MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-third Session
February 25, 2025

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Tuesday, February 25, 2025, in Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 6 of the Nevada Legislature Hearing Rooms, 7120 Amigo Street, 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 Melanie Scheible, Chair
Senator Edgar Flores, Vice Chair
Senator James Ohrenschall
Senator Roberta Lange
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator John Ellison

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Michael Scully, Committee Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts, Nevada Supreme Court
Kendra Bertschy, Reno Township Justice Court, Department 2, Washoe County; Nevada Judges of Limited Jurisdiction
Ester Quilici, Vitality Unlimited
Grant Denton
Paloma Guerrero, Clark County Public Defender's Office

Jennifer H. Rains, Chief Deputy Public Defender, Washoe County Public Defender's Office
Cadence Matijevich, Office of the County Manager, Washoe County
Yesenia Moya
John T. Jones, Jr., Nevada District Attorneys Association
Jason Woodard, Nevada Sheriffs' and Chiefs' Association
Angela Knott, Washoe County Deputy Public Defender

CHAIR SCHEIBLE:
We will open the hearing with Senate Bill (S.B.) 13.

SENATE BILL 13: Revises provisions relating to exoneration of bail. (BDR 14-471)

JOHN R. MCCORMICK (Assistant Court Administrator, Administrative Office of the Courts, Nevada Supreme Court):
The Administrative Office of the Courts (AOC), Supreme Court of Nevada, has submitted a proposed amendment (Exhibit C) to S.B. 13. There was some confusion in bill drafting, and the amendment that has been provided is to return S.B. 13 to the original intent. Basically, what this bill does is allow the defense and prosecution in a criminal matter to stipulate to a disposition of bail different from exoneration. It is sort of an efficiency measure to facilitate plea negotiations. For example, a lot of times in a negotiation, they will get to where the bail will be used to potentially pay restitution or some other monetary penalty with the offense because of the plea agreement. This allows that bail to be stipulated and used for that purpose rather than exonerated back to the payee. It is intended as a measure to facilitate plea negotiations and to hopefully increase efficiency. The reason for the amendment is to move the provision that allows that stipulation to occur before bail is exonerated and to facilitate negotiations or the other disposition. That is S.B. 13 in a nutshell.

CHAIR SCHEIBLE:
I just have to clarify, you are not intending to expand or restrict the things that bail is now used for. I know sometimes bail is already put toward restitution or a fine payment. You are just putting into statute that that is an allowable use of bail funds.

MR. MCCORMICK:
That is exactly the intent and to stipulate before bail is exonerated. This allows that pre-exoneration stipulation.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 13 and open the hearing on S.B. 17.

SENATE BILL 17: Revises provisions relating to specialty courts. (BDR 14-474)

KENDRA BERTSCHY (Reno Township Justice Court, Department 2, Washoe County):
I am so excited to be here before so many familiar faces. Today, I am here to introduce S.B. 17, which introduces targeted small improvements to our existing specialty court statutes, creating a significant and positive impact on the lives of our citizens. Specialty courts, also referred to as therapeutic courts, use evidence-based practices, treatment and case management to address the root causes of criminal behavior, including substance use and mental health disorders. Across Nevada, there are approximately 64 specialty courts. Those courts range from focusing on mental health, substance use, competency, veterans' issues, development disabilities, women in need or trauma and youthful offenders.

Based on extensive research, specialty courts are considered the most effective justice intervention for individuals who have substance use or mental health disorders. Through collaboration with treatment providers, law enforcement, intensive supervision, prosecution, defense and the judiciary, these courts operate to provide continuous individualized support that promotes lasting change. Some of the benefits for these treatment courts are that they reduce recidivism. The courts make it less likely for individuals to commit another offense. They save taxpayer's money, and they protect our communities. According to national standards, they reduce recidivism by as much as 58 percent. They also have saved taxpayers an average of $6,000 per person who is involved in a treatment court program, and they are known to break the cycles of addiction.

The current law allows a criminal defendant to enter into a treatment court in several different ways—as preprosecution diversion, as diversion following a plea or as a condition of probation. Diversion means that once successfully completing one of our treatment court programs—intensive programs that last a

minimum of a year to up to three years—the individual receives the benefit of not having the conviction on their record. This further reduces a defendant's involvement in the criminal justice system and is a significant motivating factor to enact lasting change in a person's life.

Section 1 of S.B. 17 modifies our current statute related to preprosecution diversion. Current law already allows and permits preprosecution diversion when an individual has been charged with a misdemeanor. This bill modifies our current law to mirror the changes enacted by this legislative body through A.B. No. 222 of the 80th Session. This bill would only increase the amount of individuals who are eligible for consideration for preprosecution diversion.

I want to make sure it is clear that this does not change our current practice in terms of the law with how somebody can enter into preprosecution diversion. The judge would make that determination based on the information that is provided to them through the parties, the prosecution or the victim if there's a victim in the case. This does not make any modification of the procedure for preprosecution diversion, only for those who are eligible.

Nationally, the trends for different treatment courts have been to expand preprosecution diversion. Nationally, the trend is to allow for more felony offenses to be eligible. We are not doing that here. Again, the only way for someone to be eligible for preprosecution diversion is if they are currently charged with a misdemeanor offense. Section 2 of this bill and the remaining sections make slight modifications to the statutes related to substance use courts. Section 2 through section 4 of S.B. 17 make modifications to clarify that justice, municipal or district courts can create those therapeutic courts addressing substance use. Last legislative session, this committee passed A.B. No. 405 of the 82nd Session which modified mental health court statutes to change to indicate what exactly those types of courts are. So this bill just makes the same correction for the substance use treatment.

Section 3, subsection 2, paragraph (b) of S.B. 17 makes a slight modification. What this does is allow for the treatment courts to conditionally allow someone to enter into their courts to complete evaluations to determine whether or not they qualify. For example, those could be a psychosocial, a mental health or substance use evaluation as well as determining whether they are high-risk, high-needs individuals. The evaluations are needed to then determine whether they should be allowed to participate in that program. That is the main

modification in that section. Courts in our jurisdiction across Nevada have indicated they would like to have that opportunity to be able to use funding from the AOC to ensure we have the right people in those core programs.

SENATOR ELLISON:
I think you laid this out quite well. If they've got multiple charges—for example drugs, breaking and entering or theft–how would you handle that? It may be issues that apply to multiple different types of courts. How does that work?

JUDGE BERTSCHY:
If somebody is charged with multiple offenses, with the offenses that you have outlined, they are not eligible for preprosecution diversion. For example, possession of a controlled substance is a felony, so they would not be eligible. If they have multiple offenses and at least one of them is a gross misdemeanor or a felony, then they are not eligible for preprosecution diversion.

SENATOR ELLISON:
I am sorry, I should have said a marijuana charge or something like that. That would be less of a charge and then another charge would be on top. So one would be something you could handle, and one would not be. Is that correct? One is a felony or gross misdemeanor that would not be allowed in there. But if they had a marijuana charge or something, how would you handle the two? Would you just say, "You are going to have to handle that charge in another court?"

JUDGE BERTSCHY:
If there's one charging document that has that felony offense, the gross misdemeanor offense and the misdemeanor offense, they would not be eligible for preprosecution version.

SENATOR FLORES:
First, I will start off with kind of a broader question. You indicated that there is a trend nationally to cast a larger net. We're talking about gross misdemeanors and felonies. Do we have data on whether the programs have been successful where we are expanding and casting a much larger net?

JUDGE BERTSCHY:
I have been able to determine specifically for preprosecution diversion for felonies that the studies have indicated that in Birmingham, it has reduced

criminal recidivism by 18 percent; Tacoma, 19 percent; and Jacksonville, 11 percent. Those are the data that have been studied until 2009, I believe is the correct date.

SENATOR FLORES:
I am curious to know now with this amendment, do we have any indication of how many more folk would be eligible? If the bill went into effect, how many more folk would we be considering for these types of programs?

JUDGE BERTSCHY:
I do not have that information mostly because when we are looking at this at arraignment and as a judicial officer, we just do not have access to all the information as to what an individual has been charged with and previously convicted of. The current laws indicate that if someone has been convicted of any offense other than a minor traffic violation, they are not eligible. I can say that this would expand the ability for people to ask for preprosecution diversion, but I do not have the exact numbers as that is not something that we have been able to monitor.

SENATOR FLORES:
Sections 2 through 4 talk about allowing justice courts and municipal courts to establish the program. How closely do they work together now between one jurisdiction to the next? What do these programs look like? Are they dramatically different? I am curious to know how that information is flowing and how we are establishing them between one and the other.

JUDGE BERTSCHY:
In Nevada, in order to be considered a therapeutic court, you have to adhere to the standard set by the AOC. They have established best practices. I believe there are ten factors that must be met by every court in order to be determined to be a therapeutic court. All our therapeutic courts that are considered therapeutic courts by the AOC also follow by the all-rise standards, which had previously been established by the National Association of Drug Court Professionals (NADCP). Those standards require yearly trainings, which the AOC makes available to judges and court staff. Our office assists to make sure that our prosecution team, our defense team and our law enforcement team are able to go every year, if possible. In Washoe County, we meet quarterly with the different therapeutic courts to talk about best practices as well as to make

sure we are advancing and improving our treatment courts and are in line with best practices nationally.

SENATOR ELLISON:
How many courts in Nevada are actually doing this?

MR. MCCORMICK:
Currently, we have 64 specialty court programs established in the State, off the top of my head. I do not remember the breakdown between district and limited jurisdiction courts, but as Judge Bertschy indicated, they all have to comply with best practices.

The ten key components of a therapeutic court were promulgated by NADCP. We have extensive funding guidelines courts must comply with. The programs are working pretty well. There's a lot of communication. I was at the First Judicial District the other day, and we were discussing some specialty court issues. There was a lot of discussion about transferring participants between programs, which is a very common thing. For example, a defendant in Elko receives an offense and is determined to be high risk and high need and an appropriate candidate for a mental health court, but maybe the services are not in Elko. They'll work out an agreement to transfer that defendant to a different court, if possible. We are currently engaged in a lot of that sort of collaboration. We have regular discussions and meetings with our Specialty Court Funding Policy Committee to discuss these topics. We identify areas for improvement. We have expanded peer review. We have a number of initiatives going on to tighten it up and improve our delivery of service.

SENATOR OHRENSCHALL:
I think a lot of us have learned that substance abuse and the road to recovery can be two steps forward and one step back sometimes. As I am reading the bill, I just want to be sure I am understanding it correctly. Someone could have successfully completed a diversion program, let us say a substance abuse program, and then, if this passes, they can be rereferred in the future. They would not be precluded from being able to participate in a diversion program, correct?

JUDGE BERTSCHY:
Yes, you are correct. The reason for that is we based the language of S.B. 17 on A.B. No. 222 of the 80th Session. The bill modified the veterans court

statutes related to eligibility. Previously, if you had been involved in a therapeutic court, you could not do it again. Since this legislative body had made that change, we adopted that language into this bill.

SENATOR KRASNER:
I need to clarify. They would be allowed, but not if they were convicted of a crime of violence, a sexual offense, a crime of battery—which constitutes domestic violence or vehicular manslaughter—correct?

JUDGE BERTSCHY:
Correct. That is outlined in [section 1, subsection 2, paragraph (b)]. If they have been previously convicted of a crime of violence, any crime of violence, any sexual offenses outlined in NRS 202.876, a crime of battery which constitutes domestic violence, vehicular manslaughter or driving while under the influence of intoxicating liquor, they would not be eligible to request for preprosecution diversion.

CHAIR SCHEIBLE:
I will take a point of personal privilege to say, I can't say enough good things about diversionary programs and therapeutic courts including our preprosecution diversion programs. Being able to reach more people is always good as is being able to develop more programs in more courts. I have certainly had clients who've transferred between programs. Something else I do want to mention is that it sounds like section 2 is going to allow more courts to stand up these programs. For some people, it is really important that the program they participate in is centered in their own community. Some people are very successful. They go somewhere else, and they complete a diversion program. I have seen people who fail their therapeutic programs because they were not home-based. Then as soon as the court they were originally charged in opens up its own program, they are able to successfully complete notwithstanding the issues of being eligible having already participated in one which is absolutely a barrier.

ESTER QUILICI (Vitality Unlimited):
I have worked for Vitality Unlimited for over 40 years. I happen to be here for Behavioral Health Day, and I am glad to have the opportunity to speak to this bill. Vitality Unlimited offers comprehensive substance use disorder and mental health treatment from our residential treatment facilities in Elko, Carson City and

our Certified Community Behavioral Health Clinics in Elko, Carson City, Reno and Dayton.

We serve the specialty court in Elko with peer detoxification, residential and transitional services. We have been engaged in jail and court diversion programs for many years and for all individuals who participate, we believe we have had a positive impact. However, I support S.B. 17 because it recognizes that substance use disorder is a chronic relapsing disease.

People do recover. I have seen that in the many years that we have served this population. For many it will require more than one experience with residential treatment and ongoing outpatient treatment to bring that person into long-term recovery. A second or third experience with treatment is certainly going to do that individual in our communities more good than spending that time incarcerated. Thank you for this opportunity to share our experience in this work.

GRANT DENTON:
I support S.B. 17 because I am a product of diversionary court. I spent ten years in and out of the system addicted to heroin and meth. I was homeless the whole time. I did not plan anything. I just heard this was happening. This is incredible. This is absolutely necessary. We need more of this.

A lot of times I would go to jail because I did not have a source of income, but I had this habit that I had to support. I had to do things. Sometimes I broke the law. I was not a bad person, but I was driven to do this because of my addiction.

A lot of times I would get locked up. I would go through the process. You get locked up because you do something stupid. Then when you are in jail, your head clears a little bit. You start to understand your role and how you got to where you are. You start to believe them and be optimistic. You think, maybe I can do something. I can get my kids back. I can get a job. I can do this and then do that. Then when you are released, you are released back into the same world that got you there. Then you identify that since I have been here for ten years doing this, I do not just have a drug problem. I have an identity crisis. I do not remember how to be an adult, and I do not remember how to do things. We are not in the business of just stopping drug use. We have to reinvent people.

When I was sentenced to rehab in Las Vegas, it was really strict and really rigid. I was there for a year. That is absolutely what I needed. I needed to find out who I was. I needed enough time to gain a new identity by not just learning my weaknesses but also learning my strengths, learning structure through sober living, learning to show up somewhere on time, which was very foreign to me. I swear by drug and diversionary courts. They are absolutely necessary. Today I am the founder of a nonprofit that operates a shelter. We do outreach. We operate the resource center. We're called the Karma Box Project. If it was not for diversionary court, I would not be here today. My sons would not have a dad. My mom would not have her son back.

PALOMA GUERRERO (Clark County Public Defender's Office):
Every day, we see people who made one mistake and then face lifelong consequences that affect their jobs, housing and families. Diversion programs work because they hold people accountable while also addressing the underlying issue, whether it is substance abuse, mental health issues or economic hardship. Expanding eligibility means giving more people the opportunity to turn their lives around instead of locking them up into a cycle of crime and incarceration.

We've heard of a concern that people will somehow game the system by sealing their records so they can requalify for the program. But sealing a criminal record is not easy. It is a long, complicated process that can take months or even a year, and it is far from automatic. People seek to seal the record so they can get jobs, housing and stability, not so they can commit more crimes. If anything, the fact that people are desperate to clear the records shows just how damaging a criminal conviction can be and why diversion is so necessary in the first place. This bill focuses on what actually works, which is giving people a real chance of rehabilitation. Expanding preprosecution diversion means fewer people cycling through our courtrooms, lower recidivism rates and safer communities. It is a smart evidence-based approach to justice that prioritizes both accountability and second chances. We strongly support this bill.

JENNIFER H. RAINS (Chief Deputy Public Defender, Washoe County Public Defender's Office):
The perspective I want to highlight is to supplement the letter of support (Exhibit D) our office provided as an exhibit through my colleague, Angela Knott, and to highlight how this particular bill falls within the sequential intercept model (SIM) that Washoe County has devoted extensive resources to

supporting. It is a collaborative partnership in our community with the District Attorney's Office, the Public Defender's Office, law enforcement and the courts. We have all worked closely to adopt the sequential intercept model in Washoe County. This fits squarely in the SIM Intercept 3 regarding the courts and specialty courts to allow more access as you have heard from testimony earlier today. This in turn leads to healthier humans, safer communities and tremendous cost savings. We have already been using many of these ideas to try new projects in our community in order to achieve those goals.

CADENCE MATIJEVICH (Office of the County Manager, Washoe County):
Ms. Rains gave you a great description of the SIM. Across the community, both at the county level and with our community partners, there's been extensive work in implementing the SIM. We are already seeing good benefits from it. We expect to see many more to come. Senate Bill 17 directly aligns with the initiatives in the model. We'd like to thank the court for bringing it and thank Judge Bertschy for her great explanation of why it is so beneficial.

YESENIA MOYA:
I am speaking in strong support of S.B. 17. Expanding access to diversion programs for folks struggling with substance use is a community-centered approach that prioritizes healing over punishment.

Our people currently face immense hardships: poverty, lack of healthcare access, unstable housing and many systemic barriers that make it nearly impossible to break free from the cycles of criminalization and substance use. People are excluded from these diversion programs due to past convictions or prior participation. Senate Bill 17 removes these unnecessary barriers. It empowers our courts at all levels to establish treatment programs and gives judges the flexibility to refer individuals to assessment and support. We have to recognize that substance use is a public health issue, and many people struggle to meet court requirements due to these issues I mentioned, also including lack of transportation and family responsibilities. The programs really do help folks stay on track.

Incarceration does not address the root causes of addiction, but a community-based treatment and support programs do. These diversionary programs keep families together, they reduce recidivism, they ease the burden on our courts and our jails and save taxpayer dollars. More importantly, they give people a real chance to heal, rebuild and contribute positively to our

communities. Senate Bill 17 is a step forward toward building a more compassionate system that acknowledges real struggles that our people face. I urge your support.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
It is a pleasure to be here and offer just a brief bit about the Nevada District Attorneys Association. We include the Clark County District Attorney's Office, the Washoe County District Attorney's Office and the other 15 district attorney's offices throughout the State of Nevada. I am here in opposition specifically to section 1 of S.B. 17. You have heard a lot of testimony this afternoon about how great specialty courts are. I can tell you unequivocally, district attorneys agree. Specialty courts are great, but we have conflated different types of specialty courts. We strongly support postadjudication specialty courts where a defendant has either been found guilty or pled guilty, and then as a condition of that sentence been assigned to one of these courts.

Our issue with section 1 is that it is preprosecution; meaning that if a person fails that court, they are then sent back for the prosecution to start at the very beginning. In other words, we do not have a plea to fall back on. So periods of time have passed, and the case is basically stagnant and that is our issue. There are three main points that I want to address today. First is that this bill is an unconstitutional incursion on an Executive Branch function, that being it hinders our prosecution of a case. Our second point is that it is too expansive. Our third point is that it delays the adjudication of a case.

With respect to the incursion to an Executive Branch function, I want to cite to you *State v. Second Judicial District* [*Court in and for County of Washoe*, 432 P.3d 154 (2018)] in which the Nevada Supreme Court held, in part, that court sentencing discretion once granted cannot be conditioned on what was called a prosecutorial veto. The court based this decision on separation of powers principles; and applying those same separation of powers principles, courts cannot infringe upon a prosecutor's right to fulfill their statutory obligation to prosecute a case and seek a conviction. Generally speaking, whether to seek a conviction and on what offenses is an executive prosecutorial function.

I want to point out that this is an extremely broad statute. I know Judge Bertschy indicated that she is just using the guidelines of [A.B. No. 222 of the 80th Session] and applying them to preprosecution. My argument is they

are entirely different programs. A preprosecution is generally meant for a first-time offender. It is not meant for somebody who is deeper into the system. My second point is that this statute allows those charged with stalking and with violations of temporary protective orders to be eligible for preprosecution. Those are inappropriate offenses and should not be subject to preprosecution.

My third argument is that it delays adjudication. I always like to say cases are not like fine wine, they do not get better with age. The preprosecution program allows a defendant up to 18 months in the preprosecution program. At that point, the judge says you failed, go back to step one. So now I have got a misdemeanor case that is over 18 months old, and I am supposed to prosecute that case. Cases are not like fine wine.

I want to end with a reference to Marsy's Law. The Constitution of Nevada provides victims with the right "to the timely disposition of the cases following the arrest of the defendant." Section 1 of S.B. 17 violates that provision.

I do want to point out my issue is not with specialty courts. It is with an expansion of the preprosecution specialty court outlined in section 1.

CHAIR SCHEIBLE:
I want to clarify the position of the District Attorneys Association. I completely understand what you are saying about the difference between treatment court and preprosecution diversion and not wanting to expand preprosecution diversion. Would the District Attorneys Association actually prefer to eliminate preprosecution diversion programs?

MR. JONES:
We did oppose putting in this statute to begin with, so were opposed then. I can tell you that pursuant to our executive function that some of our offices do, in fact, have preprosecution programs. My office, the Clark County District Attorney's (DA's) Office does have one, but that is an executive making an executive decision about what to do with that case. The office is not being told what to do with that case by the judiciary.

JASON WOODARD (Nevada Sheriffs' and Chiefs' Association):
Allow me to describe the Nevada Sheriffs' and Chiefs' Association. We represent police executives of all the different police agencies throughout the State. I am here today in opposition of S.B. 17. We would like to echo the

sentiments brought forward by the Nevada District Attorneys Association. Specifically, our concerns are about the broadness and the limitation of the prosecutor's ability to make proactive decisions in the prosecution of cases. We are in support of diversion programs; however, the two issues previously listed are our concerns.

JUDGE BERTSCHY:
I thank you again for the opportunity to present this bill. A specialty court, whether it is preprosecution, diversion or as a condition of probation, saves lives. They allow people to be able to return to their community to work; sometimes they have the first job that they've ever been able to hold. They are allowed to reunify with their family and to be productive members of our society. With respect to some of the opposition that we heard, I will note that with points one and three, those are not issues that this bill has changed. That is what is currently in statute. We did not modify this bill to change the procedure of having someone come into and request a preprosecution diversion. Marsy's Law still applies. Those statutes still apply. We did not change or make any modification regarding the actual procedure to make the request.

With respect to who is eligible, I know we have indicated we are willing to work with the those in opposition. I will just make sure that is clear on the record that we're willing to continue to work. The goal is to make sure that we are able to assist more individuals as quickly as possible to help deflect them from the criminal justice system—for those who are deserving and who are appropriate.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 17 and open the hearing on S.B. 20.

SENATE BILL 20: Revises provisions relating to criminal procedure. (BDR 14-476)

MR. MCCORMICK:
Senate Bill 20 is primarily intended to provide cleanup regarding the conduct of preliminary hearings for gross misdemeanors and felonies in justice court. We understand there is some opposition to section 3 that deals with what we refer to as dangling misdemeanors, which are those misdemeanors that are charged on the same information or indictment with more serious charges. We hope we can continue to work with interested parties to see if we can arrive at a

statutory mechanism that will address this issue without creating any potential unintended consequences.

Section 1 of the bill provides that if a defendant is advised on the record that a waiver of preliminary hearing is unconditional or affirms that fact in a written waiver that the case may not be returned to justice court for further proceedings and the case is under the exclusive jurisdiction of the district court.

Section 2 eliminates the requirement that a preliminary hearing for a potential death penalty case be reported by a court reporter and, rather, allows the court to record such a hearing through the use of audiovisual (AV) recording equipment, which is in fact the same as every other proceeding in Nevada trial courts, except for the part we are going to talk about in section 4. However, I do want to reiterate that currently a murder trial or a high-dollar civil trial can be recorded utilizing AV means. The only proceeding where there is a statutory requirement for a court reporter is that preliminary hearing on a potential death case. We are seeking to eliminate that requirement, so those preliminary hearings can be recorded through our normal AV recording methods.

This section is also where you will see the friendly amendment (Exhibit E) to S.B. 20 that was provided to the committee by the Nevada Judges of Limited Jurisdiction. This is an amendment that seeks to further clarify what happens after we have recorded one of those preliminary hearings. It provides that a court upon request of one of the parties or the district court before the trial in district court may designate a person who is not a certified court reporter to generate the transcript of the audio recording of the preliminary hearing. The amendment also clarifies the retention period for that sound recording of a preliminary hearing as five years. As I indicated, that amendment is considered friendly.

Section 3 is the section of the bill I referenced earlier. It is intended to require that misdemeanors charged in the same information or indictment along with gross misdemeanors and felonies be disposed of in district court.

A number of concerns have been brought up, and you will probably hear a few of them later. We want to continue to have discussions with interested parties as well as within the Judicial Branch to see if we can arrive at language that will address the issue of dangling misdemeanors without creating additional

concerns. We would ask the committee's indulgence to continue working on that section.

Section 4 updates a 1967 statute that requires a court reporter for jury trials and justice court. This requirement laid dormant for many years, specifically from 1989 until 2019. In 1989, the Nevada Supreme Court and then subsequently the United States Supreme Court decided a case called *Blanton v. North Las Vegas* [498 U.S. 538 (1989)], which said you did not have to have a jury trial if the penalties for the offense were *de minimis*. Between 1989 when that decision happened and 2019, when the Nevada Supreme Court decided *Anderson v. Eighth Judicial District Court* [135 Nev. 321, 448 P.3d 1120 (2019)], this was not something that we were particularly concerned about.

However, as I indicated, when the Nevada Supreme Court decided *Anderson v. Eighth*, they determined that the consequences, particularly with regard to firearm rights that attach upon a domestic violence conviction, were no longer *de minimis*, thus jury trials were required for domestic violence matters at the limited jurisdiction misdemeanor level. That is where we are now.

We have this statute from 1967 that indicates a court reporter has to report these proceedings and not use a standard AV means as we currently use for most things. It depends on the courtroom, too. Some judges prefer court reporters, some like the AV recording. The situation that we are trying to avoid by removing this provision is best illustrated from a situation I was made aware of this summer. I had a judge in a rural jurisdiction who had scheduled a misdemeanor domestic violence trial and absolutely could not find a court reporter. The court called everybody they could. They could not find a court reporter. The judge was put in the situation deciding whether to follow the statute requiring a court reporter or honoring the defendant's right to a speedy trial.

What we are trying to do here is clean that up. Court reporting is a profession that, unfortunately, a lot of people are not entering anymore. Court reporters are becoming fewer and farther between. It is becoming more and more difficult for courts to secure a court reporter for these matters, particularly a rural jurisdiction. We do not want to have to choose between the statute and the Sixth Amendment [of the U.S. Constitution].

Finally, S.B. 20, section 5 is a clarifying section that reiterates that municipal courts have jurisdiction over misdemeanors committed within the city limits of the incorporated municipality in which they serve and must be adjudicated there. The primary focus of this is to clean up those preliminary hearings, attempt to improve efficiencies and how the process works.

SENATOR NGUYEN:
I am still not gathering why this is necessary outside of the court reporter and AV recording sections of the bill. I have some questions about the other sections of the bill.

MR. MCCORMICK:
In terms of "dangling misdemeanors," what will happen is it is charged on one indictment. So you have a misdemeanor and a felony together. The felony goes up to district court and we end up having this misdemeanor that is just kind of hanging over here. Then say the defendant is convicted at the district court level and is sent to prison. Then we are not necessarily going to adjudicate the misdemeanor, but we have this misdemeanor charge at the justice court level that can't be disposed. The idea that we are trying to get at is addressing that issue to make sure that all the charges on the indictment are adequately disposed.

As I indicated, we have had some concerns about the misdemeanor going up to district court and how that would play out there. We would hope to continue to engage in those conversations. The idea is to not have these sorts of misdemeanors just languishing while the more serious criminal proceeding occurs at the district court level.

SENATOR NGUYEN:
Aren't there court dates that are set in a status check? You could handle these things in my experience if you had that dangling misdemeanor. Part of the case, the felony case, went up to the district court, the misdemeanor case was set over into the justice court, and you would have a status check to see what the resolution was. There would always be an existing court date down in the justice court to continue to handle this. Is this just merely convenience—not wanting to have two courtrooms that the cases are handled in?

MR. MCCORMICK:
That is not my understanding of the goal. I believe there are some differences in practice across jurisdictions in the State where perhaps some of those misdemeanors are being adjudicated in some jurisdictions. Otherwise, they are being filed and then not pushed forward or prosecuted. Then they end up dangling and hanging out there.

SENATOR NGUYEN:
Would that not be up to the prosecution to decide to dismiss that case if someone is perhaps headed to prison on a felony charge?

MR. MCCORMICK:
I would think that is a potential solution.

SENATOR NGUYEN:
In this scenario with these changes as proposed in S.B. 20, one of the things I also have concerns with is that any of these cases can potentially start off as a felony and later be plea bargained or reduced to a simple misdemeanor. I know that some of these amendments were proposed by the courts of limited jurisdiction. The district courts are definitely not in a position to monitor simple misdemeanor cases if they are resolved.

Currently, if a misdemeanor is resolved to a simple misdemeanor, any of the collection of fines or community service or any counseling requirements are probably in a better position to be monitored by those courts of limited jurisdiction. Under this scenario, we now have district court judges that are handling serious felony cases that are now like pseudo status check judges on these requirements. Will this be an added burden to those district courts when they can no longer send these cases down to be adjudicated in the justice courts?

MR. MCCORMICK:
That is one of the concerns that has been raised and we are currently discussing regarding this bill. As I indicated, I think there is some work to do, particularly on S.B. 20, section 3.

SENATOR NGUYEN:
I have some concerns that we are adding an increasing workload on to a district court when clearly the justice courts are better equipped to handle those kinds

of misdemeanor charges. That would be like my concern with those provisions of the bill.

When we are talking about the ability to have these cases stay with each other—I realize the problem I think you are trying to solve. I may disagree that it is an actual problem. With these dangling misdemeanors, could you have a situation when someone is going to have a misdemeanor trial and on the eve of the trial, the prosecution amends to add a gross misdemeanor or a felony in order to bind it up to district court and later resolve that case, and you are still stuck in the district court. I have some serious concerns about section 1. It just seems like you are shifting the work to a different court.

SENATOR ELLISON:
If a defendant had a couple of misdemeanor trials that were pending and a felony charge that goes to district court where he or she is found guilty of the felony and goes to prison, could the defendant still be prosecuted for the gross misdemeanors? Does the statute of limitation step in?

MR. MCCORMICK:
The statute of limitation for prosecution of a misdemeanor is one year. We would get sort of sideways with some of those time periods.

CHAIR SCHEIBLE:
But wouldn't the charge have already been filed within the one-year statute of limitations? You would not run afoul of the statute. You would just be having a misdemeanor trial on a battery charge that was associated with a robbery with use of a firearm ten years after the person gets out of prison on the robbery with use of a firearm. You'd go back down to district court to have your trial on the battery charge.

MR. MCCORMICK:
You are correct.

SENATOR OHRENSCHALL:
I have a question on section 2 of S.B. 20, the deletion of the requirement for a court reporter in a capital case at the preliminary hearing. I understand the difficulty finding court reporters, but I am wondering if the AOC has taken the temperature of prosecutors and defense attorneys who handle capital cases. There are lengthy appeals in these cases. Have you explored how the

prosecutors and defense attorneys feel about this deletion of that requirement? I am wondering if that is something that, even though it might be difficult, might need to be retained. I am wondering if you have heard from those attorneys that handle these capital cases.

MR. MCCORMICK:
I have discussed various aspects of the bill with both public defenders and district attorneys, and nobody has brought that up as a concern. The concerns were more along the lines of Senator Nguyen's concerns.

CHAIR SCHEIBLE:
I want to point out that I understand there are still possibly forthcoming amendments on section 3. I imagine that the disposition of those amendments is going to affect where people would testify on this bill. To make things simple, I will go ahead and have you guys testify in the position you are currently in. If you could address whether you are open to resolving the issues with section 3 or if you think there's nothing that can be done, I think that would be helpful for my committee in making a decision.

JUDGE BERTSCHY (Nevada Judges of Limited Jurisdiction):
On behalf of the Nevada Judges of Limited Jurisdiction and as a member of the Reno Justice Court, I want to thank the AOC for being willing to work with us with respect to the amendment. I am in support. We are willing to also work and would be in agreement to modify the other section as discussed.

MR. JONES:
We are in opposition to S.B. 20, specifically section 3. I do not know if there's any language that is out there that we can agree to with respect to section 3. In January, we met with John McCormick, and we sincerely appreciate him taking the time to meet with us about the bill. Jennifer Noble, who represents the Washoe County District Attorney's Office, and I went back to our office to try to think through what a legislative scheme surrounding misdemeanors and district court would look like. We could not come up with anything. We had several meetings about this issue. One reason I am here today in opposition is there was nothing that alleviated all of the concerns we have. We understand that this is meant to tackle a common administrative issue. In my experience, it is a fairly rare occurrence. It does not cause significant administrative burden on the justice courts. I am not sure there is anything that will alleviate all of our concerns with section 3.

With respect to section 4, I did receive the proposed amendment from the Judges of Limited Jurisdiction. We are still evaluating it to see if it has any potential implications. Regarding Senator Ohrenschall's question about death penalty cases, I am specifically thinking about the daily transcript requirement and things like that. We are still evaluating our position on the new amendment to section 4.

MS. GUERRERO:
We concur with the DA's Office. We also do not see a way to propose any new language for section 3. We are fine with other parts of the bill. We did reach out to our murder team and our attorneys that would be in those courtrooms, and they did not have any problems with the recording parts of this bill.

As far as those dangling misdemeanors, in Clark County it is not really an issue as explained. The case gets bifurcated, and the misdemeanors are placed in justice court. Then there are status checks to keep track of what happens with that misdemeanor. This problem has a very simple solution, and I think Clark County solves it pretty well. This proposed solution is very problematic from our perspective. We want the justice courts to keep the jurisdiction of those misdemeanors because they are the experts on misdemeanors. We also worked very well with Mr. McCormick, and we thank him for always being open to these conversations.

ANGELA KNOTT (Washoe County Deputy Public Defender):
Today we are opposing S.B. 20 for two reasons. One would be that first section regarding negotiations and the conditional and unconditional waivers. Typically, most plea negotiations are conditional waivers. Where we waive the preliminary examination, they go up to district court. Sometimes plea negotiations fall apart, but we already have a statute for when that happens. That's NRS 171.208. That is up to discretion of the district court to determine if there's good cause to remand the case back down to the justice court. As S.B. 20 is written currently, there is a concern that the justice court could just make all waivers unconditional. I am not sure how that would happen, but that is something that we have concerns on going forward. Making all waivers unconditional could have negative consequences on our plea negotiations, and it could remove the discretion of the district courts.

The other section is regarding Senator Ohrenschall's question about the death penalty cases. We have some issues with the Supreme Court Rule 250 which

currently requires daily transcripts, usually for trials or postconviction hearings. I believe that when we are doing preliminary hearings with a death penalty case, you are going to want the daily transcripts. I am not sure the justice courts would be able to handle preparing daily transcripts if we use audio only. I think Justice AV Solutions (JAVS) would be important so that we can actually see the faces of the witnesses. The other concern is sometimes a witness might misspeak or you do not understand what they are saying. A court reporter can simply ask for clarification, and it gets fixed on the record. If you only have an audio, you might not know until later that evening or the next day that you don't understand what is actually on the audio. There's no way to fix that. The transcripts from the preliminary hearings are important when you are cross examining any witness at a trial, especially a death penalty trial. For those reasons, we are opposed to S.B. 20.

As far as the section 3, we are neutral currently. I think we want to wait to see what the amendments are going to be.

CHAIR SCHEIBLE:
I have a take-back-to-your-office and let-me-know-question. I read section 1 not to really change the conditional or unconditional nature of the waiver, but just to allow for it to be in writing. I would be interested to know if your office has a problem with that aspect of it, or if you are fine with it being in writing and you just want to make sure that you retain your current scheme for conditional versus unconditional waivers.

MR. MCCORMICK:
I do not know of any court in the State that currently does audio recording. It is all AV. Generally, as the Washoe County Public Defender's Office said, a lot of courts use JAVS, which is a specific audiovisual recording solution designed for use in court. I do not believe we are going to end up in a situation where it would be an audio recording only.

Also, I just wanted to brag that in addition to the shortest bill presentation before this committee, I got the Clark County District Attorney and the police department to agree. I mean, they are opposing the bill, but they agree.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 20 and introduce one bill draft request (BDR). A committee bill starts with a BDR and the language of the proposed bill. By

reviewing this, the committee has a decision to make about whether we would like to introduce the bill that is proposed within the bill draft. If there is a motion to introduce the BDR, the vote the committee will be taking would be to simply introduce the bill. It does not change whether you support the bill. You can change your mind about that. There will still be plenty of discussions. But whether this BDR gets to grow up and become a bill is up to us today.

BILL DRAFT REQUEST 5-493: Revises provisions relating to juvenile probation. (Later introduced as Senate Bill 241.)

SENATOR FLORES MOVED TO INTRODUCE BDR 5-493.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
Having nothing further to come before the Senate Committee on Judiciary, we are adjourned at 2:15 p.m.

RESPECTFULLY SUBMITTED:

_____
Jan Brase,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 13	C	2	John McCormick/ Nevada Supreme Court	Proposed Amendment
S.B. 17	D	10	Angela Knott/ Washoe County Public Defender	Letter of Support
S.B. 20	E	15	Nevada Judges of Limited Jurisdiction	Friendly Amendment