do not want to do something to the detriment of defendants, victims, and participants.

**Assemblyman Wheeler:**

The way I understand the original intent of a justice of the peace is that it is someone from the community who really is not an attorney and relies more on common sense and community values. It seems to me that what this bill does and what you are trying to do here is add a little mini-district court instead of changing the workload of the justice of the peace and sending the cases that you were talking about up to district court, such as murder. That should never be in a justice court. In my opinion, any type of felony should never be in a justice court. I am wondering if you can answer that. Was not the original intent of a justice of the peace to be someone from the community who specifically was not an attorney?

**Judge Higgins:**

I think that was the way the system worked for a long time. We are the gatekeeper for the district court, so all the felonies come to us to start with, except for the few cases in Washoe County that go to the grand jury. Every felony and gross misdemeanor comes through our court for a preliminary hearing as required by the statute, and we have to weigh the evidence and decide whether those cases go up to district court. We are there to make sure that only the cases that should go to district court do go to district court. That worked very well and it works very well in much of the state with a local person using common sense. But as Judge Tatro indicated, those cases have become more and more complicated. There are a lot of issues with DUIs that

come up these days concerning car stops, dog sniffs, probable cause for car searches, or whether someone should be forced to give a blood draw. There are bills pending this session that deal with some of those issues. Those all come up in justice court every day for the hundreds of DUIs and domestic violence cases that Judge Wilson and I see.

I would like to think I am one of those local people with common sense. I am a Sparks native. I grew up in Sparks, learned to swim at Deer Park pool, went to Sparks schools, and only left town when I went to college. I am hoping that I am a person who is connected with the community that has that kind of common sense. But the legal issues that come to us from the Legislature, the Supreme Court, and the U.S. Supreme Court that change every day are ones we have to see. I agree that it was the system that we started with 150 years ago. This new requirement has been in place for over 20-plus years in Henderson and longer than that in Las Vegas. You really need an attorney to understand the issues that come up every day. I do not disagree with you, but I think things have changed in the last few years.

**Assemblyman Wheeler:**

So you are telling me that the issues are totally different in a smaller community like Douglas County than they are in Clark County? They do not need an attorney, but Clark County does need an attorney? That does not make any sense to me.

**Judge Higgins:**

You have attorney justices of the peace in Douglas County. Both of your justices of the peace are attorneys.

**Assemblyman Wheeler:**

But they are not required to be.

**Judge Higgins:**

They are not required to be. I think a better example is Dayton, Ely, or Pahrump. There are concerns with our association that somehow this would require every justice of the peace in the state to be an attorney. I told them that was not the intent of the bill at all, and if that somehow happens, I would pull the bill. Frankly, there are counties in this state where the only attorneys are the district attorneys, the district court judge, and maybe the public defender, and no one else in town is an attorney. So it would not be practically possible to apply this to the smaller jurisdictions. For the bigger counties, though, I think it is time for a change.

**Assemblywoman Fiore:**

Have there been any problems with the system as it is today?

**Judge Higgins:**

I cannot say there have been any problems today. Judge Deriso, who just recently retired, did a fine job for many years. Her letter is in the packet ([Exhibit D](#)) stating that she thinks it is time to make this change. The worry would be that in the future, if we expand and have another judge in our court, would Judge Wilson or I have time to essentially conduct law school until that nonlaw-trained judge felt competent and comfortable making those kinds of decisions. I think the district attorneys and public defenders would be much more comfortable with a law-trained judge. I think this is a growth issue that we are addressing rather than any particular issue that has happened before, but it is what applies to Reno, Las Vegas, North Las Vegas, and Henderson. We think it is time that it applies to Sparks as well.

**Assemblyman Elliot T. Anderson:**

Would you talk about the difference in the caseloads between the Reno and Las Vegas metropolitan areas versus Eureka?

**Judge Higgins:**

There are two huge instances of the spectrum there. There is a handout ([Exhibit D](#)) which shows that Las Vegas has 8,000 nontraffic cases per judge, Sparks is at 3,500. Reno has six judicial positions—so they are at 2,400—and Austin Justice Court had 27 cases last year. So we go all the way from the smallest jurisdiction to the largest jurisdiction, but in the top five or six we are at several thousand cases per judge, and then it trails down. A lot of courts have a few hundred. We are the second busiest court per judge in the state. We see more cases than Reno or Elko. Actually, we see more cases than North Las Vegas and Henderson. They already have attorney-required judges there, and we are seeing more cases every year than they do.

**Assemblyman Thompson:**

Have you had any conversation with an elections department? Do you have to show those credentials right up front to a license department? The reason I ask this is because sometimes we go through an election and then we might find out something about someone that is not factual, so we waste taxpayer money. Has there been any dialogue with an elections department, and do you have to show your credentials on the front end if you are running?

**Judge Higgins:**

That is an excellent question, Assemblyman Thompson, although I do not know the answer to it. I do not believe it has been a problem in the jurisdictions that



have attorney-required judges. It is pretty easy to look that up on the Nevada State Bar Directory and see if someone has been licensed. I have not had a particular conversation with them.

**Assemblyman Thompson:**

What you are saying is that it is not a common practice and it is incumbent upon the elections department to check, so it is their responsibility?

**Judge Higgins:**

Correct. Right now you have to be 18, an elector, and a high school graduate. As far as I know, they do not ask for proof of your high school graduation. It would probably be up to the other candidates to bring that issue up, but I have not had that discussion.

**Assemblyman Ohrenschall:**

For full disclosure, I am a member of the State Bar of Nevada and an attorney, so it is hard not to like a bill like this. I was raised by a single mother who is a solo private practitioner, also an attorney, and often what she had to do for day care was take me along with her to court. As a kid, sometimes I would go with her, and we would appear in front of Justice of the Peace Jan Smith, who is out of Jean and Goodsprings, but sometimes she would also ride circuit and come up to Las Vegas and Clark County. Jan Smith was a brilliant woman, and she was not an attorney. I learned that nonattorneys can serve on the justice court and do an excellent job as well, and it sounds like the former justice of the peace in Sparks was such a judge.

Has the Washoe County Bar Association taken a stand on this bill? Do we know how the legal community feels? Do they feel it is time to only have Nevada attorneys sitting as judges in the Sparks Justice Court? Do you know how the Sparks community in general feels about this?

**Judge Wilson:**

To answer your first question, the Washoe County District Attorney, Christopher Hicks, is behind us on this bill. We also have the Washoe County Public Defender, Jeremy Bosler, who is also in support of this bill, as well as the Alternate Public Defender, Jennifer Lunt.

I walked the vast majority of my township for the election. There were six candidates; three attorneys and three nonattorneys. For the primary, the vast majority of the people that I spoke with were amazed that a lay person could be a judge due to the modern age and the size of the Sparks township. Most people I spoke with—and I hope they were being forthright with me—did not think that a lay judge should be doing the job. None of the nonattorneys

made it out of the primary. It was me and another attorney that ended up moving on to the general election. I think that speaks volumes for how the local populace in Sparks views that very issue.

**Assemblyman Ohrenschall:**

There has been no position by the Washoe County Bar Association, and no official polling, only your impression of how the populace felt?

**Judge Wilson:**

Yes.

**Judge Higgins:**

I would point out that Judge Deriso could continue to sit as the senior judge. This requirement would not affect her or any other lay senior judge in the state to come and sit in our court as a pro tem judge to fill in for us. The senior judge statute is different and allows them to sit in any court.

**Judge Tatro:**

As a lay judge, I can tell you that when I am talking to people throughout the community, they often ask "Where did you go to law school?" Frankly, I dance around that question, because I see it coming. I want to get out of there before they ask it. So when they ask it, I tell them that I did not go to law school, that I am a lay judge, and they are shocked. I do not think I have said to anyone that I am a lay judge and they say "Well, that is great." They might say that a little later, but they are always shocked. That has been the case for 20 years.

**Assemblyman Nelson:**

Why 100,000? Why not 50,000? Why not make Carson City subject to this? It seems to me you are saying that it is not just the number of cases, but it is also the complexity of the cases and the legal issues. I am curious why you cut it off at 100,000.

**Judge Higgins:**

Part of that answer would have to come from the Legislative Counsel Bureau (LCB). I am not sure why they picked that number. My original bill draft was for any county over 400,000 and any township over 100,000. I would assume that LCB is bringing that to parallel other population-driven statutes. There is a list in the package ([Exhibit D](#)) "Nevada Judicial Townships by Population," which lists everyone by population. After Sparks, the next closest township is Carson City at 53,000. It seemed like a logical break. Part of that was to address the concerns of half of the people in my association who want to make sure this is not going to apply to every other judge in the state. Frankly, I did not want to bite off more than we could chew in this bill. I think you get to

a point where there will be opposition to requiring attorneys in some of these jurisdictions where they have never had to be or where some of the judges are currently lay judges. Not to give too much credit to my good friend, John Tatro, but he does a fine job, and I think he is one of the best judges I know. I would not want to place a requirement that would look like he should not be sitting there.

If you look at the list ([Exhibit D](#)), we have judges in Pahrump, East Fork Township, and Douglas County, and even my friend Alan Tiras in Incline Village who suggested dropping it below 7,000 people. I told him that we could not drop it that low. There are some considerations in making sure that this is an appropriate level, that we do not include too many people, and part of it was the drafting from LCB.

**Assemblyman Nelson:**

Apparently, there is no shortage of lawyers in Carson City.

**Assemblyman Gardner:**

Do you know how many attorneys there are in Sparks?

**Judge Higgins:**

I think there are 2,500 people in the Washoe County Bar Association. I really cannot tell you how many attorneys are in Sparks. I know a lot of people in the district attorney's office live in Sparks but work in Reno.

**Judge Wilson:**

Having just run in an election, I sent mailers out to businesses and residents. There were at least 100 or more attorneys that lived in Sparks.

**Chairman Hansen:**

Judge Higgins and I go way back. I also learned to swim at Deer Park pool and went to Sparks High School. We were in Boy Scouts together. We were in the speaking contest at Pacific University in 1975. I have had several small claims actions before him. For Judge Wilson, I worked on his first campaign, which was unsuccessful, and the second one was very successful, so I am happy to see you here.

This bill, in one form or another, has been brought up several times and never really went anywhere. I think one of the main concerns that I have is that this is an elected position. As you pointed out, there were six candidates—three who were lawyers and three who were not. Ultimately, the way it works now, the citizens of Sparks get to determine what type of judge they want. With Judge Deriso, who served for 13 years, she technically could not qualify under

this law to run and serve as she did for those 13 years, in spite of having 18 years as a clerk in the court. That is where I am coming from.

While I understand the need for attorneys and that things have become increasingly complex, I also think that because it is an elected position, those are the kinds of things that you have to make your case to the voters when you run for office. In the absence of a legal document, there may be other qualifications that the voters have a right to review. What we are going to do with this law is we are going to basically deny those people even an opportunity to put their name on the ballot. Yes, there is a weeding out process and that is why those three disappeared. I am wondering from a perspective of the politics of it, why should I allow the citizens of Sparks to be disenfranchised in who they can select and limit it entirely to people who are exclusively lawyers?

**Judge Higgins:**

I do not necessarily think that being a lawyer is a magic thing that makes you a great judge. There are many nonlawyer judges in Nevada that are the finest judges I know, but you do come with a skill set, and you do walk into the courtroom hopefully knowing general procedures. Every judge in the state has to go to a two-week class at the judicial college, attorney and nonattorney alike. Two weeks is not enough time to bring you up to speed on all the rules of criminal procedure and criminal law. I think if any of you had a relative that was accused of something that you think they were wrongfully accused of, and there was a technical legal issue involved, such as a bad search, a search warrant, the blood was not taken correctly, or an attorney filed a motion to suppress the forcible drawing of the blood, you would want someone who was familiar with those issues and was trained on those issues to address that.

It is almost like an Angie's List. You want the most knowledgeable person and who has the most experience making those decisions. You do not want to go to the doctor who has seen an appendectomy on TV but has never done one. Not to be facetious, but it is the same way with a judge. There was a judge appointed in a district in Nevada—he did not get reelected—who had never been in a courtroom in his life before he became a justice of the peace. I spend a lot of time on the phone with my friends who are lay judges. I talk to them all of the time with questions about rules and procedure. If you are in front of them with their small claims or with a relative that has been accused of a crime, I do not think you want someone who is learning on the bench. Sparks has enough of those issues every day that you want the best possible person there. That is the same for anyone. You do not want a car mechanic who does not know what he is doing. It is a difficult issue, especially here in Nevada. We pride ourselves on being rural and western. Roy Bean did not go to law school, and he is probably the most famous justice of the peace of all time. You want to

walk in there knowing that the judge is going to understand the laws and rules and your law-trained member-of-the-bar attorney sitting there can make a legal argument to the judge that the judge is able to understand and make a fair decision on. The justice court has been called the people's court, and we work very hard on having it open to lay people. We do a lot of small claims. It is not an easy thing being a judge all day long, and I think it is very important to have more training and more experience.

**Chairman Hansen:**

I cannot dispute any of that. I will say that as I go back and look at the elections in Sparks, one that comes to mind in particular is the Susan Deriso race. I was involved in that because two of the people running against her were Roy Straw and Pat McGill, with whom I had grown up. Roy was an attorney in the district attorney's office, and Pat was a highway patrolman at the time, and I did not know who Susan was. At the time, I was writing for the *Sparks Tribune*, and I ended up endorsing Roy or Pat, and this dark horse candidate, Susan Deriso, beat an attorney, and she was not an attorney. At that time, the citizens of Sparks deliberately and knowingly selected a nonattorney to serve as a justice of the peace. As you have acknowledged, she did an excellent job for the 13 years that she was there. I am worried about the disenfranchisement factor and limiting it exclusively to attorneys.

**Assemblyman O'Neill:**

Do you have any statistics that show an increased load to the district court of appeals made by justices of the peace who are attorneys versus those who are nonattorneys?

**Judge Higgins:**

The short answer is no. The long answer is that the Supreme Court publishes a lot of statistics. I could look at the appeal statistics and then manually break it down by attorney and nonattorney courts. There is nothing available at my fingertips to tell you what the appeal rate is.

**Assemblyman O'Neill:**

I am curious to know how many of the appeals were upheld by nonattorney justices of the peace versus overturned rulings by the attorney justices of the peace.

**Judge Higgins:**

They have a lot of statistics at the Supreme Court. I will work on seeing if we can pull those out of the existing numbers. I do not know if we can, but I will get back to you and send those to the Committee.

**Assemblyman Elliot T. Anderson:**

What happens if a case gets decided wrongly? What does it mean to either a defendant in the criminal proceeding on a bound-up, or someone in a civil case?

**Judge Higgins:**

If it is a felony, it means you are going to spend a lot of time in district court paying for an attorney—if you can afford it. If it is a public defender, the state and the county are paying a lot more money. In a civil case it is certainly possible that if you do not have an understanding of contract law and offer an acceptance and statutes of limitation, and performance, people are going to be required to pay judgments that perhaps they should not have. We get a lot of interesting cases in justice court over goods that are sold and not sold, who owned them and who did not own them, who owns the mobile home and if it is owned by the landlord or if it is owned by someone else, and a lot of cases have to be parceled out.

I think we are the only justice court in the state that still does title work, or at least in northern Nevada. If you find your grandpa's 1938 Studebaker in your barn and you go to the Department of Motor Vehicles, they are going to say, "Prove that you own it." Since you cannot, we will issue judicial titles. That requires us to do the research and the thinking and apply our knowledge to enable us to do that. Basically, you are not having the same access to the criminal justice or the civil systems that you would. Judge Deriso made those decisions. It is not the same small town that I grew up in. I do not know if I would let my kids ride their bike at five years old to Deer Park pool, which is a mile from my house. It is an interesting question. It is a different place and we have gang issues, and Sparks is as big as Las Vegas was when I was a kid. I think it is time to change, and there is the potential people will be denied access to justice if someone is not trained properly.

**Chairman Hansen:**

Are there any questions? [There were none.] Is there anyone else who would like to testify in favor of A.B. 66?

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

I am here on behalf of my office to lend support to A.B. 66. I know these issues have already been vetted very well this morning by all of the judges sitting behind me. I should note for the record that I currently appear before Judge Higgins and Judge Wilson. It is my distinct pleasure to still be a practitioner for both of those judges for the Washoe County Public Defender's Office.

We are here in support of A.B. 66. I, too, grew up in Sparks, and I am proud to say that. I went to Diedrichsen Elementary School, Sparks Middle School, and am a proud graduate of Reed High School. I also believe that it is time, and I will not belabor the issues. I had the pleasure of being a young deputy district attorney in 2000, prosecuting cases for certain townships such as Verdi before Judge Cook, Judge Graham in Wadsworth, and Judge Deriso for the past 13 years. They were all very fine and capable lay judges. Our office believes it is time to support A.B. 66 for the reasons that have been stated by Judge Higgins, Judge Wilson, and Judge Tatro.

**Chairman Hansen:**

Since 58 percent of the justices of the peace in the state are not attorneys, what percentage of those cases they hear are the more significant ones, such as gross misdemeanors and felonies, that actually get overturned on appeal? How many people are released because of some sort of error on their part as far as proper processing or due process or habeas corpus or whatever it may be? I am curious. Do you have any idea along those lines?

**Sean Sullivan:**

I do not have those facts and figures before me. It is an excellent point that you make. I can only speak from my personal experience. If there is a mistake made at the justice court level and, for example, it is a criminal matter, as Judge Higgins already intimated, the Washoe County Public Defender's Office would spend time and resources basically filing a pretrial writ of habeas corpus and litigating that issue with the state of Nevada involved as well. It would take weeks if not months to litigate that issue in district court. I do not have the facts and figures that you are looking for, but I would be happy to work with Judge Higgins to come up with those facts.

**Judge Higgins:**

Perhaps I misspoke, Chairman Hansen. Fifty-eight percent are attorneys and 42 percent are not attorneys.

**Chairman Hansen:**

Are there any further questions for Mr. Sullivan?

**Assemblyman Nelson:**

From the standpoint of defending in these courts, do you have anything to add, even if it is anecdotal, about decisions you have seen that might have been improper in your viewpoint which an attorney, as the judge, might have handled differently?

**Sean Sullivan:**

That is an excellent question. I do not have any specific anecdotal testimony or evidence to provide. The only thing I can provide is what these judges have talked about concerning on-the-job training. Based upon my experience, it would seem that when it came down to matters of evidentiary issues, constitutional law issues, criminal law issues, or criminal procedure issues, that lawyer-trained judges had a cornerstone or a foundation to build and work from, and they were readily available to issue rulings much more quickly. Again, I am not here to detract or take away from any of the lay judges that have been mentioned, particularly Susan Deriso, who was a wonderful judge. It just seemed that the legally-trained judges had a cornerstone or foundation to draw from and issued rulings readily available from the bench. I cannot say for certain whether a lay judge may have made a mistake as opposed to a legally-trained judge. It is a fair question, but I cannot answer that.

**Chairman Hansen:**

Is there anyone else here or in Las Vegas to testify in favor of A.B. 66? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 66? [There was no one.] Is there anyone who would like to testify in the neutral position on A.B. 66? [There was no one.] At this time we will close the hearing on A.B. 66, and go to Mr. Ben Graham of the Nevada Supreme Court.

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

You just sat through 103 and 102 of the process, and now I am going to take you back to 101 as I get the opportunity to talk to you about the courts. This is an effort on my part to bring into perspective some of the things that we are going to hear about over the next few months.

The first thing I talk about in our summary ([Exhibit E](#)) is the arrest because that is crucial. For most of us, exposure to the law enforcement community might be a citation, which is a form of a criminal complaint that tells us someone thought we did something wrong, going through a stop sign or cutting through the gas station or maybe going too fast. Do not do it in Goldfield. Actually, do not do it anywhere, but there are certain jurisdictions that you want to be real careful about. An arrest is the most dramatic force of search and seizure. They grab you and they take you somewhere. There are standards that we will talk about to put you under arrest and bring you into court to potentially answer to some sort of a criminal charge.

In the summary we mention municipal courts. Municipal courts are within a definite geographical area. Many of us think that when we live in Las Vegas or the Reno area it is all boiled together, but it is not. In Las Vegas, if you cross



over Sahara going out to the Strip, you end up in the county. On the other side, you end up in a municipal court to answer to issues in the municipal court. The municipal court deals with misdemeanors within their jurisdiction. We will talk about misdemeanors later because Nevada is a little different than most jurisdictions.

Justice court—and you just saw a good sample of some dynamic justice court judges—is limited to a township area within a certain jurisdiction. It is fun to take a look at some of the statistics that the judges gave you. When I first started working up here, someone mentioned the justice court in Beowawe—there are justice courts all over the state, and some of them are superimposed over the municipal areas. Justice court does a lot of the same things that municipal court does with regard to misdemeanors, traffic offenses, and other violations of petty larceny or a simple battery. Those are misdemeanors in justice court.

Another thing that happens in justice court that separates it from the municipal court is called a preliminary hearing. With a preliminary hearing, generally the person has been arrested or at least brought into custody in some form. The state then puts evidence before a judge about whether or not there is probable cause to hold the individual sitting at the defense counsel's table over for trial. Once the probable cause is determined, the matter then goes to district court.

District court is where you can be sentenced in a criminal matter for a year or more or all the way to a death penalty. You might hear that someone went to jail for three years. No, you do not go to jail for three years. You go to prison. Those are magic words. If it is jail, it is a misdemeanor. If it is prison, it is probably a felony. There are about 83 district judges in the state; the bulk of them are obviously in Clark County and Washoe County, but some of the county seats have a district judge that will serve more than one judicial jurisdiction.

Thanks to the legislators and the people of the state of Nevada, you now have an appellate court, which is composed of three judges. Hopefully, this will result in a reduction in the backlog of not only criminal cases but civil matters that the business community is waiting to have some decisions on. You will be hearing about that later on this year when Chief Justice Hardesty gives the State of the Judiciary talk for this Legislature.

Our Supreme Court is composed of seven members. Every single thing that comes out of district court—not out of justice court, but district court—can be appealed to the Nevada Supreme Court. From suspension of your driver's

license to getting the wrong peanut butter at the commissary at the prison could be appealed at the Nevada Supreme Court. Now those matters could still possibly be appealed, but some of those may be handled by the appellate court.

We have heard the terms misdemeanors and felonies. On the second page of the document ([Exhibit E](#)), we have misdemeanors. Hopefully, if we ever get charged with an offense, it is a misdemeanor offense. I have a daughter who went to school here in Reno, and she called and told me she was going a little too fast by Renown Hospital. She said, "Daddy, they are treating me like a criminal." I said, "Well, look at it. It says 'State of Nevada or City of Reno versus Luana.' You are a criminal." "But Daddy." Well, you know what Daddy has done over the years; she has always had to answer to these things, but she had a cushion. The way our state is, a misdemeanor is punishable by no time in jail or up to six months. That is crucial. Essentially, the law says if you are going to face incarceration for more than six months, you may be entitled automatically to a court-appointed attorney. If it is just up to six months, there is an argument whether or not you would get a court-appointed attorney. As a practical matter in our state, when jail time is anticipated, if you do not have an attorney or you cannot afford one, you get a public defender appointed to help you. Much less onerous are misdemeanors. We do something that not very many states do. We have gross misdemeanors, and that is between a misdemeanor and a felony. The gross misdemeanor is a lesser offense than a felony. It can be punishable by up to 364 days in jail and a fine of \$2,000. A misdemeanor is a fine of \$1,000. When there is a state versus, or a city versus, it is a crime. The burden of proof—how are you going to prove these things at a trial, whether it is a judge trial or a jury trial, is beyond a reasonable doubt. We will talk about that again as we wind our way through here.

Once you go through the process of getting out of justice court potentially into district court for a felony, you are faced with a potential charge of an "A" felony, which can be a death penalty, down to an "E" felony, which is actually mandatory probation for the first offense. That was readjusted in 1995, and each session you will see bills coming in to try and readjust the felony categories and the amount of punishment that you can have. You are entitled to a jury trial in district court. There is no jury trial in justice court. In district court you are entitled to a jury trial from a practical standpoint if you are charged with a gross misdemeanor, but I will wager that there is not an attorney in town who can tell you if they ever went to trial on a gross misdemeanor. Those are generally plea bargain situations where matters are reduced. You go to trial on felonies, you have a 12-person jury and, in our state the jury must find a verdict unanimous before a person can be convicted. There are all kinds of consequences.

We have not heard as much about it lately, but we have the three strikes and you are out for the habitual criminal. Of course, we are all confronted with being concerned about a revolving door. Nevada has habitual criminal statutes as well as other states, and some of them can add an additional 10 or 25 years on a penalty under the appropriate circumstances. Again, that is on the handout that I made for you with some statutory references. I am a little prejudiced, but I think our state does not quite have the distinction of sending people for additional time in prison for a video tape late charge that some states have. We have habitual criminal, but it is not as onerous as some other states.

Before I go to the next section, I added a term called "evidence." There are two types of evidence; direct evidence, which is what we can see, hear, taste, touch, and smell. Five senses. That is direct evidence. A lot of cases have little if any direct evidence. They have the second type, and that is circumstantial. A person can be convicted beyond a reasonable doubt based upon nothing but circumstantial evidence. As we learn, it is not mere doubt, but it has to be substantial doubt or reasonable doubt, so circumstantial evidence will do.

We have talked about the preliminary hearing when the judges were here, and that is when a person is charged with a felony. They may be in jail, and if they are in jail, they get brought into court a lot quicker than if they are out of jail. The defendant is given a complaint and information that says, "Here, this is what you are charged with and this is what the state has to prove beyond a reasonable doubt if you are going to get convicted." To keep this going, the state only has to show probable cause that you committed this offense, and then it will go on to another proceeding in district court and that is where you have the proof beyond a reasonable doubt.

You are never in a preliminary hearing without knowing about it, because you are there and everyone involved is there. Some things could be happening that you might not know about. If you ever hear the term, "So and so was indicted," that means that a grand jury met. Not every county in the state has a grand jury. Right now, I believe that just Clark County and Washoe County have grand juries, and they essentially meet in secret. There are some notification requirements, but essentially a grand jury under certain circumstances hears evidence pretty much like a preliminary hearing where the state has to prove probable cause. If they prove probable cause and indictment issues, then you find yourself in district court sometimes before an arrest or before a preliminary hearing. Frequently, your attorney knows about that and if it is going to be happening to you, but it is a process that is utilized for a number of reasons.

We can go into some of the reasons why a grand jury is used and not used. You heard a lot of talk during the Ferguson, Missouri situation and other places where people have said that a grand jury will indict a ham sandwich if they get a chance, but that is a whole philosophical thing. I think that a grand jury is a very useful tool for the state, and it does have its detractors, but there are ways that a person could testify before a grand jury and, quite frankly, in most cases it would be malpractice for a defense attorney to have their client testify before a grand jury because the burden is probable cause. There is another phrase that they use—slight or marginal evidence. That is all it takes to get you bound over to district court for trial. The burden of proof at trial is beyond a reasonable doubt. At the preliminary hearing, to make an arrest, to do a search, to do an indictment, is only probable cause, slight or marginal evidence.

As part of the district court, we have family court. You will hear a lot about that as we go through this session because there will be juvenile matters and other issues which are handled in family court. There are already some bills dealing with child support and custody, so you will be hearing a lot about that. That is part of your district court. In some of the smaller jurisdictions, the district court also functions as the family court. You do not have the division that you have in the larger jurisdictions. In juvenile court they get an expanse of children up to a certain age. Hopefully, the process is to have young people dealt with in juvenile court which will make it unnecessary and hopefully get them on the right track so they will not end up in a preliminary hearing or arrested as an adult and then prosecuted and sent to our prisons.

I have provided a flow chart on page 8 ([Exhibit E](#)). You have a crime or a complaint or information all the way down to prison and habeas corpus. That is a court challenge that says, "Why are you keeping me in jail?" You can get a hearing for that.

Classification of crimes is covered in *Nevada Revised Statutes* (NRS) 193.120, preliminary hearing in justice court is covered in NRS 171.206, and the degree of evidence for an indictment in NRS 172.155. Beyond a reasonable doubt is a bedstone of all of this. Probably the most crucial burden of proof is at probable cause, because that is what it takes for a police officer to stop and arrest you. That is what it takes for a judge to say that you have to go to district court for a trial.

A search warrant requires probable cause. Probable cause is facts and information sufficient that leads a reasonable person to believe that a crime has been committed and that evidence of that crime exists in a particular place at a particular time. A search warrant is not supposed to be a fishing expedition, and if it is, as someone asked, "What happens if you file or you make

a mistake?" There is a motion to suppress that we have talked about earlier. That is filed in district court who decides, "There was no probable cause to execute this warrant on this house. There was no probable cause to arrest this man." If that is the case, then everything that arises from that arrest will arise from that search and is suppressed, thrown out, and cannot be used. I think that term is extremely important for us.

The habitual criminal statutes are in here. I took the liberty of putting a reasonable doubt instruction in the packet. It talks about doubt based on reason, not mere possible doubt, but such a doubt as would govern or control a person in the more weightier affairs in life. That is one version of the reasonable doubt instruction. It is not mere doubt. It is not conjecture. It has to be a serious consideration. That is it at trial, whether it is a misdemeanor or whether it is a felony.

Juvenile court statutes are included in here for you as well—delinquency, cases of traffic matters, certification of child from juvenile court to district court, and that can happen after a fairly long drawn-out process. There are certain offenses of a higher degree which automatically go on to district court. The adult court is not in the juvenile system.

I included the Bill of Rights as the last page in this handout [[Exhibit E](#)]. If we did not have a Bill of Rights, we would not be here. None of us take a backseat to what these amendments mean to us. There is a lot about the Second Amendment, from law enforcement and citizen standpoint, and probably the Fourth Amendment, which is search and seizures. Remember, an arrest is a seizure. We are secure against unreasonable searches and seizures. No warrant for your arrest, no warrant to search your premises or whatever it might be, shall be issued except upon probable cause by oath or affirmation, particularly describing the place to be searched, and the persons to be seized. No fishing expedition. You have to be specific.

In teaching the law enforcement community and other classes I have taught for many years at the university, there is a presumption that if there is a search and there is no warrant, it is not legal. So get the search warrant, or the arrest warrant, if at all possible, because then other things do not have to come into play. There are times when search warrants are not required, but we will not go into that at this time.

We have the double jeopardy issue and then no excessive bail, and the one we love here in Nevada, which is powers reserved to the state.

I am thrown off a little bit, Mr. Chairman, because of the judges, and I thought it was important as you and I are paying their salaries to take on cases. I have

the honor of being here with you, so that is why I asked you to take them first. I am here in the building. I will have some things that I will advocate for, but basically I try to be a resource, having been in the system for a while.

**Chairman Hansen:**

Mr. Graham is a tremendous resource. I have had many interesting conversations with him. This is my third time on Judiciary, obviously my first as Chairman. Are there any questions?

**Assemblyman Elliot T. Anderson:**

Are there any reported cases with inmates and peanut butter?

**Ben Graham:**

There is. There was a case where they received creamy and not crunchy.

**Assemblyman Ohrenschall:**

I want to take a minute to compliment Mr. Graham. He worked so hard the last two sessions on Senate Joint Resolution 14 of the 76th Session, and the attorneys and the Judiciary Committee have been trying so hard to get us at the meeting at the court of appeals that we needed for decades. This gentleman worked so hard in terms of informing all of the members of the Legislature how much we needed it, and finally being able to educate the voters, and I just wanted to thank you for that. We have your lovely wife here in the audience, who is president of our state bar, and we are very honored to have you present.

**Ben Graham:**

I have been here a few years. When I look around, you are what makes it happen. It is my honor just to be here for the ride, and I give thanks to each of you who were here the last few sessions to get that through, and the rest of you who helped get it through the ballot. Fifty-four percent on that ballot measure, and we got the Appellate Court. Thank you.

**Chairman Hansen:**

You did very well that time. That is the third or fourth time it has been on the ballot.

I have a question on the Miranda rights questioning. If an officer of the law stops you and starts asking you questions, do you have the right to remain silent without even saying so? Or do you have to provide certain information? The reason I bring it up is because I had an interesting experience 20-something years ago where I was concerned about getting a ticket and started talking to this cop and lo and behold, he tape-recorded the entire conversation. I already had two citations written up, and I have always wondered if it is legal for law

enforcement to tape-record a conversation without you having any knowledge of it. Do they have any responsibility of disclosure?

**Ben Graham:**

Let me talk a little bit about Miranda and your right to counsel. Your right to counsel in Miranda warnings kicks in when you have a custodial interrogation. Now the question you have is what is custodial. I would suspect that 20 years ago you would be just as nervous as I would be today getting pulled over by that big blue and red light. The last thing we want to do is get into an argument. So we would probably respond. The question then would be whether or not those statements would be admissible against you at a later time, and that would be the question when we would argue that you were in custody, and you should have been advised of your rights and therefore any statements that you made could not be used against you. But that would be the debate.

Recording is an interesting thing, and we have been through this a dozen times. If I were to call and threaten your family with all kinds of vile things and you recorded that on the phone without me knowing about it, guess who could get prosecuted? You for recording it on the phone. Electronic recording is not permissible without two-party consent in this state.

For me to come into your office, for you to record the police officer out on the street, that is legal, and generally that would be admissible unless it is in a custodial interrogation situation from a defendant's standpoint. There are cases where a police officer does not advise anybody of anything and hauls them off to jail. The person in the back seat says, "Where am I going?" "You are going to jail. You will find out then." Then the defendant starts talking. "Mr. Law Enforcement person?" "Do not ask any questions." But then the other aside, you cannot do indirectly, but you can do directly. You cannot trick a person into making admissions against their interest and have it be legal. There was a case involving a "Christian burial speech" where they got a defendant to tell where a little body was in the snow in Ohio. They said they could not do that, could not do indirectly what you can do directly. That is generally the nature of things.

**Chairman Hansen:**

Are there any further questions? [There were none.] Thank you very much for your presentation, as always. Is there anyone who would like to participate in the public comment portion of the meeting? [There was no one.] Is there anyone in Las Vegas for public comment? [There was no one.] Are there any comments from members of the Committee? [There were none.] Seeing none, we are adjourned [at 10:38 a.m.].

RESPECTFULLY SUBMITTED:

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Linda Whimple  
Committee Secretary

APPROVED BY:

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Assemblyman Ira Hansen, Chairman

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** February 9, 2015

**Time of Meeting:** 9 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 44	C	Lorne Malkiewich	Proposed Amendment
A.B. 66	D	Chris Wilson	Letter of support
	E	Ben Graham	Presentation