

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 3, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 2:21 p.m. on Friday, April 3, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Catherine O'Mara, Probate and Trust Law Section, State Bar of Nevada
Julia Gold, Probate and Trust Law Section, State Bar of Nevada
The Honorable Michael A. Cherry, Justice, Nevada Supreme Court
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court
Franny Forsman, Indigent Defense Commission
Jeff Fontaine, Nevada Association of Counties
Vanessa Spinazola, American Civil Liberties Union of Nevada
Fred Lee, Jr., Public Defender, Elko County
Alex Ortiz, Clark County

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Lisa Gianoli, Washoe County
Gary Milliken, Churchill County
Mark Jackson, District Attorney, Douglas County; Nevada District Attorneys Association
Todd Plimpton, Public Defender, Lander County

Chair Brower:

We will open the hearing on Senate Bill (S.B.) 484.

SENATE BILL 484: Revises provisions concerning personal financial administration. (BDR 3-1087)

Catherine O'Mara (Probate and Trust Law Section, State Bar of Nevada):

Senate Bill 484 is a consensus bill that was carefully put together over the last 2 years by the members of the Probate and Trust Law Section of the State Bar of Nevada. Senate Bill 484 was vetted by each section of the State Bar, and the Probate and Trust Law Section received approval from the Board of Governors to proceed. In addition to some technical cleanup of the statutes, S.B. 484 lessens litigation and the burden on the courts, reduces expenses to beneficiaries and provides a uniform method of accounting for wills and testamentary trusts.

Senate Bill 484 improves Nevada's laws and keeps Nevada competitive with other states with respect to the administration of trusts and estates. We have a section-by-section executive summary of the bill ([Exhibit C](#)) and a cleanup amendment ([Exhibit D](#)).

Julia Gold (Probate and Trust Law Section, State Bar of Nevada):

The substantive changes included in S.B. 484 are an arbitration provision that allows for the enforcement of arbitration, a nonjudicial settlement provision and a restructuring of the trust accounting rules applicable to testamentary and nontestamentary trusts. The remaining changes are cleanup of various effective dates, clarifying language regarding undue influence and that sort of thing. These changes will keep Nevada competitive with Alaska and South Dakota because we have improved sections of the law. It will also clarify the law for trust and estate practitioners and alleviate the burden on the court.

Chair Brower:

We will close the hearing on S.B. 484. We will open the hearing on S.B. 451.

SENATE BILL 451: Revises provisions relating to public defenders.
(BDR 14-514)

The Honorable Michael A. Cherry, Justice, Nevada Supreme Court:

The Indigent Defense Commission was created in 2007 when A. William Maupin was Nevada Supreme Court Chief Justice. Bill and I were public defenders in the early 1970s when a couple of things happened in Las Vegas that caught Bill's attention. One was the Roberto Miranda case. Mr. Miranda was on death row for 14 years until 1996. His federal postconviction relief filing was based on ineffective assistance of counsel provided by the Clark County Public Defender's Office. Mr. Miranda was found not guilty. He sued Clark County and was awarded a \$5 million judgment. At the same time, the *Las Vegas Review-Journal* did an article about court-appointed contract attorneys in Clark County. It was an exposé that included interviews with clients who said they never saw their attorneys. With the creation of the Indigent Defense Commission, we were able to create conflict attorney positions in Clark and Washoe Counties.

We are here today to help Nevada's rural counties. We are in good shape in Clark and Washoe Counties. Clark County has the Clark County Public Defender's Office, the Clark County Special Public Defender and a contract group who are paid a flat fee but also hourly rates during trials. The same thing is true in Washoe County with the Washoe County Public Defender's Office, the Alternate Public Defender's Office and an appointed counsel group.

We worry about the rural counties for a number of reasons. Nevada lacks comprehensive, reliable indigent defense data to help State and local policy makers make informed decisions about how best to uphold the Sixth Amendment right to counsel. The State public defender system is in crisis. The Legislature created the Office of the State Public Defender. It was a viable organization for a number of years, but now it has lost its power.

Indigent defense contracting in the majority of rural counties creates conflicts of interests that financially reward public defense attorneys who limit the time and effort dedicated to defense of poor people. These are the findings of a 15-year-old report commissioned by the Nevada Supreme Court under a joint grant with the U.S. Department of Justice and the American Bar Association. Unfortunately, these findings still hold true today. Indeed, in the interceding years, the public defender crisis has intensified with even more counties leaving

the system in favor of low-bid contracts that incentivize lawyers to dispose of Sixth Amendment cases quickly. According to David Carroll, Director of the Sixth Amendment Center, a federal court recently called such contracting systems “a deliberate choice” that reduces the constitutional right to counsel to “little more than a formality.” The court continued that putting the government’s case to a meaningful adversarial testing is “virtually a nonfactor” in such contracting systems because they favor speed over due process, and lawyers are paid to arrange plea deals that have “almost nothing to do with the individual indigent defendant.”

Many states banned contracting systems with the most recent example being the conservative state of Idaho. That is why it is time to move the Indigent Defense Commission out of the Supreme Court and create a permanent Indigent Defense Commission in the State of Nevada. Moreover, despite the advancement of technology over the past 15 years, Nevada counties are still not required to collect and report even the most basic data on right to counsel services. Should local policy makers not be held accountable to taxpayers by reporting, for example, the number of poor people charged with crimes or the number of cases annually assigned to individual attorneys?

Senate Bill 451 is not the only way to rectify these problems; however, it does rectify one glaring omission in right to counsel services in Nevada. The Fourteenth Amendment makes the provision of indigent defense services a state obligation. Although it is not believed to be unconstitutional for a state to delegate that responsibility to its counties, in doing so the state must guarantee that the local governments are not only capable of providing adequate representation but that they are in fact doing so. Nevada has no capacity to assess whether its constitutional obligations under the Sixth and Fourteenth Amendments are being met at the local level. Enacting S.B. 451 would establish such an entity—the Nevada Indigent Defense Commission.

Reforming indigent defense services in Nevada is important because the right to counsel goes to the core of who we are as people. The framers of the U.S. Constitution created a bill of rights specifically to protect personal liberty from the tyranny of big government. All people, they argued, should be free to express unpopular opinion, to choose their own religion or to take up arms to protect their homes and families without fear of retaliation from the state. Preeminent in the Bill of Rights is the idea that no one’s liberty can ever be taken away without the process being fair. This includes the obligation to give

the indigent a conflict-free lawyer with sufficient time to advocate for the stated interests of the accused.

The Supreme Court's Indigent Defense Commission was able to establish performance standards. Its next job would be to establish caseload standards. The Commission received national recognition for its performance standards. I won an award from the National Association of Criminal Defense Lawyers. No judge had ever won this award before. I won it because of the establishment of performance standards by our Commission and thanks to Franny Forsman, John Lambrose, Ben Graham and others. It is time for the State to take over and to create an Indigent Defense Commission. The Governor would make the appointments. There are financial issues, but it is time to realize that we cannot let the State Public Defender's Office die.

We cannot have the rural counties be second-class citizens to Clark and Washoe Counties. It is not fair. A person charged with a brutal homicide in a rural county is unlikely to face the death penalty because the county cannot afford to charge someone with the death penalty. The rural counties cannot pay for indigent defense representation.

I was a member of the federal Criminal Justice Act panel. It paid us well and the government got its money's worth. A flat-fee contract, such as our rural counties are using, does not work for the defendant. The constituents that we are talking about are not the most popular people in the world. They are people charged with crimes, but the United States Supreme Court said in *Gideon v. Wainwright*, 372 U.S. 335 (1963), and *Strickland v. Washington*, 466 U.S. 668 (1984), that a defendant has a right to effective counsel, especially in felony or homicide cases.

Chair Brower:

Mr. Justice, we are honored by your presence, and we appreciate all of the work you have put into this important issue over the years.

Ben Graham (Administrative Office of the Courts, Nevada Supreme Court):

It is important to acknowledge that we have adequate public defender operations in Clark and Washoe Counties. Elko has a vibrant public defender's office. These operations would not be impacted by the creation of the Indigent Defense Commission. Section 5, subsection 2 of S.B. 451 provides for the Commission to have 13 appointed members from various sectors of our

community with significant experience in providing legal representation to indigent persons. Section 7 provides for the initial employment of a number of people.

Section 8 provides that the Commission may propose minimum standards. A proposed standard does not become effective unless approved by the Supreme Court. Section 9, subsection 1 requires the Commission to determine the appropriate system for delivering indigent services in each county whose population is less than 100,000. Section 9, subsection 5 provides that the delivery system may not include contracts with attorneys containing provisions which create a financial incentive for attorneys to fail to meet the Supreme Court-established requirements for providing legal representation.

Section 10 of S.B. 451 creates the Office of the State Public Defender under the supervision of the Commission. Section 12 allows the State Public Defender, with the approval of the Commission, to contract with private attorneys under limited circumstances. Section 14 sets the amount of the contribution from the counties. It is envisioned that the smaller counties' contribution would be capped at the amount paid by each county to provide indigent defense services for the fiscal year ending on June 30, 2014. Any other money to fund the Commission and the Office of the State Public Defender must be provided by legislative appropriation.

Creation of the Commission would start us on a path toward meeting the State's obligation to indigent defense. We checked with Idaho regarding the initial costs for its Indigent Defense Commission. It was approximately \$300,000. That was just to get started. We know time and money are crucial, but this is something that needs to be done.

Franny Forsman (Indigent Defense Commission):

I have two matters to address. One is to make sure that you understand why these flat-fee contracts are killing the Office of the State Public Defender and why it creates an intrinsic conflict of interest. Two is to offer a less expensive alternative, knowing that cost issues are a concern. My interest is to get something started.

The Office of the State Public Defender has lost another county because a county commission decided to provide indigent defense service through a flat-fee contract. That is going to keep happening. A flat-fee contract has no

provision regarding the number of cases that may be assigned. I have provided the “Amended Rural Subcommittee Report on the Status of Indigent Defense in the 15 Rural Counties and Recommendations to Improve Service to Indigent Defendants” dated July 2014 ([Exhibit E](#)). One county’s flat-fee contract provides for each attorney to be compensated \$135,000 a year, including capital cases. Each contract attorney maintains an approximate yearly caseload of 525 cases. Another county has 597 cases for each attorney. If those attorneys were working fulltime, had no private practice—which is not the case in the counties in which these contracts are let—and never took a week off, they would have approximately 3 hours for each felony case.

Chair Brower:

Are you talking about cases pending at any given time?

Ms. Forsman:

No. This is the number of appointments in a year that the attorney would open and close. American Bar Association standards are one-third of the caseloads carried in the counties by contract attorneys and even by some of the public defender organizations in the counties. The counties are interested in holding down costs.

I have provided a letter from Diane R. Crow ([Exhibit F](#)), a former State Public Defender and cochair of the Rural Subcommittee of the Supreme Court Indigent Defense Commission. Ms. Crow explains that originally the State paid 100 percent of indigent defense costs in the rural counties. Each time funding is revisited, the counties bear more of the cost of indigent defense. The counties’ contribution is approximately 80 percent. To avoid this cost, the county can execute a flat-fee contract with a struggling lawyer who is willing to take 525 cases for that amount of money, including capital cases. If the counties are able to do that, they will. It is a shame. It is a shame on Nevada that this is what is provided for indigent defense services in the rural counties.

In 2008, the Supreme Court ordered the creation of an Indigent Defense Commission. We are here today asking you to enact legislation to create an Indigent Defense Commission for the State of Nevada. If the fiscal part of this is too much or if this is something that the Legislature is simply not willing to address now, then we ask this Committee to consider creating a volunteer Commission. It would need to be staffed eventually, but not all of the positions listed in section 7 of [S.B. 451](#) would need to be hired right away.

If the Commission were created, it could implement performance standards, implement caseload standards and gather data. You will see from [Exhibit E](#) that a number of counties could not even tell us how many indigent clients were represented by each attorney. The Office of the State Public Defender would be placed under this newly created Commission. We could come back later to request funding for the staff needed to establish an adequate indigent defense system in Nevada.

Nevada was the first state in the Country to provide appointed counsel for indigent defendants—long before *Gideon v. Wainwright*—believe it or not. We have moved far away from that beginning in the rural counties. Look at these numbers. Appointing a single attorney 597 cases during a year on a flat-fee contract is outrageous. We have to do something about it, even if we are not able to do it all at once. I request that you create the Commission, staff it minimally and put the Office of the State Public Defender under it.

Chair Brower:

The Committee takes this issue seriously. In my private practice, I see every day small and large examples of the difference competent counsel makes to people who otherwise have no chance against the government. We appreciate your point of view.

Senator Segerblom:

Does the current system leave us open to financial exposure for people who are convicted without adequate counsel?

Ms. Forsman:

Yes. Not only do the individual cases of wrongly convicted persons pose a risk but also the flat-fee contracts, which may give rise to civil rights lawsuits against the rural counties. These numbers form a great foundation for a civil rights lawsuit based on the failure of due process and the failure of adequate representation by counsel.

Justice Cherry:

This is important to me. I have been doing indigent defense my whole career. I came to Nevada in 1970. I have been fortunate to be a public defender, a criminal defense attorney and the first Special Public Defender in Clark County handling nothing but homicide cases. Franny, Ben and I are from Clark County,

but we care about the rural counties. The rural counties are getting the short end of the stick, and that is not fair. You have to help these counties.

We have done a great job in Clark and Washoe Counties. Elko is okay with Fred Lee and that group. We must do something for the other rural counties so that there is equal justice in this State. That is all I am requesting.

Jeff Fontaine (Nevada Association of Counties):

The discussion of the principles embodied in S.B. 451 is one of the most important discussions for the counties that will take place this Session. I personally participated on the Indigent Defense Commission. The Nevada Association of Counties (NACO) appreciates all the work that everybody has put into that effort. The provision of indigent legal defense is expensive. In 2008, the American Bar Association reported that indigent defense costs in Nevada were almost \$77 million. Of that amount, the State contributed \$504,000—less than 1 percent of the total cost. The State has placed many unfunded mandates on the counties, but the requirement for the counties to shoulder the State's Sixth Amendment duty is problematic for all the reasons you just heard. The counties should not be funding the State's constitutional duty.

The state pays 100 percent of the cost of indigent defense in 29 states. In another eight states, the state pays more than 50 percent. Counties in only four states—Arizona, Pennsylvania, Utah and South Dakota—pay more of the cost of indigent defense than they do in Nevada. In Nevada, the counties effectively pay 100 percent of the cost. We support S.B. 451.

Churchill County has submitted a letter ([Exhibit G](#)) requesting the rural counties be given deference and the ability to opt out of the State Public Defender system contemplated in this bill as long as their system meets or exceeds the standards recommended for indigent defense services. The NACO supports that amendment. Churchill County also points out the need for clarity in section 9, subsection 5 of S.B. 451, which addresses contracts with attorneys providing indigent defense. Are all flat-fee contracts prohibited? What types of contracts are covered by this section?

Regarding membership on the Indigent Defense Commission, NACO appreciates the ability to select nominees from which one would be appointed by the Governor to the Commission. Nominees should not be required to have a legal

background. It is important to bring the perspective of county government to the Commission.

Section 14 caps the cost to the counties at the cost the counties paid for indigent defense for the fiscal year ending June 30, 2014. Those costs should not include the costs of defending a capital case. Capital cases are infrequent in the rural counties. The Nevada Association of Counties interprets section 14 as a cap on the counties' costs for indigent defense. This is critical. Our support for S.B. 451 is based on this cap. The Nevada Association of Counties understands that this Legislature cannot tie the hands of future Legislatures, but the record should reflect that the counties' support and the future success of indigent defense in Nevada is based on this understanding.

Last, NACO understands that Clark County submitted an amendment that would hold Clark and Washoe Counties harmless for any future costs resulting from standards proposed by the Commission; NACO supports that amendment.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

I have provided a letter ([Exhibit H](#)). The Sixth Amendment Center prepared a report on Nevada called "Reclaiming Justice: Understanding the History of the Right to Counsel in Nevada so as to Ensure Equal Access to Justice in the Future." This report is cited in footnote 1 of [Exhibit H](#). The report notes "serious systemic deficiencies ... and a turning away from Nevada's longstanding history of ensuring equal justice to people of insufficient means."

We are well beyond studying this topic. We are in a crisis. The State of Nevada is not meeting its obligation to provide the Sixth Amendment right to counsel. Indigent defense reform is not a partisan issue. The Koch brothers have invested heavily in the National Association of Criminal Defense Lawyers on this issue specifically. They believe that our entire Country is in a huge crisis on this issue. There have been many meetings of the Rural Subcommittee of the Supreme Court's Indigent Defense Commission. Many good minds in the State have been thinking about this problem for a number of years. We have arrived at a solution. We do not need to talk anymore. We need S.B. 451.

The ACLU has been at the forefront of indigent defense reform advocacy and litigation around the Country. Some of these cases are noted in [Exhibit H](#). The ACLU of Montana filed a lawsuit in 2002 against the state and seven counties alleging the failure of adequate funding and supervision of county indigent

defense programs. The ACLU won that lawsuit, and the state had to pay a large amount of money. Two ACLU lawsuits in Michigan were ultimately settled and addressed through legislation similar to S.B. 451. The Michigan bill was introduced by a self-proclaimed Tea Party Libertarian who is quoted as saying he “expects you to respect, promote and uphold every part of the Constitution, not just the parts you agree with.”

The ACLU of Washington filed a lawsuit alleging that two cities were aware that defenders were carrying excessive caseloads but did nothing to remedy the problem. The federal court found that the indigent defense systems at issue violated the constitutional rights of individuals. In December 2014 after 7 years of litigation, the New York Civil Liberties Union settled a class action lawsuit about New York’s indigent defense system. New York chose to force its counties to pay for indigent defense. When each county can do its own thing and no statewide standards exist, there are different rights in different counties. Similarly in Nevada, if I am arrested in Clark County, I have better or worse rights than in the next county over. That is an equal protection violation.

Indigent defense reform can be achieved without litigation. Idaho, whose law S.B. 451 is based on, decided to create an indigent defense commission. The issues in Nevada are the use of flat-fee contracts; disparity in the fee contracts; lack of transparency in employing conflict counsel; extraordinarily high caseloads; inclusion of appellate work in flat-fee contracts; requirement of court approval for expert witnesses and investigators; lack of clarity regarding fees in death cases; and shift of costs from the State to the counties. These are all factors outlined in Exhibit E, the Rural Subcommittee report. These would also be essential factors in any lawsuit that might be filed.

We encourage the Committee to help establish the Indigent Defense Commission and start looking at statewide standards so we can remedy this problem.

Fred Lee, Jr. (Public Defender, Elko County):

I am the Public Defender for Elko County. I have prepared a Memorandum (Exhibit I). We have a staff of seven attorneys, six support staff and no contracts that I know of. With respect to the financial issues and the contributions addressed in S.B. 451, I will defer to the NACO. Given the language in section 9, it is unclear whether Clark and Washoe Counties would be under the supervision of the Commission. I presume from what I have heard

today that they are. They should be. The Sixth Amendment does not stop at rural county lines. The whole State should be part of this process.

Section 9 refers to the Commission coming into an area and determining appropriate delivery systems. The Commission is required to consult with the chief judge of the judicial district for that county. This consultation requirement should include the county and the county commissioners. We strongly support consideration of the county's preference as to the means of delivery in any decision by the Commission. The five-attorney minimum office necessary for the Commission to support an office of public defender would not necessarily be appropriate in a rural area. In rural areas, there should be input from the county commissioners and the local judges as to the number of attorneys because every county has different and individualized needs.

Section 14 establishes a cap on the amount to be paid by the counties. With respect to payments, we will defer to the NACO and concur with its position. The Elko County Public Defender's Office has more than five attorneys. While we would qualify as ongoing under section 9 of S.B. 451, we might also come under the assessment in section 14. We would have to pay twice. That is probably a clerical mistake, but we point it out as something that needs to be looked at.

We have had four successful cases in the Supreme Court in the last 2 years. We are always looking at best practices. For example, we are now looking at when our first appearance should be. We expanded into juvenile representation when there was a need. Language in S.B. 451 should require the Commission to consult with existing attorneys as to what would be best for the County. That would be the best use the Commission could have. That is the main point I wish to make. We have done it and done it well, and Elko County has been generous and creative with us in allowing us to expand. Our budget was \$1.3 million for the last fiscal year. "If it ain't broke, don't fix it." We would be glad to work with the Commission and hope such consultation becomes part of the bill.

Alex Ortiz (Clark County):

Clark County either supports or opposes S.B. 451, depending on whether the Committee adopts our proposed amendment. Clark County is concerned about the unfunded mandate to the County that may result from enactment of S.B. 451. While certain provisions of the bill apply only to the smaller counties, section 8, subsection 1 authorizes the Commission to "propose minimum

standards for the provision of indigent defense services” to indigent persons that would apply to all counties. These standards could potentially include additional attorneys, additional support staff, a different mix of attorneys based on experience, revised meeting or office areas, etc. *Nevada Revised Statute* 260.010 requires Clark and Washoe Counties to each establish and pay for an office of public defender. Senate Bill 451 would require costs associated with any practice or policy standards adopted by the Commission to be borne by both Clark and Washoe Counties as an unfunded mandate.

Clark County’s proposed amendment ([Exhibit J](#)) provides all counties be treated alike and all additional costs resulting from S.B. 451 be paid by the State. Clark and Washoe Counties’ costs would be capped at the amount paid to provide for indigent defense services for the fiscal year ending June 30, 2014. Clark County supports S.B. 451 with our proposed amendment since it sets us on equal footing with the rest of the State. Without our amendment, however, Clark County opposes S.B. 451. Clark County does not have flat-fee contracts.

Lisa Gianoli (Washoe County):

Washoe County agrees with Clark County and supports Clark County’s proposed amendment. Washoe County has similar issues. Washoe County has a combination of flat-fee contracts and a different arrangement for capital cases. Washoe County is concerned about the potential unfunded mandates that could result from S.B. 451.

Gary Milliken (Churchill County):

Churchill County is concerned with section 9, subsection 1 of S.B. 451. Churchill County has three attorneys. The average caseload is 173 for each attorney. Churchill County is concerned that the Commission, whose members will most likely not be from Churchill County, may change the system Churchill County uses to the detriment of indigent defendants.

Another concern is the real possibility that under S.B. 451, the Commission will have the discretion to select attorneys to provide indigent defense services who are not local attorneys and not familiar with the County and the services it offers. Finally, Churchill County would like to see language in S.B. 451 that permits counties to opt out of the office of the public defender system as long as the county’s system meets or exceeds the standards recommended by the Commission.

Senator Harris:

Do you have enough attorneys to care appropriately for the indigent defense needs of the County?

Mr. Milliken:

Yes. The three attorneys providing services have an average caseload of 137 for each attorney. This adequately provides for the County's needs.

Senator Harris:

If indigent defense needs were to increase, would Churchill County be able to provide appropriate and competent counsel?

Mr. Milliken:

I do not know the answer to that question; however, I will check with Churchill County and provide you an answer.

Mark Jackson (District Attorney, Douglas County; Nevada District Attorneys Association):

The Nevada District Attorneys Association and the district attorneys throughout the State should not be involved in selecting the defense attorney in any case we are prosecuting. We support the Supreme Court's Indigent Defense Commission and applaud the work it has been doing since 2008.

Sections 9 and 15 of S.B. 451 state that the Commission shall determine the appropriate delivery system for indigent defense services in the counties whose population is less than 100,000 and that a county must use the services of the Office of the State Public Defender unless the Commission determines a different delivery system is appropriate. Section 5 sets forth the composition of the Commission. There are 13 voting members who will decide what happens in 15 rural counties. There is an assurance of only one rural county representative on the Commission. To borrow from Benjamin Franklin, that is much like two wolves and a lamb voting on what to have for lunch. The rurals would not have much say whatsoever.

The impetus behind S.B. 451 is the State Public Defender closing another office and another county commission deciding to hire contract counsel. Requiring the use of a statewide public defender's office unless a county provides its own county public defender's office would deprive the counties the ability to decide how to deal with indigent defense.

I understand the issues created by flat-fee contracts. Douglas County does not have a specific flat-fee contract. I grew up in Douglas County and started practicing law there in 1991. At that time, the two sitting district court judges-Judge Norm Robison and Judge David Gamble—were not happy with the services provided by the Office of the State Public Defender and were concerned about ineffective assistance of counsel. Starting in 1992, the judges looked statewide and hired three defense attorneys, Nathan Tod Young, Terri Roeser and Tom Perkins. Mr. Perkins became a district court judge and is now East Fork Township Justice of the Peace. Mr. Young continued as a public defender until he was appointed to the bench of the Ninth Judicial District Court, Department 1, 2 years ago by Governor Brian Sandoval. That is how Douglas County has dealt with indigent defense services. If it is not broken, do not fix it. The 15 district attorneys in the rural counties are concerned about placing indigent defense services under a Commission largely comprised of individuals from the larger counties who do not know the issues specific to the rural counties.

Todd Plimpton (Public Defender, Lander County):

I am a partner with the law firm of Belanger & Plimpton in Lovelock. I have been practicing law for 24 years. I have been a conflict counsel in probably every county in the State, including Clark County. In Clark County, I handled a habeas corpus case on ineffective assistance of counsel. I have several reported cases in which I represented indigent defendants because of ineffective assistance of counsel. The biggest one was *Wright v. State*, No. 60455, 2015 WL 728088 (Nev. Feb. 17, 2015), out of Churchill County.

I was a clerk for Judge Gamble from 1991 to 1992 when indigent defense counsel was being decided. Governance between the rural and metro areas and between the federal and state government is an art. It is different at every level. What may work in a metro area of 1.5 million to 2 million people may not work in a county like Pershing County with 6,500 people in an area the size of many of our states. Earlier testimony in favor of S.B. 451 used the word outrageous in reference to the rural counties. I take that as a compliment. Sometimes in the rurals, we have to do outrageous things to get things done. That is just the way it is. I want you to keep that in mind when looking at this bill.

We have short-term institutional memory. Ask why the rurals have decided not to use the services offered by the Office of the State Public Defender. It has happened because it is too expensive, ineffective and unresponsive. We have

elected county commissioners who have made the tough decision not to use the Office of the State Public Defender.

Senate Bill 451 creates an unfunded county mandate. This bill reaches out to the 15 small counties, grabs their money and sucks it back into Carson City. Then someone in Carson City gets to tell the 15 small counties how to spend their money. Senate Bill 451 has a lot of merit. I absolutely agree with the testimony of the Supreme Court Justice. However, the method and approach of S.B. 451 needs attention. If you want an Office of the State Public Defender in Nevada, then you had better come up with a funding mechanism that works. The methodology in this bill does not work for rural Nevada.

County commissioners are elected to represent the citizens of the county. They are also elected to distribute funds. This bill proposes to take funds away from elected leaders and let someone else decide how to distribute them. I think senseless is too hard of a word, but this is not the right thing to do.

I am a flat-fee contract attorney in Lander County. I am the public defender for Lander County. I have been for 3 months. It is hard work. It is late hours. It is going to the jail. It is meeting with clients. It is hiring a paralegal who has the wherewithal to support whatever needs to be done. I provide some of the finest criminal defense representation in rural Nevada. Indigent defendant advocacy is the most somber thing an attorney can do. I had to interview for the job and demonstrate the competence to do the job.

The private attorneys retained under these contracts are some of the finest attorneys in the State. To say anything other than that is disingenuous. I have practiced law for 24 years. I have been before the Supreme Court on numerous occasions. I have argued before the U.S. Court of Appeals for the Ninth Circuit. I have had in excess of 30 jury trials. I bring a lot more to the table than a young kid out of law school with 1 or 2 years of experience who is going to be hired by the State Public Defender. That is exactly what is going to happen with this system.

I caveat all of my comments with deference to the Supreme Court Justice and his work. The one thing S.B. 451 addresses that we need is standardized expectations across the State. The system should look something like this: the State of Nevada should produce standards, should establish metrics to measure those standards, should provide the funds to administer the system and should

give county commissioners the option to elect to use the Office of the State Public Defender or to hire private counsel. It is called local governance. That makes sense to me.

Justice Cherry:

I agree with 99 percent of what Mr. Plimpton said. We have established performance standards statewide for representing someone charged with a felony or a misdemeanor or representing a juvenile. We are working now on caseload standards. I worry that people like Mr. Plimpton and others are not getting fair compensation for what they do. When I came here in 1970, I was a public defender. We had private practice as public defenders in Clark County as did attorney generals, district attorneys and city attorneys.

In 1975, the Legislature decided it was not a good idea for a public defender to have private practice. Contract public defenders are paid a flat fee. Someone like Mr. Plimpton may have cases like I had with the Patrick McKenna case that went 3 weeks in Douglas County or the Philip Alexander Tomarchio, Jr., case that went 5 weeks in Clark County. If you are not getting an hourly rate, you can go broke if you are a private attorney. In addition, the contract attorneys have private practice. That does not work.

If you want to get rid of the Office of the State Public Defender, then do it. The Legislature created it. It is for you to decide. I do not disagree with Mr. Plimpton; I do not disagree with the people from Churchill County. Much of what they say is correct. We will work to amend S.B. 451. We need an independent Indigent Defense Commission. Get me out of this picture.

Chair Brower:

Rest assured, Justice Cherry, that the Committee understands the gravity of this issue. We will continue to work with the stakeholders to get this right. We will close the hearing on S.B. 451. We will open the work session on S.B. 39.

SENATE BILL 39: Revises provisions relating to business associations. (BDR 7-450)

Patrick Guinan (Policy Analyst):

The work session document ([Exhibit K](#)) summarizes S. B. 39 and the proposed amendments. Senate Bill 39 is a big bill that addresses business licensing and business identification numbers. It requires certain persons to obtain certificates

of exemption annually in certain instances. There are many other provisions. The bill addresses resident agent responsibilities in various areas. It deals with domestic or foreign businesses whose charters have been revoked and allows for the filing of certificates to dissolve and to wind up the business without paying certain additional fees. When S.B. 39 was presented to the Committee, there was some amending to be done. The Secretary of State has provided an amendment to the bill.

Chair Brower:

There is a lot in the amendment, but it is technical cleanup language. Hearing no discussion, I will close the work session on S.B. 39.

SENATOR SEGERBLOM MOVED TO AMEND AND DO PASS AS AMENDED S.B. 39.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (SENATOR ROBERSON WAS ABSENT FOR THE VOTE.)

* * * * *

Chair Brower:

I will open the work session on S.B. 56.

[SENATE BILL 56](#): Revises provisions governing graffiti. (BDR 15-479)

Mr. Guinan:

The work session document ([Exhibit L](#)) summarizes S.B. 56 and the proposed amendments.

Chair Brower:

Proposed Amendment 9826 fairly reflects the various compromises that have been reached.

Senator Harris:

I am grateful for Mr. Guinan and Nick Anthony's help as we struggled to get the language right. It is difficult with graffiti. My concern was with the

discrimination and profiling that could happen because of the way the bill was originally drafted. My intent was to get at the permanence of the speech. That is why we have a new definition. I note that "marked" in section 5, subsection 1 remains stricken because of the original intent and agreement with various stakeholders on language to appropriately capture the nature of graffiti without unnecessarily capturing people who might be involved in behavior that could be misconstrued as graffiti.

Chair Brower:

Hearing no further discussion, I will close the work session on S.B. 56.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 56.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 167.

SENATE BILL 167: Revises provisions relating to employment. (BDR 18-265)

Mr. Guinan:

The work session document ([Exhibit M](#)) summarizes S.B. 167 and Proposed Amendment 9793.

Senator Ford:

Senate Bill 167 is a great start. I would have liked some of the amendments proposed by Senator Pat Spearman included in S.B. 167. I am particularly disturbed that the civil penalty has been removed in its entirety from the bill. It would have been appropriate to give women who have been the subject of equal pay discrimination the right to sue on that issue and recover attorney's fees. It is a good start, but we are not entirely there. I will support S.B. 167.

Chair Brower:

The victims of alleged discrimination are entitled to sue, but not necessarily under this bill. This bill is administrative in nature. Senator Ford, we respect

your viewpoint, but this reflects a good compromise. Hearing no further discussion, I will close the work session on S.B. 167.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 167.

SENATOR HARRIS SECONDED THE MOTION

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 239.

SENATE BILL 239: Revises provisions relating to real property. (BDR 9-970)

Mr. Guinan:

The work session document ([Exhibit N](#)) summarizes S.B. 239.

SENATOR HARRIS MOVED TO DO PASS S.B. 239.

SENATOR HAMMOND SECONDED THE MOTION.

Senator Ford:

I oppose S.B. 239. Why are we creating a new procedural mechanism by which a party can get out of a lawsuit? We have that already. It is called Rule 12 of the Nevada Rules of Civil Procedure. I do not want to get into the habit of creating new ways for people to get out of lawsuits. If so, we could do that for any defendant or any type of entity. It sets a bad precedent. However, I want to thank the proponents of S.B. 239 for their willingness to talk and work with me.

Chair Brower:

Your point is well taken. Hearing no further discussion, I will close the work session on S.B. 239.

THE MOTION CARRIED. (SENATORS FORD, KIHUEN AND SEGERBLOM
VOTED NO.)

* * * * *

Chair Brower:

I will open the work session on S.B. 339.

SENATE BILL 339: Authorizes the Nevada System of Higher Education to impose additional restrictions relating to the use of tobacco. (BDR 15-873)

Mr. Guinan:

The work session document ([Exhibit O](#)) summarizes S.B. 339.

Chair Brower:

Hearing no discussion, I will close the work session on S.B. 339.

SENATOR HARRIS MOVED TO DO PASS S.B. 339.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 348.

SENATE BILL 348: Revises provisions governing unclaimed property. (BDR 10-770)

Mr. Guinan:

The work session document ([Exhibit P](#)) summarizes S.B. 348 and a proposed amendment.

Chair Brower:

Hearing no discussion, I will close the work session on S.B. 348.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 348.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 389.

SENATE BILL 389: Revises provisions relating to condominium hotels.
(BDR 10-76)

Mr. Guinan:

The work session document ([Exhibit Q](#)) summarizes S.B. 389.

Chair Brower:

Hearing no discussion, I will close the work session on S.B. 389.

SENATOR KIHUEN MOVED TO DO PASS S.B. 389.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 409.

SENATE BILL 409: Revises provisions related to gaming. (BDR 41-1041)

Mr. Guinan:

The work session document ([Exhibit R](#)) summarizes S.B. 409 and a proposed amendment.

Chair Brower:

Hearing no discussion, I will close the work session on S.B. 409.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 409.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 453.

SENATE BILL 453: Revises provisions relating to real property. (BDR 3-1085)

Mr. Guinan:

The work session document ([Exhibit S](#)) summarizes S.B. 453 and the proposed amendments.

Chair Brower:

Hearing no discussion, I will close the work session on S.B. 453.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 453.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

Senate Bill 454 is not on the agenda for work session.

SENATE BILL 454: Revises provisions relating to criminal justice. (BDR 14-559)

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Mr. Guinan:

The work session document ([Exhibit T](#)) summarizes S.B. 454. We heard this bill yesterday.

Chair Brower:

There is a fiscal note on S.B. 454.

SENATOR SEGERBLOM MOVED WITHOUT RECOMMENDATION TO
REREFER S.B. 454 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

The hearing is adjourned at 3:53 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	2		Agenda
	B	4		Attendance Roster
S.B. 484	C	8	Probate and Trust Law Section, State Bar of Nevada	Executive Summary
S.B. 484	D	3	Probate and Trust Law Section, State Bar of Nevada	Proposed Amendment
S.B. 451	E	6	Indigent Defense Commission	Rural Subcommittee Report
S.B. 451	F	2	Indigent Defense Commission	Diane Crow Letter
S.B. 451	G	2	Churchill County	Letter of Opposition
S.B. 451	H	5	American Civil Liberties Union of Nevada	Letter of Support
S.B. 451	I	2	Fred Lee, Jr.	Memorandum
S.B. 451	J	2	Clark County	Proposed Amendment
S.B. 39	K	34	Patrick Guinan	Work Session Document
S.B. 56	L	11	Patrick Guinan	Work Session Document
S.B. 167	M	10	Patrick Guinan	Work Session Document
S.B. 239	N	1	Patrick Guinan	Work Session Document
S.B. 339	O	1	Patrick Guinan	Work Session Document
S.B. 348	P	3	Patrick Guinan	Work Session Document
S.B. 389	Q	7	Patrick Guinan	Work Session Document
S.B. 409	R	2	Patrick Guinan	Work Session Document
S.B. 453	S	3	Patrick Guinan	Work Session Document
S.B. 454	T	1	Patrick Guinan	Work Session Document