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Bill: S.B. 89 Revises provisions governing determination of competency of defendant to stand trial.

Contact: DAG Ed Irvin

Mental Health and Developmental Services

Good morning Chairman Anderson and members of the Committee. My name is Ed Irvin. I am and a Deputy Attorney General assigned to represent the Division of Mental Health and Developmental Services. We were not prepared to testify in the hearing on this Bill in the Senate Judiciary Committee. I apologize. Dr. Neighbors and I met with Judge Hardesty initially to express concerns that the Bill as drafted appeared to allow the full range of competency proceedings under NRS Chapter 178 for a felony charge to be conducted in Justice Court. Judge Hardesty advised us that it was his impression that the purpose of the Bill was to allow a Justice Court to order an evaluation or assessment of a defendant related to competency issues. This would allow the process to begin before a defendant had been bound over (arraigned) in District Court. Judge Hardesty emphasized that the competency proceedings would be conducted in District Court.

At that time Judge Hardesty was under the impression that the above-stated intention was the intention of the Clark County District Court (Eighth Judicial District Court) Judges. He wasn't certain, so he checked with them. He later advised us that he had confirmed that the intention was as stated. When we realized that this Bill was scheduled for hearing today, and that a proposal to amend the language in the Bill had not been presented, we contacted Judge Hardesty. I expressed my concern that the that the Bill would not accomplish its intended goal. I was contacted by an Assistant Court Administrator from the Eighth Judicial District Court. We discussed the concerns I addressed in my communication with Judge Hardesty. Monday of this week, Judge Hardesty and I discussed specific language to accomplish his goal. We agreed that drafting the language was not as difficult as I had previously thought it would be. Judge Hardesty was going to suggested changes to the Clark County District Judges.

Yesterday, near the end of the day, Judge Hardesty called and informed me that the Eighth Judicial District Court Judges had changed their minds. Again I apologize for my hastily prepared testimony. Their new intention was for the Bill to allow Justice Courts to conduct full competency proceedings under Chapter 178. Dr. Neighbors has expressed her concerns. This will effect changes in the ability of Lakes Crossing center to deliver services to clients. I can only confirm her concerns.

My function here today is to act in the capacity of an attorney assigned to represent Lakes Crossing center. Hopefully, I can assist you in understanding S.B. 89 as it is currently drafted. As you recall I testified a few weeks ago concerning S.B. 179, which improves the definition of mental illness, makes it clear that treatment to competency is the goal of treatment for a client who is a defendant who has been found to be incompetent. S.B. 179 also emphasizes that involuntary administration of medication can be considered throughout competency proceedings under NRS Chapter 178.

ASSEMBLY JUDICIARY

DATE: 4/16/03 ROOM: 3138 EXHIBIT C

SUBMITTED BY: Ed Irvin

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Lakes Crossing center is a mental health facility that attempts to help clients. It does not have a direct interest in the criminal justice proceedings related to the determination of guilt or innocence. In my capacity today, there may be others who are better qualified to address the appellate consequences of conducting the full range of competency proceedings in Justice Court for serious felony charges. Let me stress that S.B. 89 will apply to the most serious felony charges. My following comments related to consistency in my testimony before this committee.

When testifying related to S.B. 179 I referenced a United States Supreme Court decision in case known as *Sell v. United States*, which is currently pending a decision related to involuntary administration of medication. I advised this committee that S.B. 179 would be effective after the *Sell* decision is rendered, because the District Court would be able to conduct the appropriate hearing related to involuntary administration of medication. In very serious cases District Courts conduct very serious hearings quite often.

S.B. 89 would change the law so that such a hearing, that could seriously jeopardize a conviction following a jury trial in District Court, could be conducted in Justice Court. I suggest that this is problematic.

If S.B. 89 passes with the current language, a defendant who has not yet been arraigned in District Court to face the charging document that he or she will face at trial, can have his or her liberty curtailed for an extended period of time. I suggest that this is problematic.

In felony cases Justice Court is the court where preliminary hearings are held. These are required to be held relatively quickly, so that a neutral magistrate makes a determination that a defendant's liberty should be curtailed pending a jury trial. The document the defendant faces in Justice Court is meant to advise the defendant of the basic charges against him or her. An "information" is the charging document that a defendant can plead guilty or not guilty to. This occurs in District Court. District Court is the court where complex competency proceedings should be held.

My comments are simply intended to bring to your attention that S.B. 89 is not a simple change of current law.

I would be happy to answer any questions.

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