

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

**Seventy-Ninth Session
March 23, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Thursday, March 23, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Olivia Diaz, Assembly District No. 11



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Maria C. Davis, Certified Court Interpreter, Reno, Nevada
Cristina Sanchez, Certified Court Interpreter, Las Vegas, Nevada
Emma Swarzman, Private Citizen, Las Vegas, Nevada
Elissa Mendoza, Certified Court Interpreter, Henderson, Nevada
Manuel Mederos, Private Citizen, Reno, Nevada
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and
representing Legal Aid Center of Southern Nevada; Southern Nevada Senior
Law Program; and Volunteer Attorneys for Rural Nevadans
Leonardo Benavides, Extern, Legal Aid Center of Southern Nevada
Alex Ortiz, Assistant Director, Clark County Department of Administrative Services
Ben Graham, Government Relations Advisor, Administrative Office of the Courts
John R. McCormick, Assistant Court Administrator, Administrative Office of the
Courts
Andres Moses, Staff Attorney, Eighth Judicial District Court
Timothy Andrews, Assistant Court Administrator, Eighth Judicial District Court
The Honorable William O. Voy, Judge, Family Division, Eighth Judicial District
Court
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Gary Lenkeit, Private Citizen, Las Vegas, Nevada
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's
Office
John M. Saludes, Co-Chair, Nevada Gun Safety Coalition
Dan Musgrove, representing Valley Health System
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office

Chairman Yeager:

[Roll was called and protocol was explained.] Before we get started, I wanted to wish a happy birthday to our committee secretary, Devon. She is sitting over here taking the minutes for today, so please wish her a happy birthday. Good morning here in Carson City. I see we have some people joining us in Las Vegas. Good morning to you, and to anyone watching on the Internet. We have two bills on the agenda today; we are going to take the bills in order.

At this time, I will open the hearing on Assembly Bill 125, which revises provisions relating to court interpreters. Assemblywoman Diaz, welcome to the Assembly Committee on Judiciary.

Assembly Bill 125: Revises provisions relating to court interpreters. (BDR 1-297)

Assemblywoman Olivia Diaz, Assembly District No. 11:

I was a member of this Committee prior to this session, and it is good to be back here in this room. At times I miss it—I am not going to say that I always do—but this Committee grew to be one of my fondest committees that I have ever had the chance to serve on.

In keeping with tradition, I have brought forth this bill, Assembly Bill 125, for the last few sessions. This bill will provide access to justice in our courts for individuals who are limited English proficient (LEP). I would like to start by reading a letter that Justice Michael L. Douglas wrote and distributed to the Nevada state district, justice and municipal court judges, dated August 16, 2011 ([Exhibit C](#)). In his letter, he states:

Matters involving parties who are limited English proficient (LEP), mandate policies and/or practices that are not inconsistent with federal civil rights' requirements. Title VI of the Civil Rights Act of 1964, as amended . . . and the Omnibus Crime Control and Safe Streets Act of 1968, as amended . . . both prohibit national origin discrimination by recipients of federal funds and prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin.

The United States Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. See *Lau v. Nichols* Additionally, the DOJ [U.S. Department of Justice] and the Civil Rights Division, require that courts and court systems receiving federal financial assistance, either directly or indirectly provide meaningful access to LEP persons in order to comply with Title VI (Safe Streets Act), and their regulations.

So, what does this mean to your court? In short, it means that your court is required to have a plan so that LEP persons are not impeded, hindered, or restricted in participation in court proceedings and access to court operations based upon a person's English language ability. A failure to comply can mean a loss of Federal funds to the court or the state.

Justice Douglas cites examples and concerns that include limiting the types of proceedings for which interpreters' services are provided by courts, charging interpreter costs to one or more parties, restricting language services to the courtrooms, and failing to ensure effective communication with court-appointed or supervisory personnel.

Judges are supplied a bench card in Nevada. The bench card says that the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968, and Executive Order 13166, signed on August 11, 2000, emphasize that a competent court interpreter must be provided for any person who is LEP. There is a section on the bench card that makes me uneasy, however. It says, "There is no clear statutory guidance or existing case law that fully satisfies these questions, and all judges are encouraged to undertake their own analysis of information in this area and to refer to the letters . . ." from Justice Douglas that I just read to you. I still question whether limited English proficient individuals, who are in our court system, are receiving adequate interpretation.

In my quest, I brought before this Committee Assembly Bill 365 of the 77th Session, and then another one, Assembly Bill 219 of the 78th Session. Understanding the importance of using certified court interpreters versus interpreters who are not certified has been an evolution for me, and I have become versed in all of the requirements that certified court interpreters must meet. The differences between the two are almost like licensed versus nonlicensed teachers. A certified court interpreter must meet many requirements and complete a lot of continuing education. I do not think that it is prudent for us, as a state, to say it is okay to have a semi-, quasi-qualified person, who missed all of the testing requirements by about ten points or less, to be doing our court interpreting; that would not be true access to justice. There is a difference between someone who has passed all of the testing requirements and has completed a background check, and those cases where somebody falsified their credentials and harmed someone who was facing a criminal case. We, unfortunately, have some history of that in our state.

I seek to ensure with A.B. 125, that this injustice does not happen in our court system. I am sad to say that we in Nevada do not have a way to even check interpreters' credentials. We do not have a periodic audit that would allow us to say that we sat in on and verified that every single interpreter is doing what is best by the limited English proficient people in our courts.

I want to talk to you about the changes that were made to my initial bill after it came out of drafting. I believe the members of the Committee should have a mock-up of the changes ([Exhibit D](#)). In the course of my journey, I learned that certified and registered interpreters are the best option for an LEP person. I do not think that we need to dilute the quality of interpreting that an LEP person is entitled to receive. That is why I included the changes saying "certification" and "registration" in my amendment.

Throughout the provisions of A.B. 125, there is amendatory language which replaces the term "persons with language barriers" with "persons with limited English proficiency." This is a term of art that is used in this area, and a previous iteration of this bill did not include this term. This change in language is cleanup; it is the term used at the federal level and is becoming more commonplace across the states.

Sections 1 through 6 and 8 through 10 of the bill provide that a court interpreter be required to obtain a professional certificate. The provisions also remove the authority, under current law, to appoint alternate court interpreters. Again, through my vast interactions and discussions with the court interpreter professionals who are in our court systems and who do get to interpret these court cases, they feel that we would be remiss if we allowed somebody who was not above the gold standard to do the interpreting in our proceedings.

Under existing law, an interpreter must be provided at public expense for a person with a language barrier who is a defendant or witness, but only in criminal proceedings. Section 9 of this bill provides that an interpreter must be provided at public expense if the person with limited English proficiency is a defendant, party, or witness in a civil or criminal proceeding. In practice, this might include such parties as a civil litigant for matters such as landlord, tenant, or child custody; or any other party who has standing in a civil action. It would include both plaintiffs and defendants in civil proceedings. My past bill, Assembly Bill 365 of the 77th Session, was adopted, but we missed the civil part in the bill. Many of our families and LEP people might face civil cases, and they may not always have the means to pay for interpreters out-of-pocket.

In 2000, Executive Order 13166 and guidance from the U.S. Department of Justice (DOJ) clarified Title VI of the Civil Rights Act. The DOJ has said that we should do this with our court interpreters, and I am happy to say that the federal courts in Nevada comply with this. Our other court systems, however, are not necessarily in compliance. In 2016, the DOJ reaffirmed its efforts to ensure that limited English proficient individuals are provided access to courts that receive federal funding. Therefore, any civil or criminal court that receives funding from federal agencies must take reasonable steps to ensure that all court proceedings are available to persons who do not understand English, and that language assistance may be provided orally or in written form. Civil proceedings where an LEP individual may need assistance might include, without limitations, proceedings related to temporary or extended orders for protection against domestic violence, child protection, or foster care; termination of parental rights; divorce; child custody and visitation; eviction or other landlord and tenant issues; and personal injury or small claims cases including any settlement agreements. With that, Mr. Chairman, I will take any questions your Committee has.

Chairman Yeager:

Thank you for your presentation, Assemblywoman Diaz, and I should have said welcome back to the Assembly Committee on Judiciary. We appreciate the hard work you did on this Committee, last session in particular.

Assemblyman Pickard:

I also want to welcome you back. I have used interpreters. I have seen many in the family court setting, and I am amazed at how good some of them are. They are able to take what the judge is saying, on the fly, and interpret it immediately, and that, in my opinion, is a gift. I do not know how interpreters do that. My experience is also that the family courts will not proceed without an interpreter if there is any question that the litigant cannot fully understand and communicate well in English. Ultimately, I support this idea wholeheartedly.

I have two questions. You have stricken "professional" as it applied to certification, and I understand there is a professional certificate that is available—what is the difference between a nonprofessional certification and a professional certification? How does that differ from registration? Have you compared this with Assembly Bill 63, which we have already heard, which also talks about certification?

Assemblywoman Diaz:

I do not want to misspeak, so I would like to call Maria Davis to the podium and allow her to explain what a certified court interpreter is, versus the route that we were trying to follow with alternates. She is a certified court interpreter and can speak to this much better than I can.

Maria C. Davis, Certified Court Interpreter, Reno, Nevada:

Good morning to all of the members of the Committee. My name is Maria Davis, and I am a certified court interpreter. Before I go into the difference between registered and certified interpreters, I wanted to mention that we simply struck the word "professional" from our amendment because it looked silly. As court interpreters we are already supposed to be recognized as professionals, and I had said that this bill was kind of like training wheels. We originally included the word "professional" because people still tend to think that being bilingual is enough to be an interpreter. As Assemblyman Pickard said, interpreting is not as easy as many people think.

In Nevada, we have both certified and registered interpreters. We have certification for many of the languages that are most commonly used in our courtrooms. A test needs to be developed for these common languages. We may be able to go through a consortium of states to develop tests for some of the less common languages—we call them exotic languages—because these languages do not have a test available for them. Interpreters for these languages still go through a process to prove that they are going to be able to understand English and whatever other language they may speak with enough mastery that they will be able to interpret in a court proceeding. Registration is available for those interpreters. To answer your question, "registered" means that an interpreter has been

screened, and has gone through the testing process to verify that he or she is qualified to interpret.

Chairman Yeager:

I have a question from Assemblywoman Miller, but did you want to add something, Assemblywoman Diaz?

Assemblywoman Miller:

I do not remember, but I think Assemblyman Pickard had a two-part question. I think Ms. Davis came to help me on the first part but I need Assemblyman Pickard to remind me of the second part.

Assemblyman Pickard:

Have you compared this bill with A.B. 63 that we have already heard in this Committee? It is another bill that requires certification for court interpreters.

Assemblywoman Diaz:

Correct. I believe the only difference between A.B. 63 and A.B. 125 is that A.B. 63 includes the "alternate" court interpreter in the bill, and my bill disagrees with this. I cannot say, in good conscience, that an alternate court interpreter, who is not required to comply with all the testing requirements referenced by Ms. Davis, may basically be deemed competent to be doing the interpreting in court. I cannot say, in good conscience, that someone who had not completed that process is qualified to do the interpreting, so I am not incorporating "alternate court interpreter" language in my bill.

Assemblyman Pickard:

It is my recollection, and I could be mistaken, that the alternate program discussed in A.B. 63 was described as one where interpreters went through training, much like your registration process. Can I safely assume that if that is their intent, that these two bills pretty much mirror each other in intent?

Assemblywoman Diaz:

I am not sure if the intent behind the two bills is the same. I know that fingerprints and background checks seemed to be issues discussed in A.B. 63, and the bill ensures that individuals who are allowed to interpret get those screenings. My bill says that there should be a bright line that distinguishes who is competent to interpret versus those who are not.

Assemblyman Pickard:

Thank you. I appreciate the clarification.

Assemblywoman Miller:

Thank you for bringing this bill forward. I think it is a fantastic bill and I appreciate changing the language. This bill ensures that we are moving away from language being a barrier, because speaking multiple languages is an asset. I like that this bill just says that

a limited English proficient person does not yet speak English as well as other people. I really want us to adopt the idea and accept that speaking multiple languages is an asset.

I have a twofold question. As far as the training or certification called for in this bill, is this a separate program that someone can seek on their own, or is this something that is available through our community colleges and university systems? If it is not available now, could it happen in the future? I also wanted to know what we currently do. I know the federal government has always been better at this sort of thing than the states, but as you mentioned before, we have some languages in our courts that are not spoken often. Take, for instance, a language like Aramaic, which is what people consider a dead language. There are languages that exist, that people still speak, that are not very common or are not spoken by the masses. What do we do when someone comes into our courts and speaks such a unique or dead language?

Assemblywoman Diaz:

I will answer a little bit of your first question and then I will defer to Ms. Davis for your second question. I think that as a state, we have lacked the foresight to implement court-interpreting education tracks, especially in southern Nevada where we are such a diverse community and so many languages are represented. I do not want this bill to be all about just one language; it is about all languages and all individuals who are limited English proficient and need access to justice in our court system. The Administrative Office of the Courts does provide a minicourse to facilitate the process by which interpreters become certified and they do sometimes offer help, but I will let Ms. Davis further explain what is available to people who are interested in becoming certified court interpreters. She can also speak to those rare languages and what is currently in practice.

Maria Davis:

We basically have to prepare on our own and we have to seek our own education. You asked what we have available in Nevada. We have courses that are available through Truckee Meadows Community College (TMCC) in preparation for becoming either a certified or registered court interpreter. Some courses recently became available through the University of Nevada, Las Vegas (UNLV). Then again, regardless of what sort of education an interpreter seeks outside of the Administrative Office of the Courts and the Nevada Supreme Court system's Certified Court Interpreter Program, he or she still has to take the written exam workshop. This workshop is more of an orientation on how the judicial system works in preparation for taking the written exam. Prospective interpreters then have to pass the written exam in order to qualify to take the oral exam. The oral exam consists of three different parts. The first is the simultaneous interpretation of English into the other language—in my case, Spanish—and the second is consecutive interpretation. Consecutive interpretation is often used on the witness stand when one person speaks, the interpreter waits, and then once the person is done speaking the interpreter conveys that message into the target language. The third part of the oral exam is sight translation, where the prospective interpreter reads documents.

My point with all of this is that court interpreters have to do their own training. It is not possible, even though some people think that it is, to acquire all of the skills needed to become a certified court interpreter in a day-and-a-half workshop and then take the test. On their website, the National Center for State Courts talks about the qualifications individuals should have before attempting to become a certified court interpreter in federal or state courts. Their website states:

Professional court interpreters are individuals who possess an educated, native-like mastery of both English and a second language; display wide general knowledge, characteristic of what a minimum of two years of general education at a college or university would provide; and perform the three major types of court interpreting: sight translation, consecutive interpreting, and simultaneous interpreting.

Thus, proficiency in applied interpreting skills involves the twofold elements of a high level of mastery of two languages as well as specific performance skills and modes of interpreting. Court interpreters perform each type of interpreting skillfully enough to include everything that is said, preserve the tone and level of the language of the speaker, and neither change nor add anything to what is said. Interpreters must deliver services in a manner faithful to all canons of a code of professional responsibility and court policies regarding court interpreting promulgated by the judiciary. Mastery of a language at the levels required for court interpreting requires reading and speaking the languages regularly and in a wide variety of language contexts. Usually years of formal education are necessary to acquire the specific performance skills presupposed by the elements of innate ability, and, of course, interpreters must practice, practice, practice.

As I said, interpreters have to educate themselves. I took Criminal Justice I and II at TMCC in preparation for this test. I wanted to better understand the system since I was born and raised in Mexico. Right now, I am enrolled in the paralegal program so that I can better understand what happens behind the scenes in our court system, so that I am better able to interpret courtroom situations. I want to be able to do more than just repeat words. Court interpreters cannot just repeat words. In order to do that, they must educate themselves.

In regard to your question on exotic languages, there are resources available that help to procure exotic language interpreters, and every effort is made to do so. Sometimes, our courts have to resort to phone interpreting or videoconference interpreting for those languages, but nothing can happen in court if an interpreter is not present. Due process cannot occur if there is no communication between the judge and the defendant or plaintiff, and without an interpreter, there is no communication.

Assemblyman Thompson:

Thank you and welcome back, Assemblywoman Diaz. This question is for either you or Ms. Davis. I know you probably do not have the statistics, but how many of our court reporters in Nevada are from Nevada? I am just curious, especially since we are looking into creating a dual immersion program in our education system, where students who

speak English as their primary language can learn a secondary language—the program would work the other way around too. Do you have statistics on that or could you get that information later? I think it would be interesting to know.

Assemblywoman Diaz:

I believe the Administrative Office of the Courts does have the numbers by language for registered interpreters. I recently attended a meeting, and if my memory does not fail me, I believe we have around 80 Spanish interpreters in our state. I do not want to misspeak, however, so I will gather that information and share it with the Committee.

Assemblyman Thompson:

What are the most common languages? I know there are hundreds of languages, but what are the most common languages that come before the hearing masters and judges in our courts?

Maria Davis:

Spanish is the most popular language in our state and it is the fastest-growing community as well. In addition to Spanish-speaking interpreters, we have registered interpreters for Vietnamese and Chinese. I believe we have certification available for those two languages; I can give you that information in a minute, as soon as I open the document on my iPhone.

Assemblyman Thompson:

Thank you, and I love your accent.

Assemblyman Watkins:

With the addition of "civil" to the requirements for interpretation, is there intent to have that requirement top to bottom, all the way down to small claims court? The reason why I ask is that we often have looser rules in small claims courts. For instance, individuals do not have to be represented by an attorney, and the rules of evidence and the way the court is addressed are all relaxed. For a period of time, I sat as a small claims judge, and the rule there seemed to be that individuals would bring their own court interpreter who was actually just a friend, and they would do their best, which was usually not very good. Most often, the clients want to move forward anyway, even if an interpreter is not present. If I had said that we were going to continue the proceeding to another day so as to get a court interpreter and have a fair hearing, the defendant would tell me, No, I do not want to miss another day of work, and we are talking about \$200 here; I want to go now. Has that been part of the consideration with this bill, perhaps on the lowest end? Could there be a waiver? On the other hand, maybe we do not want to let people waive. I just wanted to share my experience with you for your consideration.

Assemblywoman Diaz:

I think the intent of the bill is to make sure that everyone in the justice system knows that providing court interpreters for anyone who is limited English proficient should be a common practice. As Ms. Davis has stated, court proceedings involve highly technical language and the parties involved have to understand court proceedings. Defendants have to understand what the judge is telling them. If there is a disconnect and an individual is

being lost in translation, that person is probably not going to be benefitted by the whole court proceeding—much to the contrary. If an individual does not give the correct answers or does not entirely understand and says yes to something when he should say no, there could be some severe repercussions against that person. It is my hope that providing court interpreters is something we will do across the board to ensure that everyone has their day in court, and that they fully understand all the nuances and implications of everything that is on the line.

I also think that providing interpreters facilitates efficiency, and that is another reason why I brought forth this bill. When court proceedings are carried out the right way the first time, the process does not become a merry-go-round simply because an individual did not understand the information he or she was told to do or comply with. When individuals misunderstand court instructions, they end up having to come back before the court. Sometimes situations become aggravated and an arrest warrant is issued because the individual did not understand the process or proceedings to the best of his or her abilities. With this bill, I am just trying to make sure that both the court's and the judge's time is valued. The more we can streamline this process to make sure that everybody's needs are met, the more we will create a win-win situation.

Maria Davis:

May I add to that answer? Assemblywoman Diaz is not bringing anything back to the statutes. This policy has been in place through Title VI of the Civil Rights Act. We are simply reminding everyone, because we seem to have forgotten that civil courts are part of the court system. I believe that is still the case, unless there is something that I missed.

In September 2016, the U.S. Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section, prepared a pamphlet on language access in state courts. Within this document, there is a quote from Chief Judge Eric T. Washington, District of Columbia Court of Appeals. He says:

When state courts fail to provide competent interpreters for people in civil cases who are of limited English proficiency, they can't protect their children, they can't protect their homes, they can't protect their safety. Courts suffer because they lose faith in the justice system. Society suffers because its laws cannot be enforced; laws guaranteeing minimal wages, laws barring domestic violence and illegal evictions can't be enforced.

What if you were that one person who needed an interpreter, who was facing the loss of your child, and you did not understand what the interpreter was saying. You would be so scared and so nervous in the court setting, before the judge, with all the attorneys surrounding you, and social services, and I do not know who else—you would just be scared, and you would not understand what the interpreter was saying. Imagine just saying "yes" whenever the judge talked to you.

Assemblyman Watkins:

Thank you for that. I want to make it clear that I was talking about the most limited of jurisdiction of small claims court. Obviously, it is beneficial to have a certified court interpreter for every possible hearing that you can have. I was just relaying experience as it pertains to under \$10,000, limited jurisdiction courts. I understand your point; I just wanted to see if that was the bill's intent.

Assemblywoman Diaz:

I do not think it should matter what amount is at stake. In this country, we believe that everybody should have their day in court and that everyone should have access to the courts. Just because an individual is limited English proficient, that should not set him or her back or hinder that individual's ability to have true justice or seek remediation. I think that sometimes the deck is stacked against the person who does not navigate the system well, and then does not understand the language completely. Because a case is heard in small claims court does not mean that the case has less merit than a case heard in a court of higher jurisdiction.

Assemblyman Wheeler:

I would like to expand on Assemblyman Watkins' question a little bit. I was looking at section 9, which would bring this requirement down to civil court as well. I am not a part of the judicial system myself, unlike so many of our panel members. How is the monetary aspect handled now, as far as providing court interpreters? The way I read the bill, I see a big, unfunded mandate coming down to the court system. Does the loser pay, or is there a decision made, pretrial, that determines who is going to pay for the interpreter? How is it handled now?

Assemblywoman Diaz:

Based on the fiscal note that Clark County submitted, it seems like this process is not being done. If the courts were currently providing interpreters I would not expect to see a fiscal note attached. I know that different courts operate differently throughout the state, and I cannot categorically state that every court is failing to provide interpreters. I think there may be some courts in Washoe County that already do this, and there are probably some courts in rural Nevada that do not. That is part of the issue; we really do not even know who is and who is not participating at this moment in time. Clark County has spoken to me about how this bill would increase expenditures for court reporters, and based on that fact, it is my understanding that they are not currently doing this in practice.

Assemblyman Wheeler:

Obviously, some of these cases would require an interpreter to be present. Currently, is the person who hires the interpreter paying for the interpreter? As you said, and based on the attached fiscal note, the interpreter is not being paid for by the court, so is the interpreter paid in a pretrial agreement or does the loser pay? Maybe one of our attorneys can help us out, because I really wonder about this.

Assemblywoman Diaz:

I do not know the complete answer to that. I have been told that there is a form that indigent individuals can fill out in order to have a court interpreter provided. I am not sure how many people know that they have access to this service, or know to request it. Again, I want to highlight the importance of making sure that individuals know that if a person is limited English proficient, that person should request a court interpreter if he needs one. I have heard from attorneys who practice in trial law and, at this moment in time, I believe they secure their own interpreters. We wanted to expand the scope of the law to make sure everybody has equal access under the law, especially since not all cases are created equal.

Assemblyman Pickard:

I have more of a comment than a question. In my experience in family court, interpreters cost somewhere between \$45 to \$85 an hour. They are not cheap, particularly if you need the interpreter in the consultation as well as in the courtroom. It can become pretty expensive. I cannot speak to the nature of the fiscal note but I suspect, given that 70 percent of litigants are pro se—meaning they do not have an attorney representing them—I think interpreters serve a needed role of making sure that litigants understand what is going on, especially because they do not have an advocate helping them. For this reason I think, personally, that this bill is probably good policy.

Assemblywoman Jauregui:

I wanted to say that I appreciate your bringing this bill forward. I am the daughter of two immigrants from Mexico, so I often acted as an interpreter for my mom when we went to school meetings. I was also a translator when letters came, often to my benefit, of course. I know how difficult it can be to interpret things that are familiar to us in everyday language. I cannot imagine how difficult it could be not to have a professional, skilled, trained interpreter with you in a formal or professional setting. I just want to say thank you.

Assemblywoman Diaz:

Thank you, Assemblywoman Jauregui. I consider myself pretty competent in Spanish, but if I was put in a courtroom and asked to interpret a proceeding, I would be scared to death to do so—because of the speed at which everything is going; everything I would have to retain; everything I would have to communicate; things that I could not add; things I would have to be reading in terms of body language.

The cultural competency piece is key to this issue too. Ms. Davis and I were talking about how, when Latinos go before the court system, they sometimes dress up as if they are going to church. For them, the courtroom is a professional area that they are going to be entering, and they want to look sharp. Sometimes judges misinterpret this respect for the entity as disrespect. There are so many nuances to interpreting. Many interpreters, unfortunately, weave their own assumptions into their interpretations. That is why it is super important to have someone who is competent, someone who can relate to the client, and someone who can read all these things.

I wanted to speak about cultural competency because I just heard that our state is signing on with a company to do telephone interpreting. Interpreting done over the phone, quite frankly, scares me. Interpreters need to be able to see the visual cues before them so they can read the entire situation and not just hear the words. It is one thing to hear a conversation; it is another thing to take everything in and adequately report, back and forth, what is happening. This gives me cause for concern.

Assemblywoman Cohen:

I want to follow up what you just said about yourself. You are a professional who is used to presenting to committees in the Assembly—and speaking in front of the whole Assembly, on the floor, very competently—but you still say that interpreting in court would concern you. Ms. Davis, what are some of the things that you have heard when everyday people interpret for their friends in court? What have you overheard that made you shake your head or say, Oh, my goodness, that is not what was said by the judge or the attorney—that nonprofessional interpreter just got that whole sentence absolutely incorrect. Could you please give us some examples?

Maria Davis:

Fortunately, I have not seen much of that in court, because when I go to court I am interpreting. I have noticed this when I have had new interpreters shadow me and then practice without interpreting in court. There is so much "legalese"—legal language—that people just do not understand. These are nuances that have to be studied and learned. Interpreters have to practice. Interpreters have to sit down and hear everything that is happening and be able to observe everything.

I have heard stories but I myself have not seen situations like this. Sometimes, when you evaluate people who are in training, you just shake your head and tell them, This is why you need to go through the steps to become certified, and these steps are the minimum requirement. Just because someone passes a test does not mean that they are ready for whatever life brings them on an everyday basis. We are never prepared. We are not given advance notice of what is going to happen.

If we are lucky as interpreters, we may receive some of the details—as to the case or the type of hearing—the day before and then we have some idea of what kind of hearing you are going to go into. When that happens we can prepare, but it is up to the interpreter to prepare for that language. When interpreters are involved in very serious trials, we are given documents pertaining to the history of the trial. Interpreters can prepare in these situations, but interpreters can never prepare enough. Imagine if you had to interpret for a victim of sexual abuse or rape—an underage victim. Imagine if you were the interpreter and you had to make sure that you did not let your emotions or your personal emotions get in the way. If you were that interpreter, you would still have to be able to interpret everything the way that she or he was saying it. If you omitted anything, it could be the difference between the defendant going to jail or walking away. For example, let us say that there is a defendant who is accused of raping someone. All the witnesses, and everyone else, tell the judge that the defendant is guilty; but because the interpreter does not render the proper interpretation,

the defendant walks away or gets a lesser sentence. Fortunately, I have not seen that, but I have heard some outrageous stories.

This is the reason that we interpreters are so adamant about the word "alternate." Assemblyman Pickard asked about the differences between A.B. 63 and our bill, and said that A.B. 63 was probably a mirror of A.B. 125, but one word can make such a difference. We should not let someone in the legal system use a term like "alternate" at their discretion because we do not know what their discretion is going to be like or what they are going to do. We are trying to protect victims, we are trying to protect defendants, and we are trying to protect everyone and afford every individual access to due process.

Assemblyman Hansen:

Obviously, an interpreter cannot act as an attorney, and interpreting is strictly changing from one language to another, correct? If so, in my mind the phone interpretation is not a bad idea. You mentioned the importance of body language and things like that, but technically, what is the rule for that as it pertains to court interpretation? Can interpreters make comments about body language or tell a client to be careful because of someone else's body language, or are they strictly doing language shifts?

Maria Davis:

That is why interpreters go through the process of becoming certified. They attend the workshop and they learn all the rules that apply to them, as well as the courtroom. Interpreters are not advocates; they are not attorneys and they cannot give advice. Attorneys cannot leave their file with the interpreter and ask the interpreter to go over the contents and answer any questions the client may have. Interpreters are not experts on the law and they cannot represent clients.

We have a code of professional responsibility. I say "professional" because there are a lot of people who think interpreters are just like the person outside with a broom, who puts the broom down for 10 minutes to go to court and interpret. The first item in the Code of Professional Responsibility for Interpreters in Nevada Courts is accuracy and completeness. It says, "The interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation." We also have to preserve the register of whatever is being said. We cannot use better or higher level words or language; if a person is speaking at a first-grade level, then we interpret that at that level.

Assemblyman Hansen:

I am just curious, but if that is the case, it seems like phone interpreting would not be that unreasonable for cost factors.

Maria Davis:

Telephone interpretation is never the same. First, the company that employs the interpreters may have different guidelines than we do, and we do not know what their guidelines are. It is possible to look up other companies' guidelines, but many times these companies hire

people who are not certified interpreters. Phone interpreters may be calling into a courtroom in Nevada from New York. They may not even know what kind of vocabulary we use in our courtrooms or what terms we use. Some people say "codes," some say "statutes." Out-of-state interpreters may not understand everything about our state system. Phone interpretation is also extremely cold. Imagine a person being in a courtroom, having someone interpreting for them over the phone. What if the interpreter missed something or says the wrong thing for our courtrooms in Nevada? As I said, it is never the same. I think it would be a great experience for you to sit through a mock interpretation, so you could see the difference between live and phone interpretation.

Assemblyman Hansen:

I am just throwing the idea out there. I am not for or against phone interpretation. I am just trying to figure out where we are coming from, believe me.

Assemblywoman Krasner:

I would like some clarification. A minute ago, you were talking about cases where somebody has been hurt, raped, or kidnapped. I thought our courts were already appointing interpreters in criminal cases. Is that not already going on?

Maria Davis:

The court does appoint interpreters in criminal cases. I think my statement was in response to interpreters who do not interpret situations properly or who are not qualified to interpret in a proceeding. Imagine being the victim of one of these crimes and having a noncertified or nonregistered interpreter interpreting for you. Imagine the case going to an appeal because you did not have a qualified interpreter, and having to go through the whole process again. Many times, we do not see these victims as people, we see them as case numbers or an item on the calendar, and I think we really need to take the numbers out of this and add a personal touch.

Assemblyman Fumo:

I think language access is a critical civil right and I think not to provide it would be an injustice and borderline unconstitutional. What you are asking us to do is not anything that the federal government is not already doing, or that Title VI does not already require. Is that correct?

Assemblywoman Diaz:

That is correct. I just want us to codify in statute what is expected via Title VI of the Civil Rights Act.

Assemblyman Fumo:

Having practiced with interpreters for the last 20 years, I just want to tell you how much I appreciate them. Not only are they interpreting in real time as attorneys cross-examine a witness or enter a plea, interpreters have to know colloquialisms, legalese—sometimes they are translating English into Latin into Spanish in real time—and it is just very impressive to

watch. I would advise anyone who wants to see that to go watch a case and watch it in real time. It is impressive.

Chairman Yeager:

Are there any other questions from Committee members?

Assemblyman Fumo:

You talked about phone translations and I understood that you were speaking about out-of-state individuals interpreting. If I wanted to use you in my civil or a criminal case to do a deposition or to interview a witness, would it be okay to have you on the phone from Reno or Carson City if I were in Las Vegas, as long as you are certified in Nevada? Is that okay? I know it seems a little colder, but if it were a necessity to improve the system in the courts, would that be okay?

Maria Davis:

This is something that I think can be used in worst-case scenarios. At the same time, it is not ideal. With exotic languages, for instance, phone interpreters are provided if there is no other recourse. If every effort is made to get an interpreter to the courtroom but it cannot be done, then phone interpretation is up to the attorney and client—but ideally the interpreter would be there in person. For long proceedings, it is best to have an in-person interpreter. Imagine having to do real-time or simultaneous interpretation over the phone. Depositions use consecutive interpretation, but imagine having to interpret for an hour or two in person, and then imagine the same process taking three or four hours over the phone. In terms of cost—in reference to Clark County—the court would have to pay a lot more.

Chairman Yeager:

Obviously, not all cases and not all litigants are created equal. I think that when we think about this issue, we tend to think about people who do not have means who are in the civil arena. What about cases where we have multimillion dollar cases at stake, where there are several attorneys hired by each side and the trial has the potential to go on for a very long time? The way I read the bill, it would require that interpreters be provided for those circumstances as well. What are your thoughts on those types of cases, particularly where the litigants have the means to hire expert witnesses and multiple attorneys? In those cases, might we consider some way for the court to assess the litigants and ask them to pay for the interpreter? What are your thoughts on that? I do not know how many cases we are talking about, but clearly, in Clark County we have very large, complex civil cases on a regular basis.

Assemblywoman Diaz:

I want to encompass everyone with this bill, but I am open to discussion if that is not feasible and we have to look at making sure that those with the most need get the service first. I feel like our state may not be in full compliance with Title VI, however, if we provide interpreters for some litigants and not others. I need to feel comfortable that we are heading in the right direction, and I think gain over no gain is always going to be the way to go.

Assemblyman Elliot T. Anderson:

I have a comment in line with the Chairman's last statement. I think he has a point because we require fees for a number of things in our court system. I also understand that fees could be considered a barrier to justice. High-end civil cases, where there are sufficient means, that go on and on—and again I do not know how many of these cases we have—are a different story from low-end civil cases where interpreters can be easily provided without a mountain of controversy. I think that when people have means and are litigating private disputes, it is too much to ask that the courts take care of all these costs. We already have many costs in the court system that we need to take care of, to the extent that it is necessary. I do not see asking litigants with means to pay fees as a big barrier to justice if not doing so would create controversy, but that is just a thought.

Assemblywoman Tolles:

I just wanted to get some clarification. I believe I heard you say at the beginning of your presentation that there is some federal funding involved or attached to the court interpreter program. Do you know if there might be some federal funding to help pay for the fiscal note?

Assemblywoman Diaz:

I wish that I could say that there was. I know that we are currently recipients of federal funding to help us facilitate or aid the courts in some fashion, shape, or form. That funding would be jeopardized if, for some reason, the DOJ were to audit and find out that we are not in compliance with Title VI; we could lose those federal funds.

Chairman Yeager:

I do not see any other questions. Thank you for your presentation this morning, and we will now open the hearing to testimony in support of A.B. 125.

Cristina Sanchez, Certified Court Interpreter, Las Vegas, Nevada:

I would like to say good morning to the Committee, Assemblywoman Diaz, and to my colleague, Maria Davis. I am a federally certified court interpreter and I am also a state-certified court interpreter in the states of Nevada and California. I am the immediate past president of the Nevada Interpreters & Translators Association. I have been serving this state for over ten years doing my passion, which is interpreting in court. I definitely want to applaud Assemblywoman Diaz for bringing this bill and trying to make things right, for trying to do what is already established by Title VI.

Assemblywoman Diaz already told the Committee that failing to take these reasonable steps would be a form of national origin discrimination. Sadly, Nevada, as it stands right now, is only 16 percent compliant in language access. If this were a report card, Nevada would be very far behind with a score of 16 out of 100. By not passing this bill, the Legislature would be denying the people with limited English proficiency access to the judicial system. Failing to pass this bill would constitute turning a blind eye on Nevada's diversity. In reference to the fiscal note, I can tell you that we are wasting money—right now—on hearings that have

to be postponed, or delayed, that take longer, or are done wrong. The process is not being followed because of the lack of communication.

I appreciate the questions and the comments from Assemblyman Pickard, Assemblyman Watkins, Assemblywoman Jauregui—thank you so much—Assemblywoman Cohen, Assemblyman Hansen, Assemblywoman Krasner, and Assemblyman Fumo. Your comments are extremely important and right on the point.

I have personal experience in small claims court and I have seen how the lack of competent interpreters has caused cases to go wrong. Some people might think that a \$500 to \$1,000 case is not a big deal because it is not a \$10,000 lawsuit, but for some people it may mean that they will not have money for the next month's rent—and this happened because they were wronged and they wanted to recover damages. I have had to stand up—even in small claims court—and bring it to the judge's attention that the interpreter was not interpreting correctly. I have been serving our courts for ten years as a court interpreter and I have seen it all.

As far as civil cases, right now in southern Nevada, we have staff interpreters who are already in practice and can serve on those civil matters. These interpreters could help alleviate several problems; for example, in languages of less effusion—or exotic languages as they are known—languages which do not necessarily have interpreters readily available to be sent to the courts, videoconferencing is also available. As Maria Davis mentioned, telephonic interpretation is also available as a last resort and for short hearings that would allow communication to take place.

The Nevada Interpreters & Translators Association tries to provide training opportunities for our interpreters and those who would like to become interpreters. Programs are also available through the colleges and universities. Sadly, interpreters have to pay whatever it takes to complete the certification or registration process, complete the testing, and take whatever classes they need to, out-of-pocket. I am currently a continuing education instructor for an interpreting program that was recently created at UNLV. Interpreters come to these classes and pay out-of-pocket to ensure they are competent and qualified to interpret in court. I thank you for your time, I thank you for looking at this bill, I thank you for trying to do what is right to be in compliance with the federal courts, and I am open if you have any questions.

Emma Swarzman, Private Citizen, Las Vegas, Nevada:

Good morning, everyone. My name is Emma Swarzman and I am a social work graduate student at UNLV, fulfilling my practicum hours at the Progressive Leadership Alliance of Nevada, also known as PLAN. I support A.B. 125 because we have seen time and again how court interpreters in criminal cases have proven over the last number of years to facilitate greater justice for the defendants with deficient English. Clearly, justice will be advanced if court interpreters are expanded to civil cases as well. When someone lacks enough English comprehension to advance their case in any court system, to give them a fair

chance for a positive outcome, they must be afforded an interpreter. After all, if they do not understand the essence of the case against them, how can they help themselves?

I remember waiting for my uncle's case to be heard. He was the victim of a hit-and-run incident, and there were three cases scheduled before his. One defendant did not understand English, so he needed an interpreter to translate what the judge was saying. I could not imagine what it would be like if he had no translator present. How would it be a fair justice system if he or she could not understand what was happening and if the final verdict of the case was not clear? It is extremely important for an interpreter to be present when there is a litigant who needs help via translation. I would like to thank Assemblywoman Diaz for bringing this bill forward. Thank you, everyone, for your time.

Chairman Yeager:

Thank you for your testimony, and I see we have another person who joined the table in Las Vegas. Did you want to testify in support of this bill?

Elissa Mendoza, Certified Court Interpreter, Henderson, Nevada:

I am a court-certified interpreter in California and Nevada. I am here to show support for this bill. I reiterate and support what my colleague, Cristina Sanchez, stated.

Chairman Yeager:

Thank you for your testimony. Let us come up here to Carson City, to whomever would like to start first.

Manuel Mederos, Private Citizen, Reno, Nevada:

I am a private citizen who is fascinated with the court-interpreting profession. Everyone has heard today that individuals who do court interpreting day in and day out have to be highly skilled to master the profession. The skills required set them apart from any other kind of interpreting profession. Before I go on to my remarks I would like to thank the Committee for hearing A.B. 125. I would like to acknowledge Assemblywoman Diaz for her leadership with A.B. 125, which I am in full support of.

The tendency of the average person to omit, alter, and embellish the words of others is well known. It does not take much contemplation to reach the conclusion that the ability to communicate clearly is not as common as is often assumed, especially when it comes to conveying complex legal concepts and technical or specialized language. Court interpreters are trained professionals—I like to consider interpreters as cultural brokers, if you will. Interpreters go through a vigorous process to become fully certified. They are required to take many continuing education credits to keep their professional language and interpreting skills at their very best level. Many of them travel far and wide to get those credits and they keep learning every single day. Why? Interpreters have a love of the art of interpreting. Better yet, they care and love the profession so much.

You see, as Assemblywoman Diaz said earlier, I, too, speak Spanish—but if you put me in a court system, forget about it. I would not be able to interpret correctly or professionally, or represent someone as well as court interpreters do every single day. No limited English proficient person deserves an individual like me in a court setting; they deserve a certified court interpreter, someone who lives and breathes legal terminology every single day. Their life and freedom might depend on that.

In legal situations involving a person who does not speak the native language of the country they are in, accurate interpretation is vital to prevent misunderstandings between defendants, prosecutors, lawyers, judges and juries.

[Assemblyman Ohrenschall assumed the Chair.]

Highly skilled interpreters should be employed to ensure a fair trial. A certified court interpreter needs to possess not only a deep understanding of the languages in which he or she specializes, but also a high level of knowledge about the justice system, criminal procedures, and legal ethics. It is essential that a court interpreter remain impartial and interpret what is being said, precisely, without allowing their own personal prejudices or values to seep in.

If you were to go to another country today and get into trouble with the law, I am very sure that you would want a certified interpreter in the courtroom to help you understand the language of that country as well as the legal proceedings. You see, many individuals also expect the same thing when they come to this country—respect and dignity. We should give individuals who speak different languages who end up in this country the opportunity to feel at ease knowing that they have a court-certified interpreter who will be able to understand the proceedings precisely.

Ladies and gentlemen, I am here to support the bill in front of you, A.B. 125. This bill sets the tone, creates the foundation, and elevates the bar so that certified court interpreters are finally acknowledged and recognized in a formal manner as the professional individuals they are. Thank you so much for your time.

Vice Chairman Ohrenschall:

Thank you so much for your testimony, sir. Do the members have any questions for the witness? [There were none.] Is there anyone else who wishes to speak in favor of A.B. 125, either here in Carson City or down at the Grant Sawyer Building?

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and representing Legal Aid Center of Southern Nevada; Southern Nevada Senior Law Program; and Volunteer Attorneys for Rural Nevadans:

I am here representing Washoe Legal Services and three other nonprofit, legal services programs around the state to provide help to low-income people in civil law matters. We are happy to support Assemblywoman Diaz's efforts again this session, to expand the right to interpreters at public expense to the civil arena. I have my William S. Boyd School of Law

extern for the session, Leo Benavides, at the table with me. He would like to supply some additional testimony on our behalf.

[Assemblyman Yeager reassumed the Chair.]

Leonardo Benavides, Extern, Legal Aid Center of Southern Nevada:

We would like to echo much of what has been said so far today about the difficulty known as interpreting. I myself am originally from Mexico. I speak both languages but I am not an interpreter. Many technical and legal terms are used in the legal arena. I would like to provide the Committee with one simple example—not necessarily anything that has happened—to give the members an idea of the nuances and cultural differences that court interpreters take into account.

In many Latin American cultures, for example, people answer questions in the affirmative. In a landlord-tenant case the tenant might be asked, Did you not pay the landlord on this date? The tenant might start by saying yes. That sounds like a yes, so that means or sounds like the tenant is admitting liability. The court could possibly interpret the answer that way, but the tenant is just affirming the question before answering it. That is just a little example and not something that has necessarily happened. We are here today, proud to support A.B. 125, and we want to thank Assemblywoman Diaz for bringing this bill forward.

Chairman Yeager:

Thank you for your testimony. Ms. Davis, do you want to give additional testimony?

Maria Davis:

I would like to give my own personal testimony. There has been a lot of discussion about how we are going to pay for all of this. I know that these matters often come down to money. The Civil Rights Act was created in 1964, but it seems like people tend to implement the parts of the act that they like—the parts that are good for them or those things that benefit them—and then as a society we forget about the rest. When this became a mandate—again, by executive order—the Administrative Office of the Courts was charged with implementing programs for language access, facilitating the court interpreter program, and administering testing for the languages that have tests available.

We are a nonintegrated system, and I continually hear that all we can do is recommend this or recommend that, but it is up to each court to decide what they want to do. I believe it would be a disaster to leave the word "alternate" in A.B. 125. "Alternate" could mean anything. That is why it is so important that A.B. 125, as it is currently written, passes. It is not about the interpreters; it is about protecting the people we provide services for. This bill is about providing the due process our *U.S. Constitution* guarantees to everyone. As my colleague Cristina Sanchez was saying, small claims court cases may be meaningless for one person, but the same case could mean everything for another.

In 2007, there was a case involving an inmate who needed to get his clothes back, but he was unsuccessful. He went to small claims court and the judge denied him an interpreter because the judge said the inmate did not have a disability. The judge ruled that even though the inmate did not speak English fluently, he spoke enough that he should have understood, and the court denied him an interpreter. That is what happened; this man was denied an interpreter because he was not considered to have a disability.

I believe that if the Committee considers money issues alone, the members will forget what brought them to the Legislature in the first place. I know the Committee has to take everything into consideration, but I implore the members to put themselves in the position of the person needing an interpreter. I ask the Committee members to imagine being in a situation where they could lose their families or their freedom. We already require medical interpreters to be certified. Just because we are not bleeding in the courtroom, it does not mean that we are not dying in a cell. Please take that into account. Thank you.

Chairman Yeager:

Thank you for your testimony, Ms. Davis. Is there anyone else in support of A.B. 125? [There was no one.] Let us open it up for opposition testimony. Would anyone like to testify in opposition to A.B. 125? I do not see anyone approaching the table in Las Vegas but we do have Mr. Ortiz here in Carson City.

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

I am here in opposition to A.B. 125. Our position is strictly based on the fiscal impact of this bill on Clark County, as stated in section 9. We are, however, neutral on the policy aspects of the bill. It is strictly the fiscal impact that we oppose. Section 9, subsection 1 of the bill requires the cost of court interpreters to be paid at the public expense in all civil cases, and we are opposed to that.

I believe the court will come up later and testify to the fiscal impact of approximately \$2.6 million per fiscal year required to provide court interpreting services for civil cases. That is where we have concerns because, as you may or may not know, Clark County itself funds the district court—not the district court judges' salaries or benefits, but the County funds every other aspect of the district court function. This bill would provide a fiscal impact to Clark County of \$2.6 million a year. With that said, we oppose A.B. 125 strictly due to the fiscal impact and not the policy issues outside of section 9. Thank you.

Chairman Yeager:

Thank you for your testimony. Is there anyone else in opposition to A.B. 125? [There was no one.] Is there anyone who is neutral on A.B. 125? I do not see anyone approaching the table in Las Vegas but we do have some people here in Carson City.

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

I am here on behalf of the Administrative Office of the Courts (AOC) at the Nevada Supreme Court. First, I want to assure the Committee that court interpreters have my deepest respect, and in many cases, affection, for all the work they have done over the years

to help make the system work. As Assemblyman Fumo said, I too have marveled at their abilities. The AOC, as indicated by Ms. Davis's testimony, has a court interpreter certification program that was implemented to try to broaden the pool of qualified interpreters.

We provided the Committee with a copy of the bench card, which judges use to determine how to proceed with interpreters. Case law says that interpreters have to be qualified, and that there is no constitutional right to a certified interpreter.

With regard to A.B. 63, that bill was strictly a very narrow provision and it did not actually correct the language that is being properly corrected in A.B. 125. Assembly Bill 63 would simply provide for background check authority so we would not have to increase fees to court interpreters for doing those background checks.

We have been in this meeting for a long time, and as Assemblyman Watkins indicates, there are various levels of justice. We can talk about that subject for a long time. I anticipate that telephone interpretation may be used very narrowly down at the bottom level of the judicial process. Again, it is up to the judge to determine if an interpreter is qualified, and that is done on a case-by-case basis.

John McCormick is here with me today. He has been with the AOC for more than ten years and is the deputy director now. He has worked intimately with the court interpreter program for the last number of years, and is more than qualified to tell you what the program requires. I really have nothing further to say, but if there are questions about the bench card or the constitutionality issue, I could respond to that. It will be more appropriate for Mr. McCormick to respond to any detailed questions.

Chairman Yeager:

Thank you. I do not see that we have any questions so far.

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:

I am here to answer any questions that may come up. I have the answer to Assemblyman Thompson's question about how many certified interpreters we have out of state versus living in Nevada. We have 81 certified in Spanish, 3 certified in languages other than Spanish, 10 Master Level in Spanish, 1 Master Level in Vietnamese, and 10 registered interpreters in languages other than Spanish. Of all of those, 27 live out of state.

Chairman Yeager:

Mr. Moses, would you like to provide testimony?

Andres Moses, Staff Attorney, Eighth Judicial District Court:

I am here on behalf of the Eighth Judicial District Court in Clark County. I want to echo the comments of Mr. Graham. We have great admiration and respect for the work the interpreters do for our court system. I also want to thank Assemblywoman Diaz for listening to our concerns and working with us on this bill.

In Clark County, we have three full-time interpreters and eight part-time interpreters, and they all are Spanish-speaking. That is the vast majority of our cases in Clark County. Section 9 of this bill is our concern in that it changes business in our court to expand court interpreters to all civil cases. I want to make clear, though, for the record, that when there is an indigent litigant, no matter what the case type is, we provide an interpreter free of cost. I wanted to make sure that is clear.

I would also like to answer Assemblyman Wheeler's earlier question. In civil cases where indigence is not an issue, the parties pay for court interpreters. I just wanted to clarify that.

Chairman Yeager:

In situations where the parties are not indigent, do the parties typically retain their own interpreter and bring that interpreter with them to court, or is the interpreter essentially provided through the court and then billed to the attorneys or to the litigants?

Andres Moses:

It is my understanding that they have the option; either/or. Tim Andrews, who oversees our interpreters' office, is down south and he would probably be more competent to answer that question. I see him coming up to the table, so I will let him answer that.

Chairman Yeager:

Thank you for joining us, Mr. Andrews. If you know the answer to that question, please go ahead and answer it.

Timothy Andrews, Assistant Court Administrator, Eighth Judicial District Court:

My understanding is that when the court does not provide an interpreter for a litigant, the litigant contracts with a private interpreter, and the litigant who requests the interpreter pays the interpreter for that service.

Chairman Yeager:

Thank you for that. Are there any other questions from the Committee for any of our people at the table right now? [There were none.] Is there anyone else who would like to give testimony in the neutral position on A.B. 125? [There was no one.] Assemblywoman Diaz, I invite you back to the table for any concluding remarks on A.B. 125.

Assemblywoman Diaz:

I appreciate the Committee's indulgence in hearing A.B. 125, and I look forward to advancing this cause and ensuring that everyone has access to justice in our court system. Thank you.

[A document summarizing the proposed amendment to A.B. 125, titled "Conceptual Amendment A.B. 125" was submitted ([Exhibit E](#)).]

Chairman Yeager:

Thank you again for being here this morning. We will go ahead and formally close the hearing on A.B. 125. At this time, we will move on to the second bill on our agenda, Assembly Bill 253. Assembly Bill 253 revises provisions relating to adjudications of mental health.

I would like to welcome Judge Voy to the Committee. I think this is the first time we have seen you this session; it probably will not be the last time, but welcome back. I would also like to welcome Mr. Callaway. When you are ready with your presentation, please proceed.

Assembly Bill 253: Revises provisions relating to adjudications of mental health. (BDR 39-688)

The Honorable William O. Voy, Judge, Family Division, Eighth Judicial District Court:

Good morning, Chairman Yeager, and members of the Committee. I am William Voy. I am a District Court judge in Clark County, Nevada. I am currently the juvenile delinquency court judge for Clark County. Assembly Bill 253 essentially does three things as it relates to changing the current legislation contained in *Nevada Revised Statutes* (NRS) Chapter 433A.

I would like to say that although I am the delinquency court judge, I have had a little side gig for quite some time. In 1994, I was assigned as a hearing master to the civil commitment calendar for Clark County. In 1998, when I was appointed to the bench, I assumed the role as a district court judge, and I have been doing that ever since. For a little over two decades, I have been intimately involved in overseeing the civil commitment court in Clark County.

The first provision this bill allows for is the direct transfer of commitment orders from the court to local law enforcement. Under existing law, the policy is that commitment orders are transferred to the Central Repository and then that information is distributed to local law enforcement through that process for Nevada Records of Criminal History. This bill would allow the court to simultaneously send that same information to local law enforcement so they can enter it in their database. We have members of the Las Vegas Metropolitan Police Department (LVMPD) here to talk about their needs from a law enforcement standpoint, and to why A.B. 253 is so important.

I would like to note for the record that access to the repository is not available to officers on the street. As a result, when officers approach an individual, they do not know if the person is under a commitment order. This can pose a safety concern for both the officer and, of course, the individual under the commitment order. Officers have some level of training, especially in Las Vegas, on how to deal with mentally ill patients, but unless officers know that that is what they are dealing with, those talents cannot be utilized. An officer will not know to follow the mental health protocol guidelines that they are trained to follow unless they know that the person in front of them is mentally ill. This bill would allow information

about commitments to flow to local law enforcement so that officers have ready access before they actually approach an individual who is under a current commitment order.

The other two main provisions in this bill eliminate the 48-hour prior written report process within the court process, and information-sharing between hospitals for the treatment of patients. These are things that have become more difficult for the court to handle over the last four years, and we are in immediate need of this body's attention to change. We changed the laws surrounding Medicaid reimbursement rates for mental health treatment, and approximately 20 hospitals in Las Vegas, in Clark County, Nevada, now have psychiatric facilities that did not have them before. Two-thirds of our patients subject to the commitment process are not at Rawson-Neal Psychiatric Hospital. Back in the day, it used to be that 90 percent of patients who were subject to the commitment process were at that facility. Somewhat the reverse has happened. Information-sharing is therefore important, and it is important for the hospitals to have accurate information about prior treatment, prior diagnoses, prescriptions, dosage levels, et cetera.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) allows hospital-to-hospital transmission of this kind of mental health information for the purposes of treating. To get previous records on patients, however, a hospital must know where the patient was previously treated, and acute psychotic patients are obviously not very good historians. As a result, hospitals report that they almost never know where to look for medical records. This bill provides the mechanism to allow hospitals to get commitment order information directly from the court and to reach out to previous providers to obtain accurate treatment data. This bill allows hospitals to provide safer and more effective treatment to patients.

For example, let us say that patient A is committed at Rawson-Neal and released with a certain medication regime and treatment protocol to follow. Within a month or so, patient A fails to take his meds and begins to decompensate. That treatment regime worked for this patient; it was effective at stabilizing him and getting him back out in the community. This decompensated patient now turns up at Seven Hills Hospital, which has a major psychiatric ward in Clark County. In order to find out where patient A was last treated, Seven Hills Hospital would have to call twenty-something facilities to try to get that information. I learned about this about a year ago when my clerks started coming to me and telling me that we were getting calls from many hospitals asking for this information. I started digging into it—first of all, we cannot release this information to them under existing law—and then I discovered the real need and concern that mental health professionals have, that this valuable treatment information is extremely difficult, if not impossible, to obtain. We have had cases come through our commitment court where the hospitals sought recommitment of a patient, but the patient was currently under a commitment order at a different hospital. Really? This is why it is very important for these hospitals to be able to communicate with one another and know with whom to communicate.

I need to take a little step back here and explain how all of this relates to the removal of the 48-hour report requirement. All of us in the legal profession—or maybe any business for that

matter—have done things a certain way for years. When the person who first developed "that way" is gone, the person who inherits that position or that practice continues that practice with little thought as to why it existed in the first place. This is what they inherited and what has always been done.

Here is the issue with the 48-hour rule: when a petition is filed seeking commitment, the hearing has to be held within five days or less. Between the time that the petition is filed and the hearing, two independent physicians working on behalf of the court have to see that patient and make a recommendation as to whether that patient meets the commitment criteria. The question is, Why 48 hours? I asked myself this question when I was looking into the issue of information-sharing between hospitals. I suspect this goes back to 1958, when the rule was enacted. Back then we had typewriters and the postal system. The court was supposed to receive the physician's report and disseminate it to the public defender and the district attorney. That process takes time, and the court was supposed to receive it 48 hours before the hearing.

The 48-hour reports are fairly streamlined, and none of this information is really reviewed in advance of the hearing. I will tell you why that is to some extent. Neither the district attorney nor the public defender nor the court itself reviews the report. As I said, the reports are straightforward and simple. Additionally, it would be a waste of time for those individuals to actually look at these reports. The majority of these reports are useless because the patient has already been discharged by the time of the hearing, and a needless report has been done.

As I stated, the current law requires that court doctors complete their reports at least 48 hours prior to the hearing. Having a report typed up and filed 48 hours in advance means the doctor sees the patient early on in the process. As I said earlier, this is an obvious financial waste, but that is not really the issue here. Our office cares more about patient care than anything else, as well as the accuracy of the information we are getting. Our current process is disadvantageous to the patient and provides the court with less-accurate information. At least half of all of the court's evaluations are never used by the court because the patient is discharged and the case is dismissed before the hearing.

An average of 600 petitions are filed every week in Clark County under NRS Chapter 433A. In the five to seven days between the filing of the petitions and the court hearings, more than 75 percent of the patients are released by their treating physician. Because of the current statute, the court's doctors generally see the patients within the first two to three days after the petition has been filed. By 48 hours before the hearing, the number of patients each doctor needs to see for the week is down from 300—per team because we have two teams of doctors—to 100 to 125. In the 24 hours before each hearing, the number drops further to 75 to 100 patients. Later evaluations by the doctors, closer in time to the actual hearing where the determination needs to be made by the court as to whether they meet commitment criteria, better align us and give us more accurate information about that patient's current stability.

As the numbers show, the substantial majority of patients the system resolves are discharged and never seen by the court. In most cases, the patients' presentations are radically worse at the time of the filing than at the hearing. This is true even if the patient still meets commitment criteria at the time of hearing. In most cases, a patient's mental status makes notable improvements each day while receiving treatment. Under the current system, the court regularly receives reports completed five days before the actual court hearing. While these reports may be useful in determining diagnosis and history, they are of little use to the court in determining whether, at the time of hearing, the patient meets commitment criteria. The more recent the report is done, the more accurate it is. Assembly Bill 253 will push the evaluations closer to the hearing time and, therefore, improve the accuracy of those reports.

The revisions to the 48-hour rule in A.B. 253 are an obvious advantage to patients. The statute permits treating physicians to discharge their patients at any point in which the physicians no longer believe the patient meets commitment criteria. Court doctors do not have the authority to release patients from a facility—that is done by the petitioning doctor or facility. Even if both court doctors who see a patient find that the patient does not meet criteria, that patient is still not released until either the court or the treating physician orders such a release. Treating physicians are not given copies of the court's reports until the time of the hearing and then only if they attend the hearing. The court evaluations cannot and do not result in the early release of these patients. What happens instead is that private hospitals file their petition, at which point the patients start waiting for the court to sanction their release. Even if a patient is stabilized by the morning of the hearing and could be—and should be—released, the patient is not. Instead, the hospital waits for the hearing and the court order before releasing the patient, due to liability.

That is what happens. I want to make sure we all understand that removing the 48-hour requirement is not going to change or facilitate a patient being released sooner. The main benefit is getting a more accurate profile of a patient at the time of hearing because that is when the decision is being made, not three days prior. In most cases, an evaluation earlier in time will show the patient with more acute symptoms than at the time of the hearing. More than half of all patients seen by court doctors are discharged by their treating physician prior to court. In most of those cases, the court doctors found that the patients met criteria because they saw them several days before the hearing. We have patients who are discharged prior to the hearing, even though the court doctor recommended commitment. The report stays in the patient's file even if the patient does not meet criteria at the time of hearing—but the doctor, three days ago, said they did. It is not a good situation.

Patient symptoms abate with treatment and then treating physicians release them. The detriment to the patients comes when they are not released by their treating physician and they come to court with two doctors' evaluations concluding that they meet commitment criteria. Those evaluations are five or six days old, however, and do not reflect the patient's improvement in their current state. Therefore, the hearing often becomes an examination because the reviewing doctor saw the patient two days ago. The patient has not been seen by the treating physician, so the court has to look at the patient's chart and see what their status was in the morning. The judge then has to ask the patient questions to find out if the patient

is stabilized enough to be released. If the 48-hour evaluation was able to be completed in the morning, by 1:30 p.m. the case would be over and this patient would have been cleared and discharged.

Pushing the evaluations to be closer in time to the hearing has no potential disadvantage to the patient and it has a considerable upside in improving patient care. Hopefully, if we can move that process up, we can also place some pressure on the system and the various private hospitals to step up their game.

We just posted a proposed amendment to A.B. 253 ([Exhibit F](#)). We added a new section at the request of my counterparts in Washoe County. Several sessions ago we—when I say we I mean that it took several community and system partners—were able to enact the outpatient commitment process which has been so effective in Clark County. Outpatient commitment has resulted in millions of dollars of savings. It has resulted in hundreds of patients being able to be safely maintained in the community, on their medications and not locked up for months on end in locked psychiatric units. Washoe County is finally getting the chance to roll out the same program. They noted some housekeeping things that we missed when we enacted the changes several sessions ago. Basically, this amendment tries to clean up references to a commitment order so that assisted outpatient commitment orders are included. This concludes my initial remarks.

Chairman Yeager:

Thank you for your remarks, Judge Voy. Mr. Callaway, did you want to provide testimony before we open it up for questions?

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

I want to thank the Committee for bringing this bill forward, and specifically Judge Voy for taking time to sit down with me prior to the session to discuss these issues. This is something that was raised during the interim on the Advisory Commission on the Administration of Justice, which I am a member of, and it is something that we have been pushing for, for quite a while, at the Las Vegas Metropolitan Police Department. The issue is that the provisions included in this bill are critical for public safety, officer safety, and the safety of people who suffer from mental illness.

As Judge Voy stated, when someone is adjudicated mentally ill, current law says that those adjudications are sent to the criminal history repository within five days. There they are maintained by the Brady section of the criminal history repository and entered into the National Instant Criminal Background Check System (NICS). As you know, NICS is used primarily by licensed firearms dealers at point of sale. When someone goes to purchase a firearm, a phone call can be made to the criminal history repository, which checks that system and determines if that person is prohibited or not. The problem for law enforcement in the field—to give you a real-time example—is that police officers can run the license plate of a car in front of them and can find out if the person has a suspended license, if they have a warrant out for their arrest, if they have a work card for a hotel, if they have scars, tattoos,

marks, and the list goes on and on. That officer, however, cannot find out if that person is prohibited from possessing a firearm due to mental illness. We have been trying to get that information pushed down to the local level for a long time so that an officer in the field can see that information in real time, rather than trying to call the criminal history repository after the fact.

I know the criminal history repository is strapped for resources and they have rules that they have to follow, but to give you another example, we recently had a situation where a former police officer—who no longer works for our agency and who had a history of mental illness—made some threats. We assigned an investigator to look into this. The investigator made some calls to the criminal history repository to try to determine if this person was prohibited from possessing a firearm. At the time, the criminal history repository told us they could not give us that information based on advice from their lawyers that that information was confidential. Now they have changed that position and they are saying that if we call in, in the course of an investigation, they will provide us that information, but quite frankly, sometimes that is too late. The criminal history repository is not available to officers in the field 24/7.

I often hear, when I talk about the criminal history repository versus the SCOPE [Shared Computer Operations for Protection and Enforcement] background check system, I hear the term redundancy. Why do you want to put this information in the local SCOPE system if it is in the criminal history repository? The analogy that I use for that is comparing a library with books on an iPad. Both may have the same exact book, and someone could say that it is redundant, that the book is in the library, why do you need it on your iPad? I cannot go to the library at 2 a.m., but I can access it on my iPad, so it is not redundant. It is really critical for officers in the field to be able to get that information in real time. We believe that section 2 of this bill does that. In an ideal, picture-perfect world, when the criminal history repository receives information they would automatically push it down. I understand that they have resource issues, and I believe that this option answers and provides an alternative that will help ensure public safety, help ensure the safety of citizens, and help those people who are mentally ill. As Judge Voy said, and I will leave it with this, when our officers know up front that the person they are dealing with has a mental illness, our officers can use different techniques for de-escalation and work with that person. This could ultimately save lives. We appreciate you considering this important part of this bill.

Chairman Yeager:

Thank you for your testimony. Judge Voy, did you want to add something?

Judge Voy:

I have Dr. Gary Lenkeit down in Las Vegas. He had some prepared remarks and is here on behalf of my four reviewing physicians. It is a part of the commitment process, and I think he is approaching the table. Before we conclude our presentation, I would like him to give his remarks.

Chairman Yeager:

That is fine. We will take testimony from the doctor in Las Vegas and then we will take questions.

Gary Lenkeit, Private Citizen, Las Vegas, Nevada:

I am a licensed psychologist. I have conducted civil commitment evaluations for individuals placed on involuntary holds for Clark County civil commitment court since 1993. I am here to express my support for A.B. 253, which removes the requirement for evaluations to be submitted at least 48 hours prior to the court date. By allowing evaluations to be conducted closer to the court date, more information is generally available regarding an individual's mental health history and possible drug and alcohol use.

Many individuals who are admitted to hospitals on Legal 2000s [involuntary admission] have been noncompliant with medications prior to their admission. When they are placed on medications at the beginning of their treatment, their mental status may be improved to the extent that they might be released prior to their court date, thereby avoiding the necessity of further evaluation by independent examiners. By allowing the evaluations to occur later in the process, A.B. 253 allows resources to be focused more on individuals who are likely to be retained in the hospitals rather than on individuals who could improve and be released prior to court. The closer individuals are evaluated to their court date, the more likely they are to be improved and therefore released. Additionally, individuals who have been admitted primarily due to drug use could also see this issue resolved and be released prior to the court date.

Assembly Bill 253 also allows hospitals to share information regarding prior psychiatric treatment. By doing so, mental health services can be provided in a more informed and timely manner to assist the patient. Such record-sharing would allow for more rapid stabilization of the patient's condition, thereby reducing the length of stay in these facilities. Often an individual might be admitted to one psychiatric facility, followed by an admission several weeks or months later to another facility. With record-sharing, facilities can have more information regarding effective prior treatment, which could result in more timely treatment at subsequent admissions. In summary, A.B. 253 streamlines the process for the evaluation of involuntary admissions to psychiatric hospitals, saving resources in the process. The sharing of records among facilities should provide for more rapid stabilization of individuals with mental health conditions, thereby reducing the length of stay at these facilities. I urge that you vote in favor of A.B. 253.

Chairman Yeager:

Thank you for your testimony, Doctor. We have some questions from the Committee.

Assemblyman Elliot T. Anderson:

Judge Voy, this question is for you about the 48-hour requirement. Maybe I am reading the bill differently, but I want to ensure that by striking out that section we are not taking away sufficient process for the respondent to get the report, take a look at it, have time to prepare for the hearing, impeach witnesses if necessary, and do all of those things that you would

expect in terms of process when talking about a pretty substantial deprivation. Can you help me understand what process the respondent would have in these proceedings, and how that change would affect that process?

Judge Voy:

The distilling process has already occurred by the time the hearing comes around. We started the week with 600 patients. The reports my reviewing physicians and psychologists prepare are about a page and a half long and they contain all the basic information. At the time of the hearing, my reviewing physicians get the current status of the patient from the treating physician or the charge nurse. The public defender represents the patient, and at that point, the public defender can do one of two things. He can obviously ask questions of the treating physicians and the court doctors or he can request an intent to get a third opinion. In all reality, what really happens is that it is usually a pretty clear-cut case by the time of the hearing whether the patient meets commitment criteria or not. The attorneys can ask questions and trust the opinions they are given—that is why we have two independent opinions from two independent individuals, plus the opinion of the treating physician. The attorneys can then make the decision as to whether to get a third opinion. As an attorney, can one argue with a doctor or a psychologist? They can cross-examine a little bit and they may be able to test the waters, but are they really going to be able to cross-examine these three physicians to the point where they will change their opinions, without a third professional opinion suggesting something else?

I can say that I have discussed this with representatives from the public defender's offices. Our public defender—he was not going to be here—is not opposing this bill and neither is the Clark County Public Defender. That is the best answer I can give you in that regard.

Assemblyman Elliot T. Anderson:

Maybe I need to ask this question a different way. When does the public defender get the report?

Judge Voy:

They get them before the hearing starts; at 1 o'clock, before the hearing.

Assemblyman Elliot T. Anderson:

Well, that is a completely different issue, and I do not think that is enough time. Respectfully, with this sort of a deprivation, I suppose I would like to talk to the physicians offline. That is not enough time to consider a third opinion, unless the judge would grant a continuance as a matter of course. Of course, that just results in keeping someone detained longer.

I do not know, but I do not like the level of process that we have. We have had fights in the Committee about when presentence investigation reports need to be submitted to counsel. Counsel needs time to review these reports, especially if the attorney might consider getting a third, impeaching opinion. That is a lot of process, and now this bill is asking that we give the courts even more leeway, in statute, to provide reports to counsel at the last minute. That

concerns me. I am going to want to hear, going forward, what we can do to ensure process before that sort of a deprivation, because it is a very serious one.

Assemblyman Wheeler:

Your Honor, I am not sure if you can answer this question or if our legal team needs to help with this. I guess this is a two-part question. You have been talking about the 48-hour rule, but when I read the bill, what I see being stricken out is actually a 24-hour rule. I see this in section 1, subsection 5. By removal of that language—and without adding any other language saying that you must have the report by hearing time—are we not, in actuality, just getting rid of the report altogether? The way I read the bill, by removing that language, the physicians would not have to provide that report to the court until after the hearing. Then again, I am just a dumb old cowboy from Minden.

Judge Voy:

I am reading it and it says, ". . . shall, not later than the time of the hearing set pursuant to NRS 433A.220, submit to the court in writing a summary. . . ." The way I read it, the written report would have to be presented at the time of the hearing, not after. Obviously, these reports—even with this provision here—would be provided before the actual hearing starts. The way the statute reads, it says that it is at the time of the hearing, but when the physical reports come in, they are provided to the district attorney's representative and the public defender's representative prior to court. Whether that is in the morning or before the hearing, I could not tell you for sure because my hearing master actually does the day-to-day nuts and bolts of the hearings at the hospital.

We are planning on moving the proceedings to the actual courtroom and utilizing more videoconferencing. You have to remember that, at least in Clark County, two-thirds of these patients are at area hospitals. These hearings are done by video for two-thirds of these patients. We began conducting the hearings via videoconference as the result of many years when the majority of patients were still at the main state hospital and only a handful were in other area hospitals. We used to transport patients to the courtroom from area hospitals, but one of the patients jumped out of the van and was killed on the freeway. At that point in time, we thought it would be a better idea to try to do some videoconferencing rather than transporting these highly dangerous—to themselves, in most cases—individuals by vehicle to the courtroom. Again, to answer your question, I believe the bill says the report has to be presented at the time of the hearing.

Assemblyman Wheeler:

My follow-up, then, is for legal. The way I read this bill, if the person who is alleged to be mentally ill is admitted under an emergency admission, then the 48 hours is 24 hours, which is the language that is being removed from the bill. If a person who is admitted under an emergency admission only meets that criteria, by removing the "48 hour" language completely, would that mean that the report would not be submitted until after the hearing? Is it possible for the doctors not to give the court the report until after the hearing?

Judge Voy:

The intent was to remove that language because there are two different types of admissions. The particular section you are referring to concerns recommitment to a facility within 24 hours. The same written report must be produced, but if you look at section 1, subsection 5, we are deleting, "Except as otherwise provided in this subsection . . ." and then we drop down from there. That was the fix that was proposed, and I believe the Legislative Counsel Bureau suggested the change.

Chairman Yeager:

I can check with legal on that after Monday's deadline. We will make sure that the language in the bill accomplishes what we want to accomplish. Did you have any follow-up questions, Assemblyman Wheeler?

Assemblyman Wheeler:

No, thank you. I am so confused.

Assemblyman Pickard:

It is good to see you again, Judge Voy and Dr. Lenkeit. I do not know that I need to do this, but in an abundance of caution I want to remind the Committee that my wife works for Judge Voy as one of the hearing masters, though not the hearing master in question here. She works on the juvenile side.

My question relates to a statement you made about HIPAA rules. I am no expert in HIPAA, but I seem to recall that law enforcement is only entitled to information under HIPAA when a court issues a warrant. Obviously, under the commitment procedure it would be permissible to exchange information. Your question made me wonder if, under section 2, subsection 5, paragraph (b) the exchange of information within law enforcement agencies and the central repository would also fall under that exception, or if there is another exception within HIPAA that would allow that. Have we done that analysis to make sure this squares with HIPAA?

Judge Voy:

I, as a court, am not a health care provider, so I am not covered by HIPAA. Anything I release as a court is not covered by HIPAA. The HIPAA reference I was making has to do with the exchange of information from one hospital to another. That is specifically provided for in HIPAA and allows that exchange to happen. When I mentioned that, I wanted to ensure there would not be concern about hospitals sharing information about commitment orders. I did not want anyone to think that was a violation of HIPAA.

Assemblyman Pickard:

Very good. Thank you.

Assemblywoman Krasner:

Commitment proceedings is an extremely serious matter that we are talking about. In the section of the bill that addresses taking away the 48-hour rule, we are talking about

a deprivation of someone's liberty because they are alleged to have mental illness. We are talking about involuntarily admitting them to a mental health facility, and I have serious concerns about removing the 48-hour rule. Currently, when two physicians or a physician and a licensed psychologist do, in fact, look at and evaluate a patient who has been admitted against their will, if they have been cleared, can they be released prior to the hearing, under any circumstances?

Judge Voy:

No, they may not. This is the problem. The doctors come in and see the patient. They are independent doctors who are hired by the court to do these evaluations for the court. Up until the court hearing, the only person who can release the patient is the admitting physician from the hospital—the physician who petitioned for the patient to be held for five days to begin with. Removing the 48 hours does not change that process whatsoever. It would not result in a patient being discharged sooner. I guess that is the answer to the question.

Assemblywoman Krasner:

If the 48-hour rule is not removed and the statute stays how it currently is, the two physicians—or the physician and psychologist—who evaluate the patient, could they make a recommendation to the admitting physician that the patient is fine and was put there for false pretenses? Could the patient then get out?

Judge Voy:

No, they cannot do that. In almost every case, the issue is whether the mental illness, through the passage of several days' time, has been ruled out because it was drug-induced, for example, or whether the patient is on his or her medication and has stabilized long enough that he or she does not present a danger to themselves or others. These changes can happen in microseconds. The stabilization occurring in most of these patients happens in a matter of hours. Take a patient who comes in on day one; by day four the patient is stabilized enough to be out.

My experience over the years has been that when we have had a shortage of beds in Clark County and we had patients backing up in the waiting rooms, treating physicians were making the calls more often to discharge patients prior to the hearings. What I am seeing now is that physicians are holding on to patients for an extra day or two in order to have that patient presented at the hearing. In my experience, my court doctor tells me at the time of hearing that the patients do not meet commitment criteria. My doctors tell me this, not based on when doctors evaluated the patient two days ago, but based on what the doctors observed that day. My doctors tell me that the patient does not meet commitment criteria and the court orders release. There are a lot of people trying to protect themselves in this process, and they are using the court process to do so. That is what I see more often than not. Removing the 48-hour requirement allows my doctors to meet with patients the morning of the hearing and confirm that the patient does not meet commitment criteria. In that way, when the patient comes to court, all parties are aware of the patient's current status, and we can get the patient out, rather than having to determine whether this patient still meets criteria based on evidence from three days ago. I hope that makes sense.

Assemblywoman Krasner:

I am sorry. You said removing the 48-hour rule helps so we can get them out? What did you mean by that?

Judge Voy:

No. It allows us to make that determination later in time so that when my doctors see patients, we get a more accurate picture of their current mental state at the time of the hearing. Again, the hearing is the time when the decision is being made as to whether patients meet commitment criteria. If I am looking at a report that was done three days ago, and I see that both doctors said the patient met commitment criteria, and the patient has not been discharged by the treating physician, I have to figure out if they still meet commitment criteria. More often than not, patients do not, and then we order their release. If my doctors could see patients closer in time to the hearing, I would get a more accurate picture of the patients' current mental state, and whether they still present a danger to themselves or others at that time.

Assemblywoman Krasner:

I understand what you are saying.

Judge Voy:

Right now doctors are forced to see that patient early because the statute says that we have to submit that report within 48 hours prior to the hearing.

Assemblywoman Krasner:

I suppose those provisions were put in there to protect the person who was involuntarily committed. Let us take a scenario. You said that people are usually in there because their illness is drug-induced, and I certainly understand that. What about that one instance when a person is falsely, involuntarily committed? How do we protect persons who have been falsely placed there against their will?

Judge Voy:

That is why we have this process. Many of our patients' symptoms clear within this five-day window—not all of them, obviously—but a lot of them do because their mental illness is a drug- or alcohol-induced psychosis that clears within a matter of 72 hours. Alternatively, patients are off their meds and need to be stabilized—they are easy to stabilize. These patients go back on their meds and within 72 to 90 hours they are stabilized enough to be released. Again, we started the week with 600 patients and are down to 150 by the time we have gone through that five-day window. That is why we have this process in place.

Why was 48 hours chosen? As I stated earlier, who knows? All I know is that 48 hours makes some sense when we are dealing with older technology, when we cannot get things turned around and reports drafted in real time. These days doctors can sit down and see a patient and actually dictate their report right there, in real time. Doctors can print and file their reports right on the spot, and this capability did not exist when the statute was written.

The current statute does not say anything about the court transmitting reports to defense counsel ahead of time, but we do this as soon as the reports come in. Statute says the report must be transmitted to the court and then it is the court's obligation to send the report to the parties. Back when we had to use the U.S. mail, I suppose 48 hours would have made some sense, but that is not the world we work in. I do not know if having the report 24 hours in advance versus 1 hour in advance makes that big a difference at that point in time, but I will have the public defenders speak to their decision-making and what they do.

Those are the safeguards that are in place. Again, removing the 48-hour requirement for the advanced report is not going to result in a patient being released sooner. It is only going to result in the court getting more accurate information as to the patient's current mental state at the time of the hearing.

Chairman Yeager:

Let me ask a couple of follow-up questions that might clarify the issue. I think what you stated is that once a petition is initiated, a hearing will be set within five days.

Judge Voy:

Yes.

Chairman Yeager:

The only way that the person is going to be released prior to that would be if the treating physician cleared the person.

Judge Voy:

Correct.

Chairman Yeager:

If that does not happen, you as the judge, or the hearing master at the time of hearing, are the person who could next release the individual if the treating physician does not.

Judge Voy:

Yes, sir.

Chairman Yeager:

Are you saying that, with the 48-hour rule, you are essentially receiving reports with stale information? Are you saying that even if the report says this person should be committed, when you get the report you are going to have a full-blown hearing to decide whether to keep them? On the other hand, if you get a report that says this person does not meet the criteria, that person is simply released at the beginning of the hearing, so essentially there is no hearing? Is that how the process works?

Judge Voy:

We have a brief conversation with the patient just to confirm that the information is accurate. I will tell you a story, because this happened to me once years ago. Both of my treating

physicians suggested that the patient did not meet commitment criteria. The primary physician came in and told me he thought the patient was good to go, so I asked the gentleman a question. I asked him how he was doing, and I asked him, "If I release you today, am I going to read about you in the newspaper?" He asked me what I meant. He was in for suicidal ideation, so I said, "Are you going to try to kill yourself?" He said he was not going to do that, and asked me if I knew why. I said no, and he told me, "I am a vet. I get paid on the first of the month." This was in the middle of the month. He told me, "I will not have enough money to go get a gun to actually do that with." He was deadly serious. At that point, both doctors said they wanted to change their opinions and have him stay a little bit longer. That is what we are dealing with; it is not an exact science. There is no magic Ouija board here either. That is why it is so important to get that information closer in time to the actual hearing, so you can make those proper findings and try to make the best decision you can.

Assemblywoman Cohen:

When the public defenders walk in and receive the reports, what is the size of their calendar that day? How many reports will they have to review at the time of the hearing?

Judge Voy:

Can I defer that to Dr. Lenkeit? He is out there in the trenches every day with me.

Gary Lenkeit:

There are generally around 275 to 325 people on a calendar, but the number of hearings that are actually held are somewhere around 80. As we go through the calendar many of the hospitals will say a person was discharged this morning, or this person signed a voluntary, and we will end up having around 55 to 60 actual hearings.

Assemblywoman Cohen:

How many reports will one public defender have to read before, or in the course of a hearing?

Gary Lenkeit:

There are probably right around 55 to 60 actual hearings for individuals who appear before the court, many of whom just simply say they are willing to stay voluntarily and should have signed a voluntary admission to the hospital prior to coming to court.

Assemblyman Pickard:

I want to ask a follow-up question on a statement you made. You commented that you were starting to see hospitals keeping patients until the hearing date in order to avoid liability, even though the patients could have been appropriately discharged before that time. Could you expand on that a little bit? I do not know if this is necessarily germane to the point you are trying to make with respect to the 48-hour rule, so I just wanted a little clarification on that.

Judge Voy:

Let me clarify that statement a little bit. I am not claiming that hospitals are trying to avoid liability; I am just saying that this is what happens. We seem to be keeping the patient an extra day or an extra half day or whatever. Since the hospitals file the petitions, you would have to ask them about this. Another issue, and another thing I have heard—whether it is true or not—is that hospitals do not have a second, independent psychiatrist who they can use to provide a second opinion and clear the patient at these psychiatric facilities. They are using our court and our doctors to accomplish this instead.

Assemblyman Pickard:

In your opinion, would that be alleviated by the removal of the 48-hour prior notice requirement?

Judge Voy:

Not at all. I would see that practice continuing, regardless.

Assemblyman Pickard

All right. Thank you.

Assemblyman Elliot T. Anderson:

I think the common refrain that I am hearing from the Committee concerns what we can do to ensure that the process better serves the respondents in these proceedings. We are overloading public defenders with reports just before the hearing and that is just not a fair process. I am looking for some creativity on your part, Judge Voy, to make this process fairer for the respondents, to make sure that they get the process they deserve before this sort of a deprivation occurs.

Judge Voy:

The deprivation has already occurred by operation of statute. The court process is there to give due process to the system, to make sure that whoever is still in the facility at the time of hearing needs to be there, and that those who do not are not. I understand your concerns. Maybe this is a discussion we need to have with the public defender's offices in Washoe and Clark Counties. Perhaps they should use more than one deputy; that has been the norm for some time. Perhaps the problem is not the court process itself.

Assemblyman Elliot T. Anderson:

I understand that if you have a temporary legal hold there will be a temporary deprivation, but permanent deprivation is much more significant. In terms of staffing issues, we have that problem across the board. There is just too much volume in our court system. Everybody is drowning, but in terms of the report issue and having the ability to arrange for an impeaching expert opinion, getting all the reports at the hearing or in the morning is just not enough time.

Judge Voy:

I do not disagree with being able to arrange for an expert, but I suggest that getting an expert within 48 hours is probably not enough time either.

Assemblyman Elliot T. Anderson:

Well, it is better.

Judge Voy:

I understand.

Chairman Yeager:

Are there any further questions from the Committee?

Assemblyman Fumo:

Maybe this is a better question for the doctor, but how close in time to the actual hearing are you able to see each patient? I understand the later the better, from what you are saying. Are you seeing patients the day before or two days before? How long does it take you to review and then draft the report?

Gary Lenkeit:

The court that I generally attend is on Wednesday and it starts at 1:30 p.m. As it stands now, my reports now need to be in by 1:30 p.m. on Monday. Therefore most of the reports I write for Wednesday court, I am doing Wednesday, Thursday and Friday of the prior week. It takes that long in order to get the reports dictated and sent in by 1:30 p.m. on Monday. I would think the reports would be more accurate if, instead of getting them in by 1:30 p.m. on Monday, I were writing them on Monday and Tuesday to prepare for court. I am not sure if that fully answers your question.

Assemblyman Fumo:

If I understand you correctly, then you are actually seeing the patient about a week before court. Is that correct?

Gary Lenkeit:

Some of the patients, yes. Also, earlier on in the process, we may not have been able to get patient drug records, and many of the people who are placed on legal holds are in the hospital because of drugs. The drug records do not get sorted out until a little later in the process. We are at the disadvantage of having to do our evaluations earlier to meet this 48-hour deadline. Not only that, many times we do not have patients' mental health treatment history, and we see them when their mental status is less stable. Unfortunately, that unstable mental status could be due to drug use, but we do not know that because drug tests have not come back by the time I see the patient.

Assemblyman Fumo:

This might be a question for Judge Voy. What percentage of the time does the applicant, the state, or the defense say they want to seek a third opinion?

Judge Voy:

I have not experienced that.

Assemblyman Fumo:

You have never had a situation where the defense said they wanted to get a third doctor to evaluate the patient?

Judge Voy:

I think I vaguely remember hearing, somewhere around 2000, that there was an objection to the hearing master's report. That is my only memory of that. Since Dr. Lenkeit has been doing this every week since 1993, you might want to ask the same question to Dr. Lenkeit, too, to check his memory.

Assemblyman Elliot T. Anderson:

This may tie into the issue we were discussing before, as well as Assemblyman Fumo's question with regard to not requesting extra time to seek third opinions. Perhaps this has something to do with the size of the caseload. Do you know if the staffing levels in both the Clark and Washoe County public defender's offices are sufficient for the caseloads each office has to carry?

Judge Voy:

I do not know anything about the public defender's office in Clark County. I could tell you though, in Clark County, the attorney who covers the hearings for the civil commitments is a contract attorney. He contracts with the public defender's office in Clark County to cover those hearings and represent patients at those hearings.

Assemblyman Elliot T. Anderson:

Therefore, it is one person. In addition, what is the average caseload that he has every week?

Judge Voy:

I guess if you take what Dr. Lenkeit used and multiply it by two, covering Thursday and Friday.

Assemblyman Elliot T. Anderson:

What was that number again?

Gary Lenkeit:

There are generally between 280 and 320 people on the calendar. When the actual, reduced calendar is put together, it ends up being about 85 people with about 55 to 65 hearings.

Assemblyman Elliot T. Anderson:

Wow.

Gary Lenkeit:

You would multiply that by two, so probably a minimum of 110 people actually coming to a hearing per week, up to about 150.

Assemblyman Elliot T. Anderson:

Okay, that is pretty amazing. Thank you.

Chairman Yeager:

Do either of you know—and if not, maybe someone in the audience knows—if that is a similar caseload in Washoe County, in terms of the number of cases and the number of attorneys?

Gary Lenkeit:

I do not know what they are doing, how they are doing it, or what the volume is in Washoe County. I would assume it would be less than Clark County, simply because the population is less, but that would just be an assumption.

Chairman Yeager:

Thank you for that. Are there any further questions from the Committee? I do not see any, so I would like to thank you again for your presentation, and I will open the meeting up at this time for testimony in support of A.B. 253. If you would like to testify in support, please make your way to the table.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

I am here to represent the Nevada Sheriffs' and Chiefs' Association. We support the law enforcement portion of A.B. 253.

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office:

I am here in behalf of the Clark County District Attorney's Office. We also support A.B. 253.

John M. Saludes, Co-Chair, Nevada Gun Safety Coalition:

I am a co-chair of the Nevada Gun Safety Coalition. Our mission is to advance effective gun safety legislation and policies that save lives and reduce injuries. We are in support of this bill because we feel strongly that the court should be required to transmit to each law enforcement agency of the state a record of any order involuntarily admitting a person with mental illness to a public or private mental health facility, or other programs of service such as community-based or outpatient services. We also believe that the record should be entered in an appropriate law enforcement database of information relating to crimes. We feel this makes a whole heck of a lot of sense for officer safety and public safety. Therefore, we urge the Committee to vote in favor of the bill.

Dan Musgrove, representing Valley Health System:

We have seven hospitals in southern Nevada—six in Las Vegas and one in Pahrump—and one up here in northern Nevada. I just wanted to say that we appreciate the work of Judge Voy in trying to streamline this process. As the Chairman knows, the Southern Nevada Forum has been looking at these issues for a number of years, as well as the issue of hospitals being the front door for these people who are a danger to themselves or

others, because they have to get medical clearance. That is a part of the process. Once they get into the hospital, then it is all a matter of getting them into the most appropriate treatment facility that is appropriate for their care. As we know, every case is different. Hospitals are not necessarily acute care hospitals, and the hospitals that we take our families to are not necessarily the best place for people with mental illness. Anything we can do to work with the court system to make this process work more smoothly and more efficiently, in the best interests of the person and their care, is certainly something that we support and we hope that you support as well.

Chairman Yeager:

I do not see any questions. Is there anyone else in support of A.B. 253? Seeing none, is there anyone who would like to testify in opposition to A.B. 253?

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:

We did not plan to testify in opposition to this, but then when we were listening to the testimony we had a problem with the 48-hour rule. I just received word from Ms. Christy Craig, at our office, and she believes that the changes in the bill provide too short of a time frame for the attorney to have enough time to work on issues. As you know, we contract those services out to an attorney from our office in Clark County. It is different in Washoe County where their office handles commitment cases themselves. In speaking with Ms. Craig, who is the expert in our office, she believes that the 48 hours is too short of a time frame to provide the attorney enough information to confidently confront the issues in front of them. I also apologize for not signing in today.

Chairman Yeager:

Thank you, Mr. Piro. I understand that things like this happen, but I would encourage you to continue to speak with the sponsor of the bill to see if there is potential consensus there.

John Piro:

We will do that.

Chairman Yeager:

Is there anyone else in opposition to A.B. 253? [There was no one.] Is there anyone who would like to testify in the neutral position on A.B. 253? Mr. Sullivan, I see you approaching the table, and I am hopeful that you can shed some light on Washoe County practices.

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

I signed in as neutral in this matter, and I have been speaking to my family court attorneys. First and foremost, we have two attorneys—Jennifer Rains and Kris Riley—who, in my understanding, handle our hospital commitments. These cases are quite taxing. It is my understanding that each attorney can have anywhere from 40 to 50, but all the way up to 75 to 79 cases a week. Our attorneys bring social worker interns and an investigator with them to try to help with that burden. It is my understanding, according to the attorneys, that ideally they would like to see the reports within 48 hours but sometimes they have as little as 24 hours or even as few as 10 minutes to digest all this information. We share the same

concerns as Clark County, and we are more than willing to keep working with the bill's sponsor on this issue because this is an important issue.

Chairman Yeager:

Just so I can make sure that I heard you correctly, you said that you have two attorneys in your office who handle these proceedings. Is that what you said?

Sean Sullivan:

Yes. We have two attorneys on staff who handle these commitments.

Chairman Yeager:

You said they handle approximately 70 cases a week?

Sean Sullivan:

It ranges anywhere from as few as 40, up to 75 or 79. That is the highest that I have heard.

Chairman Yeager:

Are there any other questions for Mr. Sullivan? I do not see any. Thank you for providing that information. Is there anyone else who would like to testify in the neutral position on A.B. 253? I do not see anyone. Judge Voy, I will invite you back up to the table for any concluding remarks.

Judge Voy:

Obviously, there exists an issue with the 48-hour rule as it relates to the effectiveness of counsel to do their job. I understand that, and that is an issue. I need to figure out how to balance accurate information with patient care. I am not sure how that occurs. I am a little concerned about my earlier communications with various people; I usually do my homework before I get to this point or this chair, and I somewhat waived and waffled a little bit on some issues here. That concerns me, but I am willing to work with others to fix the issue. It may be that someone just needs to be informed of the situation at the right levels so we can move additional resources where they need to be. I am open for any offline requests for information, comments, discussion, et cetera. Thank you so much for your time today.

Chairman Yeager:

Thank you for joining us, Judge Voy, and for presenting this bill this morning. We will certainly follow up with any additional questions. I will close the hearing on A.B. 253. Now is the time of the meeting where public comment would be appropriate. If anyone would like to give public comment on any matter, please make your way to the table. I do not see anyone in Las Vegas or in Carson City. I would just like to remind everyone that we do have an Assembly Committee on Judiciary meeting tomorrow morning at 8 o'clock. We do have a work session with a number of bills, which we will likely take first on the agenda. The meeting is adjourned [at 10:42 a.m.].

RESPECTFULLY SUBMITTED:

Devon Isbell
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated August 16, 2011, from Michael L. Douglas, Chief Justice, Nevada Supreme Court to all state district, justice, and municipal court judges regarding access to court interpreters for people with limited English proficiency presented by Assemblywoman Olivia Diaz, Assembly District No. 11.

[Exhibit D](#) is a proposed amendment to Assembly Bill 125, dated March 22, 2017, presented by Assemblywoman Olivia Diaz, Assembly District No. 11.

[Exhibit E](#) is a document titled, "Conceptual Amendment AB 125," dated March 23, 2017, written by Assemblywoman Olivia Diaz, Assembly District No. 11.

[Exhibit F](#) is a proposed amendment to Assembly Bill 253, submitted by Andres Moses, Staff Attorney, Eighth Judicial District Court., and presented by the Honorable William O. Voy, Judge, Family Judicial District Court.