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ASSEMBLY JUDICIARY COMMITTEE

March 27, 2003

**Testimony of the Honorable Robert E. Gaston
In Support of A.B. 331**

TO: Chairman Anderson and Members of the Assembly Judiciary Committee

FROM: The Hon. Robert E. Gaston, District Court Judge, Family Div.

Chairman Anderson and Members of the Assembly Judiciary Committee, my name is Robert Gaston and I am a District Court Judge in the Family Division in Clark County, Nevada. I am here as an individual and not representing either the Family Division or the District Court. I apologize for not being personally present for this hearing but, unfortunately, I am in Ely making presentations at a judicial seminar.

Thank you for the opportunity to address this Committee in writing in regards to A.B. 331. I want to convey my thanks to Assemblyman McCleary for requesting the introduction of this bill. My comments will be brief, to the point, and deal primarily with the need for and policy behind A.B. 331.

When the Family Court was made operational, we divided, to an extent, the duties of Justice Court and District Court, Family Division, regarding the issuance of Temporary Restraining Orders (TPOs). Wherein, historically the Justice Court handled the issuance of the TPOs, at the advent of the Family Court, protection orders dealing with domestic violence were placed in the Family Court's jurisdiction. As we delineated the specific duties of the Justice Court, we granted that court jurisdiction over cases primarily dealing with "stalking."

During the past year, it has come to my attention that there are a group of victims of crime that have no access to the Temporary Restraining Order. This group of victims is the most vulnerable and, in my opinion, the most in need of such an order. Children, who have been sexually abused, by an individual not living in their home or related to them, have no access to a TPO under our laws today. This applies to those children who have been victimized by such individuals by lewd conduct.

Why is it important for a parent of such a child victim to have access to a Temporary Restraining Order? It is easy to access and can be obtained quickly and efficiently. The alternative for a parent is to request the Prosecutor to come before the court and request an injunction. This procedure is time consuming and expensive to the system.

I voiced a concern over the suggestion that A.B. 331 has a fiscal impact on our local and state government. I don't share that point of view. In my perspective, I see this as a

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SUBMITTED BY: Assemblyman McCleary

savings to the governmental entities, by not having to take the time of the district attorney in preparing a motion for an injunction, for not having to appear before the court to argue for an injunction, and for not having to file an injunctive order. That procedure takes time and governmental costs. On the other hand, a Temporary Restraining Order can be handled without those costs.

It is extremely frustrating for parents, in an attempt to protect their children who have been victimized by sexual predators, to not be able to get immediate protection through a TPO. Instead, they have to worry for many months, while a case is pending before the criminal court, as to whether the perpetrator will be exposed to their child. This can have serious affects on the child. In some cases, the perpetrator may even approach the child.

We have an obligation to protect these vulnerable victims whose scars from such incidences last for a lifetime.

Thank you for your serious and sensitive consideration of A.B. 331. I strongly urge you to pass this through without delay.

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PROPOSED AMENDMENTS TO AB 331

I. Delete Section 1. Children who are victims of domestic violence can already obtain protection orders pursuant to NRS 33.020, so this section is unnecessary. To the extent this section provides for a protection order against persons not in a domestic relationship, that is now provided in revised Section 4 of the bill.

II. Amend Section 2 to read as follows:

NRS 4.370 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, justices' courts have jurisdiction of the following civil actions and proceedings and no others except as otherwise provided by specific statute:

(a) In actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$7,500.

(b) In actions for damages for injury to the person, or for taking, detaining or injuring personal property, or for injury to real property where no issue is raised by the verified answer of the defendant involving the title to or boundaries of the real property, if the damage claimed does not exceed \$7,500.

(c) Except as otherwise provided in paragraph (l) in actions for a fine, penalty or forfeiture not exceeding \$7,500, given by statute or the ordinance of a county, city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll or municipal fine.

(d) In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed \$7,500, though the penalty may exceed that sum. Bail bonds and other undertakings posted in criminal matters may be forfeited regardless of amount.

(e) In actions to recover the possession of personal property, if the value of the property does not exceed \$7,500.

(f) To take and enter judgment on the confession of a defendant, when the amount confessed, exclusive of interest, does not exceed \$7,500.

(g) Of actions for the possession of lands and tenements where the relation of landlord and tenant exists, when damages claimed do not exceed \$7,500 or when no damages are claimed.

(h) Of actions when the possession of lands and tenements has been unlawfully or fraudulently obtained or withheld, when damages claimed do not exceed \$7,500 or when no damages are claimed.

(i) Of suits for the collection of taxes, where the amount of the tax sued for does not exceed \$7,500.

(j) Of actions for the enforcement of mechanics' liens, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$7,500.

(k) Of actions for the enforcement of liens of owners of facilities for storage, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$7,500.

(l) In actions for a fine imposed for a violation of NRS 484.757.

(m) Except in a judicial district that includes a county whose population is 100,000 or more, in any action for the issuance of a temporary or extended order for protection against domestic violence.

(n) In an action for the issuance of a temporary or extended order for protection against harassment in the workplace pursuant to NRS 33.200 to 33.360, inclusive.

(o) In small claims actions under the provisions of chapter 73 of NRS.

(p) In actions to contest the validity of liens on mobile homes or manufactured homes.

(q) In any action pursuant to NRS 200.591 for the issuance of a protective order against a person alleged to be committing the crime of stalking, aggravated stalking or harassment.

(r) In any action pursuant to Section 4 of this act for the issuance of a protective order against a person alleged to have committed or to be committing a crime listed in Section 4.

2. The jurisdiction conferred by this section does not extend to civil actions, other than for forcible entry or detainer, in which the title of real property or mining claims or questions affecting the boundaries of land are involved.

3. Justices' courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute. Upon approval of the district court, a justice's court may transfer original jurisdiction of a misdemeanor to the district court for the purpose of assigning an offender to a program established pursuant to NRS 176A.250.

4. Except as otherwise provided in subsections 5 and 6, in criminal cases the jurisdiction of justices of the peace extends to the limits of their respective counties.

5. In the case of any arrest made by a member of the Nevada highway patrol, the jurisdiction of the justices of the peace extends to the limits of their respective counties and to the limits of all counties which have common boundaries with their respective counties.

6. Each justice's court has jurisdiction of any violation of a regulation governing vehicular traffic on an airport within the township in which the court is established.

III. Retain Section 3 as written.

IV. Amend Section 4 to provide a remedy parallel to NRS 200.591 for children only, based on a reasonable belief that one of the listed crimes has been or is being committed by another person against that child. (The acts listed are taken from NRS 432B.020 concerning child abuse and neglect.) As follows:

1. In addition to any other remedy provided by law, the parent or guardian of a child may petition any court of competent jurisdiction on behalf of the child for a temporary or extended order of protection against a person who the parent or guardian reasonably believes has committed or is committing a crime involving:

(a) Physical or mental injury to the child of a nonaccidental nature, or

(b) Sexual abuse or sexual exploitation of the child.

2. The parent or guardian petitioning on behalf of the child may request that the court direct the person who is allegedly committing or has committed the crime to:

(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.

(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person, including a member of the family or the household of the victim, specifically named by the court.

3. If a defendant charged with a crime against the child involving physical or mental injury of a nonaccidental nature or sexual abuse or sexual exploitation, released from custody before trial or is found guilty at the trial, the court may issue temporary or extended order or provide as a condition of the release or sentence to the defendant:

(a) Stay away from the home, school, business or place of employment of the victim of the alleged crime and any other location specifically named by the court.

(b) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged crime and any other person, including a member of the family or the household of the victim, specifically named by the court.

4. A temporary order may be granted with or without notice to the adverse party. An extended order may be granted only after notice to the adverse party and a hearing on the petition.

5. If an extended order is issued by a justice's court, an interlocutory appeal lies to the district court, which may affirm, modify or vacate the order in question. The appeal may be taken without bond, but its taking does not stay the effect or enforcement of the order.

6. Any person who intentionally violates:

(a) A temporary order is guilty of a gross misdemeanor.

(b) An extended order is guilty of a category C felony and shall be punished as provided in NRS 193.136.

7. Any court order issued pursuant to this section must:

(a) Be in writing;

(b) Be personally served on the person to whom it is directed; and

(c) Contain the warning that violation of the order:

(1) Subjects the person to immediate arrest.

(2) Is a gross misdemeanor if the order is a temporary order.

(3) Is a category C felony if the order is an extended order.

V. Sections 5 through 8 remain as written.

VI. Delete Sections 9 through 15.

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