

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
April 29, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:11 a.m. on Monday, April 29, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Ira Hansen  
Senator Keith F. Pickard

**COMMITTEE MEMBERS ABSENT:**

Senator James Ohrenschall (Excused)  
Senator Scott Hammond (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Steve Yeager, Assembly District No. 9

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Nicolas Anthony, Committee Counsel  
Jeanne Mortimer, Committee Secretary

**OTHERS PRESENT:**

Linda Bell, Chief District Judge, Department 7, Eighth Judicial District  
John J. Piro, Office of the Public Defender, Clark County

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Robert Brunsvold  
Kendra Bertschy, Office of the Public Defender, Washoe County  
Tony Yarbrough, Veterans of Foreign Wars  
Alanna Bondy, Nevada Attorneys for Criminal Justice  
John T. Jones, Nevada District Attorneys Association  
Dody Fuhrmann, Nevada Quick Search, Inc.  
Amy McKennon, Manager, Nevada Quick Search, Inc.  
Josh Hicks, Consumer Data Industry Association  
Matthew Hoffman, Battle Born Injury Lawyers  
Mike Sullivan, Hear the People

CHAIR CANNIZZARO:

The meeting will begin with a presentation of Assembly Bill (A.B.) 222.

**ASSEMBLY BILL 222 (1st Reprint)**: Revises provisions relating to specialty courts. (BDR 14-842)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

I am here to present A.B. 222. This bill addresses Veterans Treatment Court (VTC). I have provided a participant handbook for your reference as ([Exhibit C](#)). Veterans court was not always governed by statute. Assignment to a specialty court was a sentencing issue. In *State v. Second Judicial District Court in and for County of Washoe*, 432 P.3d 154, 134 Nev. Adv. Op. 96 (2018) ([Exhibit D](#)), the Nevada Supreme Court held the veto power of the prosecutor is unconstitutional and it violated the separations of power doctrine. The order from the court is for your reference.

Prior violent felonies prohibit a defendant from getting into VTC. Additionally, prior admittance to a specialty court denies the defendant the opportunity to be admitted to the VTC. Mental health is an important aspect of this program. This bill fixes the issue. I have provided a fact sheet ([Exhibit E](#)) that lists Category A felonies.

This bill removes the provision that prior assignment to a specialty court prohibits assignment to a subsequent specialty court. Addiction and mental illness are complicated issues. Admission to a specialty court requires a written application ([Exhibit F](#)). Coordinators complete a risk assessment and it is decided whether the applicant is appropriate. Both prosecutors and defense counsel have the opportunity to provide input. A prerequisite of specialty court

is the defendant must first be on probation. I have provided the mental health court participant handbook ([Exhibit G](#)) for reference. These are not easy programs to complete.

If A.B. 222 does not pass, defendants will not have the tools needed to reenter society. If this bill does not pass, our communities will be less safe. Some veterans experience post-traumatic stress disorder.

LINDA BELL (Chief District Judge, Department 7, Eighth Judicial District):

I am a judge who presides over specialty courts. I have been involved in the program since 2012. Entry into the specialty court is a lengthy process; the court ultimately decides whether the applicant is a qualified applicant to enter into the program. Various factors in an applicant's background contribute to whether the applicant will be admitted into the specialty court.

Once accepted into the program, there are various phases that the veteran must complete before he or she is eligible to graduate from the program. In the beginning of the program, the defendant is required to come to court every two weeks. The program progresses based on each defendant. All participants are required to attend counseling of some sort. The treatment is designed to be individualized. Approximately two-thirds of all participants graduate from the program. Those who graduate make differences in their lives by completing the program.

SENATOR PICKARD:

Can you speak about the differences between specialty courts versus prison or detention time? There is a misconception in the community that the State allows offenders out of detention quickly. What is your position on that?

ASSEMBLYMAN YEAGER:

Treatment options are limited for an offender who is in detention. Public safety increases with application of specialty courts. Specialty courts allow individualized treatment. This is a multiyear program. The goal at the end of the program is that the court has adequately addressed the underlying issues of the offender. The issues will have been corrected so that when the offender reenters the community, there is increased public safety. We want to get proper treatment for these types of offenders.

SENATOR PICKARD:

It is less expensive to operate these programs. Can you speak about the amendment ([Exhibit H](#)) proposed by the Nevada District Attorneys Association (NDAA)?

ASSEMBLYMAN YEAGER:

We do not agree with the proposed amendment by NDAA. Research shows that specialty courts have a higher graduation rate than other programs offered by the courts. There is no right for a participant to be accepted into the program. The amendment is unfriendly and does not align with the intent of the bill.

SENATOR SCHEIBLE:

How do we evaluate prosecutors who do not agree with VTC for applicants? Do prosecutors take the option of VTC out of the stipulated agreement as a bargaining tool?

DISTRICT JUDGE BELL:

Ultimately, the decision is at the discretion of the sentencing judge. The prosecutor can provide input at any point in the process. We have an interest in providing resources for veterans who have honorably served our Country. Veterans may have issues related to their service. It is appropriate for veterans to receive a dismissal of his or her charges if the VTC is completed.

JOHN J. PIRO (Office of the Public Defender, Clark County):

We support A.B. 222. I am a veteran and served as an Army combat medic in the 2nd Battalion 27th Infantry Division. I served with men and woman who served our Country honorably. These service members were sent into dangerous situations. When a service member comes back, sometimes the service member experiences extreme trauma. Problems arise with the criminal justice system. This bill is the trauma-informed care solution that our State needs to repay our veterans. We urge the Committee to support this bill. This bill does not infringe on the role of the prosecutor. This bill helps our veterans.

ROBERT BRUNSVOLD:

I am a veteran and served 20 years in the Army. I have 12 years of law enforcement experience in Washoe County. Due to my military background, I let addiction get the best of me, and I got into legal trouble. During the end of my legal issues, the district attorney took away my ability to ask for VTC as a diversion. The judge ultimately recommended VTC for me, and I am 15-months

sober. I now give back to the community. If the judge did not allow me the opportunity to participate in VTC, I would have faced 2 to 15 years in prison.

It was an honor to be in VTC, and it is a difficult program. I maintained a full-time job, attended all appointments, attended court hearings, completed mandatory drug and alcohol counseling and all other requirements. This program brought me back to who I am. I lost coping skills and turned to self-medication. The VTC allowed me to learn coping skills and become a productive member of society.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):

We support A.B. 222. Veterans benefit from rehabilitative services. The Legislature has the ability to allow the specialty courts to remain active and allow the judge to have discretion on which offenders can participate. In Washoe County in 2016, the recidivism rate has decreased and is at 94 percent for offenders who graduate from the VTC. Veterans have a higher recidivism rate than any other offender.

There is a significant need to connect veterans with resources. When individuals are in crisis, it is sometimes hard for them to reach out. It is often more difficult for veterans to reach out and gain those services. There are long waiting lists at Veterans Affairs medical clinics. Oftentimes, veterans suffer from survivor's guilt. The VTC is important to provide access to resources. In *State*, the issue was whether the judge has full discretion to decide whether an offender is eligible to participate in veterans court. Across the Nation, similar VTC programs have been successful. This program will make our communities safer.

SENATOR DONDERO LOOP:

This bill is important. Congratulations, Mr. Brunsvold, on your sobriety and thank you for your service. If we assist our veterans with tools to be successful, they will be successful.

TONY YARBROUGH (Veterans of Foreign Wars):

We support A.B. 222. Many families in Nevada have direct experience with having family in active duty military service. Please remember the family sacrifices and commitments to serve our Country. We want to support our veterans. I agree with previous testimony in support of this bill. Judicial discretion is important in VTC, and there needs to be a vetting process. It is not clear why the court would want to deny a veteran the opportunity to participate

in a program. It is helpful for veterans to communicate with each other. Part of VTC is the mentor program for active participants, in which other veterans help coach the veteran to get him or her through the program. We do not agree with the proposed amendment in [Exhibit H](#).

ALANNA BONDY (Nevada Attorneys for Criminal Justice):  
We support A.B. 222.

JOHN T. JONES (Nevada District Attorneys Association):  
We oppose A.B. 222. District attorneys across the State are supportive of specialty courts. These are good programs. We understand that service-related substance abuse problems need to be addressed. We understand that people suffer from mental health issues. The criminal justice system is the first line of defense in dealing with mental health issues.

Specialty courts are ways to address these problems. The VTC uses federal dollars. The problem is with the one-size-fits-all approach. A judge has to decide whether an applicant is appropriate for VTC and then ultimately decide whether the applicant is deserving of a dismissal at the end of the case. The automatic dismissal is a barrier for entry for some judges—for example, an offender who engages in battery on a peace officer. It is important for peace officers in the future to have knowledge of that crime so best practices can be used when interacting with that offender. Criminal records are important for that reason.

Cases can be sealed at a detriment. Violent offenders in these specialty courts may not always deserve an automatic sealing at the end of the case. Violent crimes such as murder would require an automatic dismissal under this proposed statute. Almost half of the offenders who are in VTC are there for a crime of violence. District attorneys do not decline participation every time. District attorneys may offer a reduced sentence upon completion of a program instead of a dismissal. This includes reducing a felony to a nonfelony upon completion.

There are other options to give defendants for completing the program instead of giving them a dismissal. Through the negotiations, prosecutors can also use their veto power and can stipulate whether a defendant can go through the program and receive a reduction of the offense instead of a dismissal. In this situation, the defendant would get the benefit of completing the program and going through therapy. Assembly Bill 222 offers no middle ground. The only

outcome for a defendant in VTC would be a dismissal. A judge who feels that a defendant needs the treatment but not necessarily a dismissal at the end would have no discretion. We have proposed an amendment, [Exhibit H](#). The amendment would allow the judge discretion and more options to deal with the defendants who come before them.

SENATOR SCHEIBLE:

This area of law has been the source of much confusion. The shell provision appears to already be in the law. It is disputed between attorneys on what is allowed or currently supposed to be happening in plea negotiations.

MR. JONES:

Prosecutors can use their veto power prior to the *State* decision. In my experience, I have stipulated to veterans completing the specialty court program who committed crimes of violence, and who received a dismissal at the end. However, as a prosecutor, I have also stipulated to a defendant being admitted to the veterans court program that if the defendant agrees to go as a condition of probation, at the end, the crime would be reduced but not entirely dismissed. Prosecutors may leverage the veto power on what the prosecutor believes is a better outcome for the community and the defendant. Assembly Bill 222 does not allow the judge the discretion to reduce the offense at the end—the judge must dismiss the offense at the completion. The bill is written so that a dismissal is granted at the end or the defendant is not eligible to begin with.

SENATOR SCHIEBLE:

That clarifies my inquiry about the bill. As a prosecutor, I prefer to go into sentencing with as much agreement as possible. Either there is a complete agreement or there is a middle ground. Will this bill result in more opposition in sentencing where the prosecutor does not want VTC and then the defense counsel argues for VTC and complete dismissal?

MR. JONES:

This bill may cause district attorneys, especially with crimes of violence, to be reluctant to agree to VTC. We want more people in VTC; however, this bill may have the opposite effect intended.

SENATOR PICKARD:

Most judges want more discretion in their decisions. With discretion, we hear from judges that they need guidance. What kind of guidance would the court be given with regard to making these determinations?

MR. JONES:

There should be guidance for the judge in the law. The judge should consider things like the defendant's record, the criminal act and service-related issues. The stakeholders should consider the amendment proposed in [Exhibit H](#) and whether the judge should be obligated to dismiss a case at the completion of VTC. The defendant should be aware of the outcome from the beginning. The amendment could be more refined, and it is important to give judges additional discretion. This bill allows for the defendant to complete VTC multiple times.

SENATOR PICKARD:

Your response answers the concern of addressing whether a dismissal will be granted upon completion of the program and the defendant would know at the beginning of the program. Would this need to be outlined in instructions for the court to follow?

MR. JONES:

In my experience, we have not seen a defendant go through a treatment program who has not gotten some type of benefit at the completion. Oftentimes, it may be a reduction in charges instead of a complete dismissal. There is an incentive to complete the program. If we structure a statute where a defendant is entitled to some type of benefit, prosecutors would probably agree to that.

DISTRICT JUDGE BELL:

In VTC, defendants have been pre-adjudicated. We follow the statute in terms of accepting defendants into the program. The VTC is a sentencing provision. The courts have not necessarily been in compliance with the end part of the statute. Defendants in Clark County will continue to get dismissals. The dismissal is appropriate if a defendant completes the program. The VTC gives the defendant the tools to be successful; it would be counterproductive for the court to not dismiss the crime the defendant was convicted of. Convictions make it difficult for a person to find employment, find suitable housing and more.



ASSEMBLYMAN YEAGER:

It is concerning that no veterans in the Eighth Judicial District Court are getting dismissals. The wording of the bill does not attempt to change the current law. This bill does not change the intent of the statute but seeks to restore the ability for violent offenders to get into VTC. Some cases should not qualify for VTC or mental health court. The bill proposes that the judge uses discretion on each case. Law enforcement was initially opposed to this bill. After sitting through the hearing, some law enforcement officers were neutral. This bill will help our veterans. This bill is right for our justice system and our State.

CHAIR CANNIZZARO:

The hearing on A.B. 222 is closed. The hearing on A.B. 417 is open.

**ASSEMBLY BILL 417 (1st Reprint)**: Revises provisions governing the dissemination of certain records of criminal history to certain persons by the Central Repository for the Nevada Records of Criminal History. (BDR 14-714)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

I am here to present A.B. 417. Previously, there have been bills that dealt with background checks and employment screening services that conducted background checks through the Central Repository. The impact of the bill unintentionally made it more difficult for an employer to obtain background information about a future employee. Assembly Bill 417 seeks to fix the problem.

DODY FUHRMANN (Nevada Quick Search, Inc.):

I am a licensed private investigator and a business owner. This bill will correct the unintended consequences of previous legislation. Nevada is different when it comes to retrieving data. Several national background screening companies that have contracts with the Central Repository hire Nevada companies as subcontractors to conduct the employment screening process.

There is no public national database to draw criminal history. Most criminal case research must be accessed by each criminal court. Using the Central Repository, civil name check is more efficient. Nevada employers can hire quicker, with more confidence, and get Nevada citizens on the job sooner. There is a vital need for employment background checks in Nevada. This bill will reinvigorate the background screening in public agencies.

In 2016, Nevada Quick Search, Inc., paid approximately \$450,000 to the Central Repository for this service. This is approximately 38 percent of the Central Repository's revenue for that year. Nevada Quick Search, Inc., provides revenue for the State. After 2017, revenue has decreased due to a decline in business. Businesses were limited in what they could legally access from the Central Repository.

Any authorized participant to the Central Repository must have an active Nevada private investigator license. There are credentialing requirements. Nevada Quick Search, Inc., is regulated like consumer reporting agencies under federal law. This ensures the protection of consumer information during the employment screening process. There has never been unauthorized use of protected information. Assembly Bill 417 will not affect the credentialing and security measures already in place for access and usage of the system and will bring the system to its highest potential.

This bill will correct the unintended consequences of previous legislation and reinvigorate the industry. This bill will increase overall public safety. The law authorizes an employment screening service on contract with the Central Repository to provide records of criminal history to the employer or volunteer organization. This bill allows employment screening located outside of the State to contract with Nevada businesses to conduct this process.

ASSEMBLYMAN YEAGER:

I have submitted a proposed amendment ([Exhibit I](#)).

SENATOR PICKARD:

Do entities under contract with the Central Repository need to meet the minimum qualifications as a licensed private investigator?

MS. FUHRMANN:

That is correct. To be an authorized participant to the Central Repository, an entity must be an active, licensed Nevada private investigator.

SENATOR PICKARD:

Thank you for clarifying. Can a nonparticipant receive information and disclose that information to a third party?

MS. FUHRMANN:

No, that is not legal. As a consumer reporting agency, licensed private investigators must adhere to applicable federal laws.

SENATOR PICKARD:

Information obtained through a legal proceeding from a private investigator would be legal. If an entity is not authorized to access the information, disclosure is allowed under the federal law, correct?

MS. FUHRMANN:

The only legal access to the system is for preemployment or prevolunteer and cannot be used for any other information.

SENATOR PICKARD:

With regard to an employment background check, these checks are conducted frequently, and the law is broad. Is it your testimony that it is illegal for the authorized entity of information to turn the information over to an unauthorized entity?

AMY MCKENNON (Manager, Nevada Quick Search, Inc.):

This system is used as a tool. Information is always kept confidential. Authorized participants only use information in a confidential manner. It is unlikely that an authorized entity will disclose confidential information.

SENATOR PICKARD:

If the Central Repository includes public information, there would be no disclosure of any information of a secondary entity from providing information to the first that does not have access.

MS. MCKENNON:

That is correct. There is a dissemination appropriation that can be used in the system; however, it would not be usable information for a criminal background screening for preemployment or prospective volunteer services.

JOSH HICKS (Consumer Data Industry Association):

We are neutral on A.B. 417. The issue of a national screening service contracting with a subcontractor could raise some issues. There is nothing in the law that provides that only a licensed private investigator can access the

information. It is not a correct reading of Nevada law that only a private investigator could access the Central Repository.

CHAIR CANNIZZARO:

The hearing on A.B. 417 is closed. The hearing on A.B. 418 is open.

**ASSEMBLY BILL 418 (1st Reprint)**: Enacts provisions governing an offer of judgment. (BDR 2-1115)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

I am here to present A.B. 418. I am a practicing attorney with Battle Born Injury Lawyers. I have many years of experience practicing a variety of law.

MATTHEW HOFFMAN (Battle Born Injury Lawyers):

I have provided written testimony ([Exhibit J](#)). We support A.B. 418. This bill promotes the intent of the Nevada Supreme Court and to effectuate the prompt resolution of lawsuits.

SENATOR PICKARD:

I have used this tool as a lawyer. Were there previous arguments on passing this legislation? How does the attempt at balancing the law affect existing cases?

MR. HOFFMAN:

Current litigation would be impacted positively. This bill would allow the plaintiff in a diversity action to serve an offer of judgment in attempts to settle a case. This bill would encourage settlement. In federal court, there are constitutional issues on criminal matters; discovery can end sooner in a civil matter. This substantive law creates incentive to settle cases sooner.

SENATOR PICKARD:

The offer of judgment is a tool lawyers use to incentivize quick resolution. Are there any cases where this is a point of litigation in federal court where this law would impact the case in any way?

ASSEMBLYMAN YEAGER:

There was no previous discussion in repealing this bill in previous Legislative Sessions. We are not aware of this bill being a point of contention in ongoing federal litigation.

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SENATOR PICKARD:

I overlooked the effective date.

NICHOLAS ANTHONY (Counsel):

The bill becomes effective October 1. Almost all Nevada legislation is prospective only, which allows parties to take avail after October 1.

SENATOR PICKARD:

That clarifies my question of whether there was discussion on this bill previously—there was not any discussion.

VICE CHAIR HARRIS:

The hearing on A.B. 418 is closed. The hearing on A.B. 481 is open.

**ASSEMBLY BILL 481**: Revises provisions relating to civil actions and homesteads. (BDR 2-1106)

MIKE SULLIVAN (Hear the People):

We are here to present A.B. 481. This bill increases the amount of the homestead exemption. A homestead declaration is a tool for Nevada homeowners to protect their primary residence from general creditors. Values in Nevada are increasing. Nevada law authorizes the homestead amount. The exemption has steadily increased. Homeowners may find themselves in properties that have increased values. Homes have appreciated significantly. As the values increase, homeowners find themselves at risk for lawsuits and liens based on equity in their homes.

SENATOR PICKARD:

Is there any discussion regarding inclusion of the consumer price index connection as opposed to a static number? Prices fluctuate often. Are there difficulties in implementing this type of bill?

MR. SULLIVAN:

We can work with the stakeholders to ensure implementation.

SENATOR HANSEN:

When can a homeowner file for a homestead?

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MR. SULLIVAN:

This bill will increase the homestead exemption to \$650,000. The homestead exemption has not been raised since 2007.

SENATOR HANSEN:

This information regarding homestead is helpful, and this bill seems reasonable. The cost of homes have increased.

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VICE CHAIR HARRIS:

The hearing on A.B. 481 is closed. The meeting is adjourned at 9:46 a.m.

RESPECTFULLY SUBMITTED:

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Jeanne Mortimer,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	4		Attendance Roster
A.B. 222	C	30	Assemblyman Steve Yeager	Veterans Treatment Court Program Participant Handbook
A.B. 222	D	27	Assemblyman Steve Yeager	Hearn Case
A.B. 222	E	3	Assemblyman Steve Yeager	Category A Fact Sheet
A.B. 222	F	14	Assemblyman Steve Yeager	Specialty Courts Application
A.B. 222	G	20	Assemblyman Steve Yeager	Mental Health Court Participant Handbook
A.B. 222	H	4	Nevada District Attorneys Association	Proposed Amendment
A.B. 417	I	1	Assemblyman Steve Yeager	Proposed Amendment
A.B. 418	J	2	Matthew Hoffman / Battle Born Injury Lawyers	Written Testimony