

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
April 14, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Tuesday, April 14, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman Mark A. Manendo, Assembly District No. 18

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Hank Pirowski, Project Director, Veterans Treatment Court, Buffalo, New York
T. Arthur Ritchie, Jr., District Judge, Family Division, Department H,
Eighth Judicial District
Peter I. Breen, Senior District Judge

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Ramu Komanduri, M.D., Chief of Staff, Veterans Health Administration,
Southern Nevada Healthcare System
Tim Tetz, Executive Director, Office of Veterans' Services
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's
Office
Diane R. Crow, State Public Defender
Claudia Stieber, Lieutenant, Division of Parole and Probation, Department of
Public Safety
Kevin Quint, Executive Director, Join Together Northern Nevada
Gregory Hunter, Veteran, United States Army
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada
Dee McLellan, Deputy Administrator, Division of Mental Health and
Developmental Services, Department of Health and Human Services
L. J. O'Neale, Chief Deputy District Attorney, Vehicular Crimes Unit, Office of
the District Attorney, Clark County
Samuel Bateman, Nevada District Attorneys Association

CHAIR CARE:

I will open the hearing on Assembly Bill (A.B.) 187.

ASSEMBLY BILL 187: Authorizes the establishment by district courts of a program for the treatment of certain offenders who are veterans or members of the military. (BDR 14-955)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):

I am the sponsor of A.B. 187. Operation Enduring Freedom and Operation Iraqi Freedom are ongoing. The pace of development in these wars has been unprecedented in the history of our all-volunteer force. More of today's armed forces are directly exposed to combat. The service members returning home bear the scars of these experiences. Those with physical wounds are easily identified and treated, but the scars of battle are not always physical. Increasingly, military leaders and policy makers admit that exposure to combat can damage the mental, emotional and cognitive faculties of service members, even as their bodies remain intact.

At least 12 independent studies have provided evidence of the prevalence of depression, post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) among today's deployed troops. Post-traumatic stress disorder is the most prevalent mental health disorder among deployed service members. It affects

approximately 5 percent to 15 percent of all service members. The prevalence of depression is 2 percent to 10 percent. Traumatic brain injury includes closed head injuries resulting from an object hitting the head, but not breaking the skull, and primary blast injuries—injuries caused by wave-induced changes in atmospheric pressure. Very little research has been done on the prevalence of TBI. The only published report estimates 7.6 percent of deployed troops have suffered such an injury.

If the proper financial, emotional and structural supports are not in place, PTSD, depression and TBI are often a precursor to homelessness. The rate of homelessness is higher among veteran populations than nonveteran populations. The Office of Veterans' Services estimates the veteran population in Nevada exceeds 339,000. The National Coalition for the Homeless estimates that 4,715 of these veterans are homeless. Fifty-seven percent are post-Vietnam veterans, 47 percent are Vietnam era veterans, and 15 percent are pre-Vietnam era veterans.

Co-occurring substance abuse disorders are common among people with PTSD, depression and TBI. Research shows that 76 percent of homeless veterans experience alcohol, drug and mental health problems, and integrated treatment programs are more successful than mental health programs and substance abuse programs administered separately.

Assembly Bill 187 authorizes the district court to establish a program for the treatment of certain eligible defendants who are veterans or active members of the military, which would be similar to programs established for treatment of individuals with mental illness or substance abuse issues. For veterans charged with a nonviolent crime, A.B. 187 authorizes a court to suspend further proceedings without entering a judgment of conviction and with the consent of an eligible veteran, place him or her on probation under terms including successful completion of a program.

The first veterans treatment program was established in Buffalo, New York, in January 2008. Judge Robert Russell presided over the city's drug treatment court and began a one-day-a-week mental health treatment court in 2001. After counting 300 veterans in the local courts during 2007, Judge Russell decided to structure a veterans treatment court to address not only the veterans' crimes but their unique mental health issues. The court provides a setting where

veterans who appear as defendants can see treatment as a sign of strength rather than a sign of weakness.

Through the court, veterans have access to the U.S. Department of Veterans Affairs (VA) services, medical care, psychosocial services, housing assistance, job training, day care for children, family counseling and help with transportation. An education-to-recovery program taught at a local community college can help a veteran acquire a General Educational Development (GED) credential, job skill certification or an associate's degree. The defendants must stay in the program for at least one year and can be discharged once their health care provider states they are well enough to continue without court supervision.

ASSEMBLYWOMAN BUCKLEY:

We are fortunate to have Hank Pirowski, the Project Director for the Veterans Treatment Court in Buffalo, New York, available to testify telephonically. He will describe the Buffalo court and their experiences. Since then, courts in Illinois, New Jersey, Oklahoma, Pennsylvania and Wisconsin have all begun exploring the idea of establishing a veterans treatment court. The 111th Congress is considering passage of the House of Representatives Resolution 7149 and Senate Resolution 3379, both called the Services, Education, and Rehabilitation for Veterans Act, which will provide funding for these courts.

The Eighth Judicial District Court in Clark County recently applied for a federal grant to establish a veterans treatment court patterned after its drug court program. Their adult drug court program has approximately 600 active cases. Since the program's inception in 1992, over 4,000 individuals have successfully graduated from the program. Over 400 drug-free babies were born to drug court graduates. In addition, although 70 percent of the clients entering the court were unemployed, underemployed or did not complete high school, 80 percent of the drug court graduates are employed, have completed high school, received their GED or are attending college or university.

There are 15 veterans already enrolled in the adult drug court program. In a veterans treatment court, in addition to substance abuse counseling, eligible veterans would receive a treatment program specifically designed to meet their needs, including additional individual counseling sessions and group therapy. Wraparound services for veterans would include education, employment, housing assistance, contact with local veterans support groups and a

mentorship program. Program clients would be tested regularly for alcohol and drug use and may be subject to random testing as deemed appropriate by the court.

District Judge Jennifer Elliott from the Eighth Judicial District testified in support of this bill from the Assembly. I have provided you with copies of her testimony ([Exhibit C](#), original is on file in the Research Library). Dr. Komanduri, Chief of Staff at the Veterans Health Administration hospital in Las Vegas, will testify about the VA's willingness to partner with the court to ensure veterans get the skilled care they need and deserve. I have provided the Committee with material from Dr. Komanduri's mental health clinic including a description of their PTSD treatment program ([Exhibit D](#)).

Senior District Judge Peter Breen from Washoe County will testify in support of the creation of a veterans treatment court for the Second Judicial District. Tim Tetz, Executive Director for the Office of Veterans' Services, will also testify in support of [A.B. 187](#).

I have been impressed with the success of the specialty court programs. They work. I was excited to see this idea for a court work so well in Buffalo, New York. It would be ideal in Nevada because of our large number of veterans.

I provided you with an amendment ([Exhibit E](#)). In the Assembly, through [A.B. 47](#), there has been an issue regarding the sealing of records and when it should begin. This amendment would make sealing records consistent with other statutes. It would provide that a record be sealed upon successful completion of the program, whether it is the drug court program, the mental health court program or the veterans court program.

[ASSEMBLY BILL 47](#): Revises provisions relating to specialty courts. (BDR 14-409)

In the aftermath of war and conflict, it is incumbent upon us to take care of our Nation's veterans. With several veterans on this Committee, we know how frustrating it is when we see incidents like the lines at the VA or Walter Reed Army Medical Center. This is something we can do. We can pool all the resources in one stop for the best care and treatment of our veterans. I urge your support of [A.B. 187](#).

Some groups oppose this bill, saying, "Why should we treat our veterans any different than anyone else?" The answer is obvious. They put their lives on the line for our protection. This is the least we can do for our veterans.

SENATOR MCGINNESS:

This is a great bill. Will you please reiterate your comments regarding funding?

ASSEMBLYWOMAN BUCKLEY:

There is the potential of federal funding. Two bills pending would give funding for the creation and running of these veterans courts. It probably could be done without funding by gathering together our resources. The courts would like the funding, and we are hopeful the federal government will consider grants to support this project.

SENATOR MCGINNESS:

It took considerable time for the drug court to reach rural Nevada. Is there a question of unequal justice if you are at a court in Ely or Elko versus Clark or Washoe Counties?

ASSEMBLYWOMAN BUCKLEY:

Drug courts have spread through the rural community. These programs should be provided throughout the State. Once we have a template as with the drug court, it did expand. Once the program is successfully up and running, the judges share their experiences with other district court judges.

HANK PIROWSKI (Project Director, Veterans Treatment Court, Buffalo, New York):
The wars in Iraq and Afghanistan have put renewed focus on the issue of veterans mental health and for all the right reasons. Active duty in military service in a war zone can range from distressing hardships to traumatic experience. Many veterans who served overseas return home and learn the war traveled back with them in the form of anxiety, depression, flashbacks, PTSD, TBI, alcoholism and drug abuse.

We live in a high-definition world where visual clarity is unlike ever before. You couple that with the smells of diesel, rubber, flesh burning, feeling the heat and concussion wave and remembrance of false hopes that you will be okay. That is what PTSD really is. That is what our veterans continue to relive. Transitioning back to civilian life or readjustment for many may be difficult because of the psychological changes that occur in war. Given the military's culture, emphasis

is on strength, confidence and bravery. War's mentality is challenging. Treatment is for the weak, and many do not seek needed help. Readjustment for the soldier can be rapid. Unfortunately, readjustment can also be marked by dysfunction and contact with the justice system. Many untreated, mentally ill veterans are arrested for nonviolent criminal acts that are manifestations of their untreated illness and are frequently a way of asking for help.

Our Nation's veterans are not always successful coping with the invisible medical conditions. The system of conviction and sentencing that labels and incarcerates veterans leaves the underlying problem unaddressed and unresolved. Internalizing the event of an arrest, self-punishment, community condemnation and promotion of social ostracizing are likely to increase the sense of isolation veterans with a service-related psychiatric condition are likely already experiencing. Unfortunately, many of these veterans will find themselves in the criminal justice system for behaviors associated with their illness. In their efforts to mask the symptoms, they may turn to illicit drug use. For many, the first time a veteran is forced to confront his or her problem is when he or she is caught up in the justice system. Equally troubling, the justice system is often the first to recognize a veteran's need for assessment and treatment. Many mentally ill veterans who went through the justice system might not have engaged in such behavior if they had been receiving adequate and appropriate mental health treatment.

Many behaviors that help promote survival in a combat zone cause difficulty during the transition back to civilian life. Hypervigilance, command and control interactions, which can be beneficial in war, can result in negative and potentially criminal behavior back home. Timely access to available resources such as medical care, mental health care, addiction treatment, education, employment and other supports that meet the readjustment challenge for the many veterans who carry the physiological and psychological scars of war is critical. Access to these services can improve the quality of life in all our communities for our veterans who have served in defense of the United States.

We need to find them before they enter deeper into the criminal justice system, offer them assistance, assess their needs and manage their care. This question has been asked and will be asked again. Why should we do this; why create a veterans-specific treatment court? Why not work with these individuals within the existing drug and mental health treatment courts in Nevada? The most significant answer is veterans are a unique population with unique needs.

Veterans have many shared experiences, many of which are not common among their nonmilitary peers. The veterans court allows the veterans to go through the treatment court process with other veterans who are similarly situated and often have common past experiences and needs. What matters most in the veterans court is peer support—the mutual experience of combat, mental illness and substance abuse. Rather than search and destroy, it is time to identify and assist.

Your authorization to create a veterans treatment court in Nevada reaches far beyond displaying a yellow ribbon. This is what we need to do for all of our communities because these individuals put their lives on the line for us. I know some may view this as treating them differently, but it is our intent to provide the help that may be necessary for all of those who may not have sought the help on their own.

CHAIR CARE:

Your program has been around since 1999 or 1998?

MR. PIROWSKI:

Our drug courts have been around since 1997 and 1998. The veterans treatment court began in January 2008.

CHAIR CARE:

How many veterans have come through that court?

MR. PIROWSKI:

We have had 110 veterans come through. Approximately 60 percent of them are Afghanistan and Iraq veterans.

CHAIR CARE:

Is it too early to gauge any degree of success or failure with the program?

MR. PIROWSKI:

The transition to the program has been amazing. To date, we have had eight graduates, no incarcerations and no recidivism. The appearance rate in courts is approximately 99 percent. They do not miss court dates. They come in because they feel secure there with other veterans who have experienced the same situations. They keep 98 percent of their treatment appointments.

CHAIR CARE:

Are criminal dockets involving veterans all heard on the same day, or how does that work?

MR. PIROWSKI:

That is correct. Similar to a drug court or mental health court, all our veterans appear every Tuesday afternoon in Buffalo. We have a separate docket just for the veterans who have been identified in our programs.

T. ARTHUR RITCHIE, JR. (District Judge, Family Division, Department H, Eighth Judicial District):

I am here for District Judge Elliott who testified, [Exhibit C](#). We will establish a veterans court with existing resources in Clark County. While we have applied for a grant, we have a plan to implement this court. This is an important way to help veterans.

A marshal has worked for me for ten years while I have been on the bench. In the last five years, he has done two tours—one in Afghanistan and one in Iraq. It is a tremendous adjustment to come back into society, an adjustment for family and employment.

If we do not have sufficient funding, we are going to add these matters to the existing calendar. We have an elected judge who handles the specialty court matters here. District Judge Elliott would handle the additional calendar to start. We understand providers are ready to increase services. District Judge Elliott and the drug court are able to handle these additional matters.

The transfers of jurisdiction are used in the mental health court now, and this is something the Eighth Judicial District can do upon enactment of this law. We support the establishment of the veterans court.

CHAIR CARE:

The bill on page 2, line 14 says the court may, if appropriate, assign a defendant. I am trying to get a feel for the phrase "if appropriate." How would the court determine it is appropriate to assign a veteran to the program?

DISTRICT JUDGE RITCHIE:

These would be nonviolent offenses. We would make sure any defendant referred and accepted into the specialty court would meet all the requirements,

including requirements to complete domestic violence treatment, if necessary. The criteria would be based on judicial review.

CHAIR CARE:

There is nothing in here about the verification that someone claiming to be a veteran actually is a veteran. Everyone who has been in the service knows what a DD Form 214 is. Would there be a procedure for identification?

DISTRICT JUDGE RITCHIE:

That would be checked. Although that Form seems to be readily available, the bill does not specifically require that Form. Veterans groups would provide the services.

CHAIR CARE:

Section 7 of the bill, regarding justice and municipal court, references an eligible defendant as someone who appears to suffer from mental illness, alcohol, drug abuse or PTSD. Where it says "appears," would there be an effort to determine whether that is actually the case?

DISTRICT JUDGE RITCHIE:

The transfers of jurisdiction would be the same as used in the mental health court, which would include a review and evaluation.

SENATOR MCGINNESS:

District Judge Elliott testified her duties include three specialty court calendars, including the Dependency Mother's Drug Court, the Adult Drug Court and Truancy Diversion Program, [Exhibit C](#), pages 1 and 2. Were these courts established by statute, or are they programs the court established on their own?

DISTRICT JUDGE RITCHIE:

Some of them are by statute and some are by grant. The Dependency Mother's Drug Court was a grant awarded to the court that was established by the Family Division. The drug courts are statutory. District Judge Elliott is a district court judge and a therapist. Senior judges were handling the calendars for drug court. We transitioned to an elected judge last summer and fall. District Judge Elliott handles some specialized dockets and the adult drug court, and there are two or three calendars per week. Other judges handle specialized court.

SENATOR MCGINNESS:

If some of these programs are established by the court, could you establish a veterans court without legislation?

DISTRICT JUDGE RITCHIE:

We already have veterans as part of our drug court. The veterans court would tie in veterans' services. These calendars would consolidate veterans together, and they would not be alone in dealing with their issues. In establishing the small additional calendar, we would try to have the veterans group together at the end of that docket. We do not exclude veterans from our specialty court program. If a veteran qualifies, he could be in a drug court program.

SENATOR WIENER:

When you do grant applications, does it add strength to show statutory support for particular programs?

DISTRICT JUDGE RITCHIE:

I do not know. The will to establish the court and the statutory basis for the court would improve the chances of getting the funding. We have applied for the grant without the law, and we intend to pursue this.

SENATOR WIENER:

Sometimes, we have the inclination to allow certain programs to unfold because the locals know what the locals need. However, there are times when a statutory commitment gives a program an enduring life. If we move this program forward, we would want it to have a long life to serve the particular community we are talking about today.

PETER I. BREEN (Senior District Judge):

With Senior District Judge Archie Blake, I preside over all the adult specialty district courts in western Nevada, except the family drug court. This court is patterned after the mental health court, which has its origins in this Judiciary Committee.

Veterans are found in the misdemeanor courts and the felony courts. Many of them are homeless. We can integrate misdemeanants and felons in one particular court as we have done so successfully with the mental health court. Forty percent to 45 percent of those in our mental health court are misdemeanants. We are thereby more efficient. We need legislation for that.

When a court has been established and endorsed by the Legislature, it gives us the sense of permanence. It helps us with grants, particularly with the mental health court.

We have found specifically that veterans in our specialty courts are not forthcoming to deal with their mental or addiction problems. Since the publicity about this court has come out, we have had people knocking on our door saying they are ready to go to the veterans court. That is not the usual case. In fact, we have had difficulty identifying veterans within our specialty courts.

Those are three reasons for establishing a veterans court. I was asked to call the mental health court something else because mental illness is a term that tends to turn people off and make them shy away from identifying and obtaining help with their problems. After consultation, we decided that part of the problem in getting people with mental problems or addiction problems to come forth and help themselves is identifying it as such. We break down the stigma of mental illness. We will likewise attract the veterans to a court that is set apart for them and their peculiar issues.

I was at the last hearing when there were some objections to establishing a mental health court because it creates a class of citizens. We are trying to identify people who have drug or alcohol addiction or mental illness problems, or a combination of those, whose misbehavior is clearly related to the addiction or illness. We bring them into a criminal court devoted to that. We give them treatment and life skills; we make them work and be accountable for their behavior. We establish a great deal of expertise. You can focus on those particular problems. Likewise, the veteran will tend to have myriad problems—homelessness, PTSD—peculiar to the military history because of the immediate danger of life-threatening activities. We will be able to focus our energies on the veteran, develop our expertise, and identify and work on their needs.

It is not in the makeup of a soldier to say he was scared in combat and needs help, and that is why he drinks so much. This is a small example, and this is why we have specialized in these particular areas.

With regard to the qualifications to get into the veterans court, we envision a procedure much like we have in our mental health court. If it is an illness, they must have qualifying diagnosis. We have a committee that meets and determines whether this person is appropriate for mental health court. A

decision is made by the judge in consultation with the committee. We have a similar procedure in our various courts for alcohol or drug addiction.

We support the establishment of this court. Our experience tells us the legislation is vital, particularly in view of the varying natures of veterans with problems who would appear in a different court. We would be much more efficient with the legislation.

It is not easy to navigate the waters of veterans' services, as we have learned in the last six months, which is another reason to establish a veterans court. Some people would qualify for federal benefits, and some would not. A person who is an addict may have committed crimes that have disqualified them from military service. That would not necessarily disqualify them from this particular court. But to develop knowledge and expertise in that would be most helpful, and it would justify establishing a veterans court by statute.

People with these illnesses are not able to spend much time looking for the services to which they are entitled. This court would help with that. Some people will be entitled to services, and some will not. Money will have to be available for people who do not qualify to get the drug and mental health treatment they need. We would require caseworkers who are especially attuned to these particular needs.

We are in the process, like Clark County, of applying for a grant to help us in this regard. If the veterans court grows to the proportions we think it might, there will have to be funding. Clark County has indicated in its application for a grant that they would look to Assembly Bill No. 29 of the 72nd Session funds. Those funds are pretty well used up. That would be down the road.

We have 12 or 13 veterans in our specialty courts. We will establish veterans court in small proportions now. It will eventually need to be supported with some services.

CHAIR CARE:

Just because someone is a veteran does not necessarily mean they are entitled to this court. There has to be a finding at some level that there appears to be any one of a number of conditions related to the military experience.

SENIOR DISTRICT JUDGE BREEN:

Terry Gilmartin has been looking into that. It is hard to find them now. If we had a veterans court, people would want to jump in. We are establishing a safe procedure for indentifying the proper veteran.

CHAIR CARE:

What is the rationale for sealing the record?

SENIOR DISTRICT JUDGE BREEN:

Historically, two or three statutes have brought forth the drug courts. One was the diversion procedure in the 1980s. A person convicted of any particular crime was entitled to have their charges diverted into a treatment program. There was no limitation on that except a list of exclusions. When the program was completed, the court would set aside the conviction; then you were eligible to have your charges dismissed and your record sealed.

The entire drug abuse field was revamped in the early 1990s. You could do the same thing under the possession and sales charges. The court could divert the charges under certain conditions and put the defendant in a program of recovery. That particular statute had a three-year sealing provision. That statute also provided that you could treat this conviction as if it was not a conviction once it was set aside.

Then the mental health court statute came along. It also included the provision where once you completed treatment, your charges would be dismissed, and you could act as if you had never been charged with this particular crime. But it copied the drug chapter and took three years to have the crime sealed.

There are various crimes where you can get into drug court and various times where your record can be sealed. You could seal your crime immediately for burglary but not for possession of marijuana. Assembly Bill 47 tries to unify these sealing provisions.

All records can be sealed unless you committed the crimes of murder or sexual assault. Different categories of crimes have different periods of time for sealing records. Some are 5 to 7 years, some 10 years and some up to 20 years, depending on the severity of the offense. Sealing of records and avoiding prison are the two biggest incentives for people to come into these courts. These courts are not like regular probation. You must commit to 200 or 300 drug tests

per year. You commit to a couple of hundred counseling sessions if you go through drug court. You are constantly monitored. You are required to get a job. If you cannot get a job, you are required to get vocational education. You are brought into court and examined regarding why you are not working. It is not easy. Incentives are important for them to at least start. That is why we have dismissal of the charges and why we seek early sealing of these records.

SENATOR WIENER:

Page 7 of the bill, lines 1 through 6, says the court may not assign a veteran to the program if he was convicted of a felony involving the threatened use or use of violence unless the prosecutor stipulates to the assignment. Does this language mirror the mental health court language as a reason not to assign? What would be a situation where there would be a stipulation?

SENIOR DISTRICT JUDGE BREEN:

Most of the specialty courts have a general underlying requirement that the crime not be one of violence. However, if you are dealing with mental health court, it is hard to find a client who has not committed some act of violence. Resisting arrest could be an act of violence. Violence has been interpreted as something more with the use of force. The requirement for the district attorney to stipulate to admission was included when the mental health statute was established so the Nevada District Attorneys Association would agree to this statute. The district attorneys have been good about letting people into our mental health courts who, without their medications, might be violent and need that kind of treatment.

SENATOR MCGINNESS:

Is there a district court in Nevada that does not have drug court?

SENIOR DISTRICT JUDGE BREEN:

Assembly Bill No. 29 of the 72nd Session has an assessment on misdemeanors, which provides the collection of a stable source of funding. Every district in the State has a specialty court. Not all of them have mental health courts. Someone with a serious mental illness probably cannot get treatment in Hawthorne. But I have sent people to Carson City and Reno. Everyone can go to a drug court within a short distance of their county seat now. As for mental illness, we are working on that. We are making progress.

RAMU KOMANDURI, M.D. (Chief of Staff, Veterans Health Administration, Southern Nevada Healthcare System):
I will read from my written testimony ([Exhibit F](#)).

TIM TETZ (Executive Director, Nevada Office of Veterans' Services):
I urge your support for [A.B. 187](#). When I got my job about three years ago, I was briefed on the Guardianship Program where we had 40 veterans deemed by the VA to be mentally incompetent. It was our job to handle their fiduciary responsibilities, care for them and negotiate on behalf of the veteran. I came across a World War II veteran named George, who was one of our wards. George had a traumatic story that relates to this today. He was a victim of shell shock as it was identified following World War II. When he returned, his family could not understand what had happened and how he had changed. He disconnected from society and fell apart. He had dramatic changes in his personality. He went to the VA. In 1947, the VA performed a full frontal lobotomy on him. From 1947 until 2007, he was a ward of guardianship programs throughout the country and a patient in a number of care facilities.

I bring this up because, much like today, rather than treat the problem—the root of his misbehavior—society imposed a punishment that would last a lifetime. Whether it is called shell shock, adjustment syndrome or personality disorder, these symptoms have been true across every war era.

According to a VA Department of Defense study by Dr. Steven Jordan in August 2008, 1.6 million troops were deployed to Afghanistan or Iraq since October 2001. Of those people, 14 percent had tested positive for PTSD, 14 percent had tested positive for depression, and 19 percent, or 320,000, were probable for TBI. We still do not know the ultimate impacts of TBI. Ten thousand veterans with TBI are being cared for by members of their family on a full-time basis. One-third of the 1.6 million veterans had at least one of these problems. Yet, this is not unique to the global war on terrorism.

We had a decorated Vietnam veteran as a patient at our office. He came back and threw himself into society, went to school, worked two jobs, raised a family and became an exemplary citizen in northern Nevada. No one would have known, except he would occasionally go around with his Purple Heart saying he was a veteran. In the ten years after his children left and after his career started twilighting, he suddenly started having problems with PTSD because of what he had experienced in Vietnam. One day, when approached by a reckless driver

who flipped him off and pulled him over to the side, he jumped out of his car, dragged the driver out of his car and beat the driver's head against the concrete. Here is a leader in our society, someone whom the youth of the community and many of his peers looked up to, who suddenly snapped because of something that happened back in the early 1970s.

Those veterans, as well as the veterans of the global war on terrorism, are the patients and people who need to be involved in this program. The Office of Veterans' Services has a unique role in this. We have accredited service officers. Each of those service officers sits down with veterans who have been entered into this program. Our first role is to determine if they are eligible for this program and work with them to make certain they are veterans. They need our help.

Our next step is to determine eligibility for VA medical care. Can we get them into mental health care if they need it? Can we get them into medical care if they need it? Can we help them free up some of their financial resources used to pay for medical care so they can use it for other purposes?

We also determine if they require or are eligible for vocational rehabilitation, and if they are out of work, can we train them to become better citizens. Finally, we determine if they are eligible for VA pension or compensation. It is our job to provide them with tools so they can be free from worries that perhaps got them into the problem.

Of the 11 veterans we started with in the trial court in northern Nevada, we met with 5. Of those, almost all of them were eligible for care in some form, and many are still working with our service officers. Six of them did not show up, and through a mentorship program, continued support and an enhancement of this program by passage of A.B. 187, we can put the tools in place so those people know they must come. Working with the court systems and our communities, we can take care of not only the heroes of today, but the heroes of yesterday when they have these symptoms caused by their service.

Many have challenged us and asked why we should have a special court for veterans. Why are they special? They are the only portion of the population who willingly went forward, stood up, promised to serve our country and do anything in service to the country. We should do anything in service to them.

In 1947, we did not understand shell shock and its symptoms or treatments for our troubled heroes like George. Now, 60 years later, we still do not fully understand readjustment issues. We do not understand PTSD, TBI or the complex intertwining issues that affect today's veterans. As one veteran's wife told me in a tearful conversation recently, "My husband left. My children's father left for Afghanistan, and he never came home. The man who came home was not my husband, was not my children's father." Your support of A.B. 187 and a veterans court is the beginning of a new chapter in Nevada on how Nevada and our court system care for America's heroes.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We support A.B. 187. I am a veteran, serving in the Navy for six years. My most relevant experience to this bill is the last two years I spent as Executive Officer and later the Commanding Officer of a Naval Reserve center in Everett, Washington. During the Iraq war, we were mobilizing a lot of people. Even in the Northwest, where there are a lot of military hospitals and a fleet concentration area, it was tough to make sure the people who returned got the proper medical services they needed—sometimes because they were too proud to admit it, sometimes because they did not do the paperwork and sometimes because they fell through the cracks. But in Nevada where there are not as many services or a fleet concentration area, this becomes even more important.

A lot has been said about why veterans are different. We see a lot of defendants who get in trouble with drugs or something similar and do not want to take responsibility in their lives. They want to hide out and do drugs. The irony is that veterans get involved with drugs because they are trying to take responsibility for their lives and self-medicate. I had a client who said he did not believe PTSD existed, and he did not admit he had been diagnosed with it. He said it was just an excuse guys used not to get a job. He was on his second driving under the influence charge. He had problems, and, fortunately, there were services available for him. For many others, those particular circumstances are not there.

When a veteran, who is used to taking control of his life, goes into a diversion program and sees other people who have not been in similar situations, they cannot identify with them. They cannot put themselves into the same situation. If there are other veterans with whom they can share similar experiences, the peer pressure aspect of the specialty court is a critical component to their

success. Diversion programs are successful. We want to make sure the same success other people enjoy through their shared experiences is enjoyed by the veterans because of their unique shared experiences. We want to allow the peer pressure that served them so well in the military to serve them in the civilian world. That structure is important to them.

As a public defender and as a veteran, I am not completely aware of all the services available to veterans. Often, it is frustrating when I know someone is having trouble, and I do not know the best service to contact for them. One of the benefits of a veterans court is that the court system will be intimately involved, not only with the VA, but with other charitable services available to veterans to help them with mental health or drug abuse. Even if our clients do not go to the veterans court, we still have a better idea as defense attorneys of how to get them the help they need. My job is not just defending my clients in court but making sure they do not come back. We try to make sure they have the services they need.

DIANE R. CROW (State Public Defender):

We have a veteran in our Carson City mental health court. Because he was originally getting services from the VA, we agreed to take him and were supervising and coordinating his services with the VA, which was working well. He has not integrated into our mental health court with the peers there because he is not in the same groups. He cannot get services from Carson Mental Health Center. He does not qualify. He is getting services from the VA.

It is important to have a veterans court. Those who oppose a veterans court because it creates a different class and does not provide nonveterans with the same services are wrong. Everyone who is not a veteran and gets into the same trouble can go to a regular mental health court or a regular drug court. Veterans are special. They have unique and specific causes of their mental health issues. They do need the peer support.

Legislation would be important in the rural counties as services for veterans come from the VA. The State and county rural mental health clinics will find it difficult to provide those services. The legislation would help coordinate the transfer of veterans from different jurisdictions. White Pine, Lincoln and Eureka Counties do not have mental health courts. They do not have providers. But with veterans' services in either Las Vegas or Reno, they would be able to

transfer jurisdiction. We have done that through some drug court participants, and it works well.

In Carson City, the court was founded in justice court. Judge John Tatro supervises our mental health court. Because the bill and the mental health court require the district court to create the court, he was made a Master so he could supervise the mental health court in misdemeanor court. Legislation would also help so it does not burden the district court judges.

In our Western Regional Drug Court, which the mental health veterans court is patterned after, we are 16 percent above the national average for success. We have a good program in northern Nevada, and we could help veterans. With a court available to veterans, they would have an incentive to complete treatment and get better.

CLAUDIA STIEBER (Lieutenant, Division of Parole and Probation, Department of Public Safety):

The Division is supportive of this program and this bill. If it passes, the Division will assign staff to the veterans court as we have with the other specialty courts.

KEVIN QUINT (Executive Director, Join Together Northern Nevada):

I serve as President of Nevada AADAPTS, which is an association of substance abuse prevention and treatment programs. We support A.B. 187.

I used to work as a counselor in a veterans' program in Menlo Park, California, in the early 1980s. We still had World War II veterans who were young and Korean and Vietnam veterans who were really young. This is a great idea. This is an opportunity to bring services together. There is a great need for more coordination in the community, and this bill will provide that.

GREGORY HUNTER (Veteran, United States Army):

If you are enrolled in a VA healthcare system, you have a card you could provide to the court that verifies you are a veteran and eligible for veterans' benefits.

If there is no funding available, VA benefits are essential to make the program work. The VA system has resources—mental health, medical care, dental care, occasional rehabilitation, disability benefits, inpatient and outpatient care. By bringing all the veterans together, they could show other veterans what

programs are available and where they are. The average veteran does not know what programs are available to them. I have learned everything from other veterans.

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union of Nevada):
There is a certain sensitivity to testifying against this bill because we generally agree with everything said in favor of the bill. Veterans have special needs. They have a high correlation of issues in the mental health area and the substance abuse area. There is no question those are issues that merit special treatment by the courts.

The concern we have is the creation of a separate system only available to certain people not because of those needs but because of their status in society. I disagree with the previous speakers who said this would not present equal protection problems because the same services are available to other people.

As I read this bill, that is not how it would work. The bill permits a jurisdiction to optionally engage in a veterans court. Drug court and mental health court do the same thing. The structure is similar. As I understand it, a jurisdiction would have a choice of which courts it would like to construct. There is a possibility that a jurisdiction without a mental health court may opt, under this law, to build a veterans court. Injustice would result if you have that situation.

You would have two individuals before the court. Both of them have a substance abuse problem. One of them served in the reserves and had no combat experience, but that substance abuse issue stems from their military service in the reserves. The other individual would be a police officer who was shot in the line of duty, prescribed painkillers because of that incident and had PTSD or a substance abuse issue after that incident. That second individual would be subject to mandatory minimums in the system. They would not have an option of probation. They would have no other access to the court within the existing criminal justice structure. The other person, although they may have all the same attributes, would have access to a different court system that provides probation, treatment and the sealing of their criminal records.

The American Civil Liberties Union (ACLU) has to oppose this bill because it creates a separate system for someone with military service. The government should attempt to ease the burden for veterans wherever it can, perhaps financially with respect to housing and medical benefits. The line should be

drawn with respect to fundamental rights—the due process rights to access the criminal justice system. Two people come before a court with the same kind of history, the same underlying mental health condition, and the only difference is one of them is a veteran. If they automatically get a different form of criminal justice, there are constitutional problems with that. An equal protection issue is created in the system because you treat people differently based on their history.

I say that with all due respect to the gentlemen behind me. I respect their service and understand the issues of community. More can be done in the system. For instance, the VA should be involved any time a veteran is looked at in the specialty court. We could have a special hearing for veterans to make sure they are honest about mental health issues.

This bill would require a judge to look at an individual and determine whether that person has a mental health issue. The mechanism of how this court works is identical to the other courts. On a practical level, creating the veterans court does not create any new incentives or procedural mechanisms to identify their issues.

There are ways to work in the existing system to get veterans into the mental health courts and drug courts to cover all the issues presented in today's testimony. The sticking point is that veterans are more reticent to bring up those issues. There are ways to get at that problem without creating a separate court for a different class of people where they are treated differently because of who they are.

We oppose the bill and urge you to consider those issues.

CHAIR CARE:

Your concerns are the same even if we are talking about defendants not in an act involving the threatened use of force or violence?

Ms. ROWLAND:

Yes. That is the same language as in the mental health court. Everything would be treated the same. The only difference would be if a jurisdiction opted only to enter into this court but not a mental health or drug court. The only people eligible for that, whether violent or not, would be those with veteran status. That is where we have the concerns.

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DEE MCLELLAN (Deputy Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services):

I work with Dr. Harold Cook, and while we are neutral on this bill, we are concerned about the funding that may be needed in the future for the clients who do not fit into the category that would be accepted into this specialty court. Some veterans may not meet the criteria for services. Those veterans would be coming to other providers.

We do not have the infrastructure needed for this. We do not have the funding. Most of us do not have the training it would take to provide this service for veterans who have had bombs going off and people dying next to them. We do not have that understanding. We may have the understanding and expertise with addictions because many of us have family members with these problems, or we have an acquaintance with it. We are able to work with people with these addictions. However, we do not have the experience that comes with being in a war. We would require special training that is expensive and time-consuming. We would have to have funding to provide the needed care.

CHAIR CARE:

There is no fiscal note on this bill, but there was testimony indicating there may be a funding issue. This will go on a work session, so if you have supplemental material you want us to see, please provide us with it.

SENATOR MCGINNESS:

Will you ask for a fiscal note?

Ms. MCLELLAN:

No.

CHAIR CARE:

There being nothing further, I will close the hearing on A.B. 187 and open the hearing on A.B. 250.

[ASSEMBLY BILL 250](#): Revises provisions relating to certain affidavits or declarations of experts. (BDR 4-1018)

ASSEMBLYMAN MARK A. MANENDO (Assembly District No. 18):

Assembly Bill 250 provides that a person may qualify to test as an expert witness in any court of record in the State, rather than only in the district court,

regarding the presence of alcohol in the breath, blood or urine of a person or the identity or quantity of a controlled substance or other chemical in a person's possession. The measure defines who qualifies as a chemist for purpose of such expert witness testimony and authorizes a request to have the affidavit or declaration admitted as evidence at a trial to be personally served on the defendant or his counsel.

L. J. O'NEALE (Chief Deputy District Attorney, Vehicular Crimes Unit, Office of the District Attorney, Clark County):

This bill clarifies and eases the procedure. It does not affect the substantive rights of anyone accused of a crime. The bill provides that a person who has qualified as an expert in a court of record can testify as an expert regarding certain evidence. It is becoming increasingly difficult to get time in the district courts with so many cases being heard. It is rare for an expert to have the opportunity to testify in a trial.

The district court was the only court of record in Nevada. In 1979, justice courts and some municipal courts became courts of record. Therefore, testimony of experts can be preserved and scrutinized.

Chemist is a term generally used to refer to anyone who tests blood or urine for alcohol or drugs. The problem is, although many of these people have degrees in chemistry, none of them have the job title of chemist. This bill explains who a chemist is.

Statute requires us to send the notice of intent to use affidavit by certified mail. This takes about five minutes per letter. If we do ten a day, we are up to about an hour of our time. Additionally, we have to send it to the defense attorney and the defendant. This adds to our cost. We give them actual notice when we hand them the notice in court. They still have all their rights to object. This makes it easier and cheaper for us.

HAIR CARE:

What is the current case law on only the use of an affidavit or declaration and the confrontation clause? This is not the issue in front of us, but it kicks in when we say a court of record in this State as opposed to district court.

MR. O'NEALE:

There are two separate issues. One is the affidavit of someone who draws the blood. The state of the law is the Nevada Supreme Court opinion in *City of Las Vegas v. Walsh*, 121 Nev. 899, 124 P.3d 203 (2005), where the Nevada Supreme Court said the present procedure with the provision to object and bring the objections before the court does not violate the right of confrontation or due process. The other issue is bringing in the chemist. The law requires us to bring in the chemist if there is an objection to bringing in the chemist, even for a misdemeanor trial. We can bring in the affidavit of the person who drew the blood if the objection is not sufficient under the law. There is no sufficiency requirement for an objection to the chemist. All they have to do is say they object, and then we have to bring in the chemist. This affects us only in our misdemeanor cases. In a jury trial, as a routine, we always bring in the chemist and the nurse or person who draws the blood because we want the jury to see them. In a felony, we do not want any possible objections on appeal. Under Nevada law, there is no due process or confrontation problem with the affidavit of the person who drew the blood because the statutory right to object is preserved.

SAMUEL BATEMAN (Nevada District Attorneys Association):
I am here as a backup.

CHAIR CARE:

This bill passed out of the Assembly by a vote of 42 to 0.

SENATOR WIENER MOVED TO DO PASS A.B. 250.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

There being nothing further to come before the Committee, we are adjourned at 10:21 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____