

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
February 15, 2005**

The Committee on Judiciary was called to order at 8:10 a.m., on Tuesday, February 15, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Mark Manendo
Mr. Garn Mabey
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Katie Miles, Committee Policy Analyst

René Yeckley, Committee Counsel
Judy Maddock, Committee Attaché

OTHERS PRESENT:

George Togliatti, Director, Nevada Department of Public Safety
Robert Wideman, Major, Central Repository for Nevada Records of
Criminal History, Nevada Department of Public Safety
Gene Porter, Legislative Advocate, representing Nevada Judges
Association
Judge Robey Willis, Justice of the Peace, Justice and Municipal
Court I, Carson City, Nevada
Judge John Tatro, Justice of the Peace, Justice and Municipal
Court II, Carson City, Nevada
Kristin Erickson, Chief Deputy District Attorney, Washoe County
District Attorney's Office, representing Nevada District
Attorneys Association
Gerald Gardner, Chief Deputy, Attorney General, Criminal Justice
Division, Nevada Department of Justice
Suzanne Ramos, Victim's Advocate, Reno City Attorney's Office,
Nevada
Henry Sotelo, Line Deputy, Reno City Attorney's, Office, Nevada
Andrea Sundberg, Community Outreach Coordinator, S.A.F.E.
House, Inc.
Mark Stevens, Deputy City Attorney, City of Henderson, Nevada
Ben Graham, Chief Deputy District Attorney, Clark County District
Attorney's Office, representing Nevada District Attorneys
Association
Paula Berkley, Member, Nevada Network Against Domestic
Violence
Nancy Hart, Volunteer, Nevada Network Against Domestic
Violence
Valerie Cooney, Member, Domestic Violence Victims Assistance
Vicki LoSasso, Member, Nevada Women's Lobby
Isaac Henderson, Private Citizen
Cotter Conway, Public Defender, Washoe County Public Defender's
Office, Nevada
Kathleen O'Leary, Public Defender, Washoe County Public
Defender's Office, Nevada
Fritz Schlottman, Administrator, Offender Management Division,
Nevada Department of Corrections
Helen Mortenson, Private Citizen

Chairman Anderson:

[Meeting called to order and roll called.] The first item of business today is dealing with the Central Repository for Nevada Records of criminal history.

George Togliatti, Director, Nevada Department of Public Safety:

When I first came on board as the Director of this department, which was a year ago on the 2nd of February, I knew we had some issues with the criminal repository. On July 1, 2004, we reorganized. We took the Bureau of Information Technology and the Criminal History Repository and joined them together and formed one division under the command of Major Wideman. With that and with his presentation I would like to introduce Major Bob Wideman.

Robert Wideman, Major, Central Repository for Nevada Records of Criminal History, Nevada Department of Public Safety:

As Director Togliatti had mentioned, we did conduct some minor reorganization within the limits of the statutes and provisions of Chapter 480 of the *Nevada Revised Statutes* (NRS), in that the Criminal History Repository is by statute a bureau of the Nevada Highway Patrol. Our Information Technology (IT) section is not mentioned in the section of NRS Chapter 480 at all. Given the fact that the majority of the work that the Information Technology Bureau does is derived from either the Criminal History Repository or the Highway Patrol budget, it made sense to apply some level of management supervision from the Highway Patrol toward this issue, so that is in fact what we have done.

I have a slide presentation ([Exhibit B](#)) for you and I will get through that as quickly as I can, because I know many of you have questions related to the Repository, and I want to provide as much time for you to delve into those as possible.

Our new organization under Records and Technology again embraces the concepts of the Criminal History Repository as well as our Information Technology Bureau. These two bureaus work together with local agencies to provide centralized services statewide. Our Records and Identification Bureau houses the Repository and its function is to be the file cabinet of criminal history records, which is its core purpose and is the issue of its original founding. Along with that of course, it is the access or control point for the NCJIS [Nevada Criminal Justice Information System]. That network system is the basis by which we transfer information in the Repository back and forth between the criminal justice entities in the state of Nevada and the basis by which we make contact and share information with the federal government and the other states. The Department of Public Safety is the CJIS [Criminal Justice Information System] agency that is the central point which the federal government recognizes as the point through which all information flows. I act as

the NCJIS systems officer for that single point. The Records and Identification Bureau runs the NCJIS along with our IT Bureau and that reached approximately 9,000 criminal justice users and approximately 10,000 terminals in over 130 criminal justice agencies in Nevada. The Department of Public Safety provides that service to those local agencies. Our technicians deal with the connectivity, physically visit these sites, and make adjustment as necessary in the maintenance of this process. Our IT section does not just maintain ID for the Department of Public Safety. Their larger job, in fact, is to maintain the statewide Criminal Justice Information System. That is also the system by which law enforcement officers, statewide, obtain information about wanted persons, dangerous offenders, and so forth.

[Bob Wideman, continued.] From that hub, we make connections to the National Crime Information Center (NCIC) maintained by the FBI [Federal Bureau of Investigation]. We maintain connection with other states such that we can maintain drivers license and registration information. That goes through the NLETS [National Law Enforcement Telecommunication System] and we also have a node into CLETS [California Law Enforcement Telecommunication System], which is the California state system equivalent to our NCJIS. This shows a graphic representation of the connectivity across America and then within our own state to our own local agencies.

Our Information Technology Bureau is divided into three basic functions:

- The Systems function
- The Networking function
- The Applications function

The Systems function maintains the NCJIS hardware and connectivity for that process. Our Networking function provides the support within the Department of Public Safety to keep our computer terminals up, networked, and running. The Applications Section is our programmers. They're the ones that write the software code for changes related to our internal systems such as OTIS [Offender Tracking Information System], or Parole and Probation, and also for the systems linking the various agencies under the NCJIS.

Some of the things we have implemented in our program section in IT are:

- Revised Criminal History Inquiry Application
- Centralized Protection Order Application
- Revised Hazardous Material Application
- Revised Dangerous Offender Notification Application
- Centralized the Carrying Concealed Weapon Application
- Made Changes to Sex Offender Registry

- Submission of Sex Offender records to the FBI

[Bob Wideman, continued.] In an audit last year we were criticized as the last state to make connectivity to that, and I am able to tell you that, effective September 2004, that connectivity was created and we are submitting records to the FBI.

Applications that are being worked on or designed are:

- Nevada Criminal Justice Information System/JLink Application and related phases
- Centralized Stalking and Harassment Protection Order File
- Centralized Violence in the Workplace File
- Centralized Sex Offender Application Process
- Revising the DPS [Department of Public Safety] Wanted Person Application
- Revising the DONS [Dangerous Offenders Notification System] Application
- Revising the DMV [Department of Motor Vehicle] Inquiry Application

The JLink [software] Application is a very large and significant project which is taking the connectivity in the system from a DOS [disk operating system] type environment to an Intranet browser-based application enabling us to run a number of applications, and providing a great deal of information that was not there before.

Some of these changes are needed because we are migrating the mainframe environment into a server environment to provide the level of access and scalability that we will need for the future. It requires a number of the applications to be rewritten from BASIC [Beginners All-Purpose Symbolic Instruction Code] coding that was there in the past and is, in many cases, 20 years old, into a more modern structure.

The Records and Identification Bureau is comprised of four particular units:

- Central Repository deals with the civil and criminal background checks and records.
- Uniform Crime Reporting unit provides the statistical analyses and creates the "Annual Uniform Crime Report" for crime in Nevada.
- Special Services unit maintains the Sex Offender Registry; it has access to the National Instant Criminal Background System for Brady Point of Sale gun checks. It does the Civil Name Check for employers and coordinates the Protection Order process.

- Program Development and Compliance Unit does testing and verification of new applications related to the Nevada Criminal Justice Information System; provides training for users of the Criminal Justice Information System; conducts required auditing for the appropriate use and inquiries into the Criminal Justice Information System; and it maintains and verifies the quality of the systems we use.

[Bob Wideman, continued.] The Central Repository itself, the criminal history process, is primarily focused around records of arrest and convictions and does the following:

- Booking facilities are electronically linked to the repository through our LiveScan program.
- Fingerprint images are transmitted over the Nevada Criminal Justice Information System.
- Prints are checked against state records stored in the Western Identification Network database, in Sacramento.
- Prints are then forwarded to the FBI CJIS [Criminal Justice Information System] Division electronically.
- Dispositions are not electronically linked.
 - a. Courts forward dispositions in a format of their own choosing.
 - b. Majority of dispositions lack sufficient identifying information to match a fingerprint based arrest record.

Civil Applicant Background Checks are related to jobs or privileges requiring a background check based on submitted fingerprints. These requirements are in a variety of chapters in the *Nevada Revised Statutes*, generally linked to some specific job or privilege.

The quality and value of the background checks are only as good as the quality of the criminal history. That is a point I can't over-emphasize. If the criminal history records themselves are not current, valid, and complete, then when we conduct civil applicant background checks, we only get a certain amount of information. By law all we can release is those records of conviction. So if we don't have dispositions and those records of condition aren't there, the background check essentially produces a false clear. That is a very important thing.

Chairman Anderson:

What the Major is trying to explain to us is when background checks are done, for example, if you are going to work at a school, not necessarily as a teacher, a background check is done to make sure that this person has not had an out-of-state sexual predator order that is in place in some other state, even though it may not be here, or have a criminal history.

Bob Wideman:

Yes sir, that is partially correct. The example that you used with sex offenders is probably not the best example of this, because sex offenders are, in fact, known convicts. We have their records. We are able to identify them and track them; however, a person might have five arrests in their record for a variety of crimes. If there are not dispositions that are recorded for those arrests regardless of what those arrests might be for, and a background check is done, we will then have to report that there is no record, because there is no conviction.

Chairman Anderson:

And that is because you are innocent until proven guilty.

Bob Wideman:

That is correct.

Chairman Anderson:

Clearly, I see this as one of the more important elements in linking law enforcement, the courts, the prison system, and parole and probation together. That does not include the gun ownership sales and all the rest of the things you have to do.

Bob Wideman:

Yes, sir. I could not agree more.

As I was saying, an electronic interface does not yet exist to process the submitted fingerprints without staff intervention. I have received a number of complaints, and possibility you have as well, about the delays in receiving results related to civil applicant fingerprint checks. This lack of interface is the most significant obstacle in that particular process.

A programming project is underway. We expect it to be done somewhere in mid-summer. We have progressed in the project to the point where we have successfully transmitted test records between a data site and our repository to speed that process up. The next phases are also equally important. Currently there is a delay in processing of approximately seven days between when we get a fingerprint card and when were able to get it into the system on the civil applicant side. The more significant backlog is that once we receive some results on that background check, we have no way to electronically get it to those civil applicants. We are in a position where those records must be printed out and then mailed back to some applicant. Currently, the delay in mailing results is 33 days.

[Bob Wideman, continued.] The other significant delay in the process is the quality of the fingerprints that come in. We receive fingerprints sometimes by a LiveScan automated process and receive them sometimes by a traditional old fashion rolled-print process done in ink. The skill of the person that rolls the fingerprints is a very important process in getting quality prints and frequently with the civil applicant process, we don't always have the most accomplished people. So we get fingerprints that come in that we end up having to reject as unclassifiable, and we sent those back and they have to get them redone. As a result, that drags out the time in response as well.

The completion of the interface project will certainly improve the delays, and the next phases of our civil interface project will include the ability for us to create the disposition and return them to the requestor in an automated quick way. It will also include an integration of our billing process as the civil applicant process is fee-based. We need to get that done in a consolidated way, as well.

The sex offender program is a combination of three major components:

- The sex offender registration and database that we keep at the Criminal History Repository.
- The efforts of local law enforcement as they in their community take efforts to ensure that the sex offenders are in compliance.
- The quality and strength and completeness of the statutes related to those particular issues.

As of last week 4,482 active in-state offenders were listed in the database. They are classified in several tiers and the tier assessment is a process that our case workers use to create this assignment of tier level. The tier level is based on guidelines developed by the Attorney General, a score sheet that goes with it essentially. Our case workers apply the circumstances they find for each case worker against the measures and score sheet and create a tier level assignment. Tier 3 is the most dangerous sex offender and the concept is based on the likelihood for violence and recidivism. There are 1,500 Tier 1s, there are just a few more Tier 2s, there are only 67 Tier 3s and there are over 1,200 Tier 0s, who are required to register but present little likelihood of danger or recidivism. Of those 4,400 or almost 4,500 active sex offenders, there are 1,640 listed on the public website. They are all Tier 3s and some Tier 2s. Their inclusion is based on the application of the statutes in Chapter 179D of the *Nevada Revised Statutes*, related to what we can release and what we can not release. Those 1,640 comprise approximately 37 percent of the total listed on the database. We had 1,408 new offenders register with us in 2004. Again, we were finally connected with the national sex offender registry for submission of information in September of 2004.

Chairman Anderson:

We picked up a lot of criticism over the last several years relative to the enforcement of Megan's Law and other areas, in terms of the specificity of the information that we put out here and compared to other states. Major, have you had an opportunity to make that kind of a comparison? I know in the paper it is always reported that we do it by ZIP code, but in reality I think you bring in right down to the block. In the Reno paper, they tend to identify the street and block where a sex offender resides, if not the exact address. Do most states put in the exact address?

Bob Wideman:

I don't know if I would say most states put in the exact address, but there are a number of states that do. I think, if we examined the practices across America, we will find that they are all across the board. Generally speaking, states that put out the most information also do not use a tier assessment process. They simply put out all the information they have about all the individuals in the database without respect to any assessment of their relative risk of their recidivism or violence. Those things go hand-and-hand. The issue you brought out about identifying the residences down to a city block tends to be local agency specific, in Nevada. They are generally for the Tier 3 level of individuals and identifying where they are. In terms of our website, I am not sure how we define a city block type of a circumstance out of the database, so we use the ZIP code because it is an easily identifiable piece of information to track out of the database and that is why it reports it that way. In addition, our website is automatically updated. It requires no intervention from our staff to keep the website current. Whatever is in the database, as long as it's current, is automatically transferred.

Chairman Anderson:

So you are dependant upon input data from parole and probation or from the Department of Prisons, in terms of where this particular person is going. In other words, so there is no reason to re-key the information a second time. The Probation or Parole report would contain that information as part of the release for a Tier 3, for example. Thus you would carry that over.

Bob Wideman:

That is approximately correct. When we enter it in the database, there is no need for us to re-key anything to put it in the website. That is done automatically. However, when information comes to us from local law enforcement or Parole and Probation or the Department of Corrections, that has to be keyed in at our shop.

Chairman Anderson:

Of course the Tier 1s are those folks that tend to be misdemeanor or gross misdemeanor sexual offenses. Some have been pleaded down in the District Attorney's Office from a Tier 2 down to Tier 1 in some cases

Bob Wideman:

Yes, they are the least dangerous and the least chance of recidivism.

Assemblyman Mortenson:

Reading off your list over there, programming for the project is in progress and expected to be completed by mid-summer. I'm guessing that this has been done or is being done in 50 states and the District of Columbia. Isn't there a central corporation or software entity that does this thing so you wouldn't need to have 51 departments in 51 states doing the same thing, reinventing the wheel over again?

Bob Wideman:

I think some of those assumptions are misplaced although that seems like a good idea, but that is not how it works in reality. Different states are at varying levels of automation across the county. It depends on their state government and the structure of local government. We are at the tail end of the parade on a number of issues there, but in also a few of the issues we are on the front end of the parade. Our ability to have all of our booking facilities at 17 counties linked with an automated criminal fingerprint capture actually leads the nation. We were among the very first to have that done and there are a couple of reasons for that. The most significant is that we only have 17 counties. Therefore, we don't have that many places to make that connection. A state that has 100 or 150 counties has a very significant problem in creating the resources to get that done. That has been to our advantage in that regard.

On the civil side, the civil applicant fingerprint issue and background check is an exploding issue in terms of the amount of resources it is taking across the country. In discussions with people in other states which are situated similar organizationally to myself, that is probably the most significant issue they worry about for the future; how we will deal with that? There is not a situation where we are on the tail end of this and many states are dealing with this and there is no common process. There is no single way of doing it. Of course the reason for that is that states have developed their own automation process in stages rather than a turnkey issue. There is a need to deal with the legacy system as we move forward and that requires individual and unique programming to make those things work.

Chairman Anderson:

The person who first set up the Criminal History Repository, who was employed by the state to do this, had previously worked for the FBI and had a long term vision. Mr. DeBacco had an idea where this was all going to go and he indeed convinced the various Justice Courts and the other courts of the state where and how to get the right equipment so that we could get to a common place. Because of other disagreements he had with the previous director, he was replaced—tragically, in my opinion. We then started down a different road.

You have received an Audit Division report which we received in 2002, which we reviewed in the 2003 session. If you look to the third page, we made 14 recommendations in our oversight audit of this Division, some of which have already been accomplished. What I really want to do here is make sure that we don't keep you from finishing up the rest of the report but make sure that we understand what we really expected you to do. As I have told you Major, this is not one of the areas I am real pleased about where it is going, in terms of the backlog of cases. September of 2004 for a program that we all anticipated was going to be in place by 2001 is kind of a big disappointment to all of us. I know that you are new to this, as is the Director, Mr. Togliatti.

Bob Wideman:

Certainly we are sensitive to those issues in relation to our progress and what has happened in the Repository in the past. When I took over, Director Togliatti was kind enough to bless me with this challenge. I recognized that issue of the National Sex Offender Registry very early on. We pushed that to the top of the list and that is one of the issues we completed quickly. Another issue that was looming immediately, as I took over, was a change to the Brady point of sales software requirement, based on federal law. We were able to have that up and running on time. It worked and became a nonissue and as a result of that, we achieved some national recognition for our efforts in getting that done.

Chairman Anderson:

You are able to move on the Brady point of sales and you increased the fee by \$10 in October of 2004, so now you have a little bit more money coming in.

Bob Wideman:

We do have a little bit more money coming in. We also increased the fee related to civil name check process. The reason behind those, of course, is the Repository is entirely fee-based and it receives its funding from four particular streams.

- Court Assessment fees
- Brady Point of Sale
- Civil Name Check

- Civil Applicant Check

[Bob Wideman, continued.] The court assessment fee amounts are set by provisions of the statutes and those are not within our purview to alter. The Civil Applicant fingerprint fees, in many cases, are also specified in statute and we are not able to make adjustments there. The other two, Civil Name Check and Brady Point of Sale, were not specified in statute, and we felt that was the place we needed to go to make that done. We felt that was appropriate given those fees had been stable for a very substantial period of time. They are also both areas of substantial growth. Back to the idea that all of these civil processes are only as good as the quality of the criminal history records we underlay them. We feel it is appropriate that revenue from those issues is also used to improve the total quality of the criminal history records.

We're up to almost 55,000 firearm purchase point of sale checks in 2004 and certainly expect that to grow. All records of approved purchases must be destroyed within 24 hours now. That was the subject of the major programming upgrade that we did in July. Nevada was used as an example of a success story by the FBI, NCJIS [Nevada Criminal Justice Information System], and us did have a \$10 fee increase implemented in October.

Chairman Anderson:

Regarding the 24 hours, what happens if a person tries to buy a weapon and is turned down? You then have destroyed that record because they were unsuitable. If they then try again someplace else, you are not building a list of somebody that is consistently trying to beat the system.

Bob Wideman:

Mr. Chairman, only the records for those people who pass the check and are successful, are destroyed in 24 hours. The ones who are not approved we get to retain.

[PowerPoint presentation, continued. Slide 14 ([Exhibit B](#)).]

Civil Name Check:

- 34 gaming enterprises have accounts established with the Criminal History Repository.
- 31 of those 34 are in Clark County.
- Approximately 75 percent of the name checks occur in an automated fashion without any staff intervention.
- An \$8 fee was implemented in October 2004.
- Last year we conducted over 67,000 name checks. We are on a pace to easily out-distance that for 2005 already.

[Slide 15 ([Exhibit B](#)).]

Temporary Protection Orders:

- A database is maintained as part of the Nevada Criminal Justice Information System.
- Protection orders are issued by district courts and entered into the system by the court by using terminals connected to the Nevada Criminal Justice Information System.
- 3,521 protection orders were entered in 2004.
- Information Technology Bureau provides programming and maintenance support to the database.

Chairman Anderson:

What is the turnaround time between when court puts it into the system and when it is available to the officer on the street?

Bob Wideman:

As soon as it is entered, it is available.

Chairman Anderson:

So the cost of the keying is really borne at the local level?

Bob Wideman:

Correct, we do not do the data entry for those issues. The courts do them and as soon as they make the entry it is up and available.

The Uniform Crime Reporting Unit processes the annual *Crime and Justice in Nevada* report. Nevada is still a summary uniform crime reporter and, in addition, 3,209 domestic violence reports were received by the Repository in 2004.

Chairman Anderson:

Do you still put that out in the hardback form?

Bob Wideman:

Actually we make a couple of hardback forms but we save printing costs by making it available as a portable document file (pdf) and post it on our Internet site.

Assemblyman Ocegüera:

Major, do we ever get to the point where we use and analyze these criminal statistics?

Bob Wideman:

Our role in this process is essentially to be the file cabinet. The information contained in the report is as submitted to us by the various local law enforcement agencies. I think the other salient factor in that level of analysis is that the trends are highly localized. For example, what happens in the Las Vegas Valley may not have very much to do with what happens in Elko. So, statewide analysis does not necessarily reveal a great deal of meaningful law enforcement information. We tend to leave that to the local agencies who are dealing with the localized problem.

Chairman Anderson:

Mr. Ocegura, it seems to me that you had a piece of legislation, both in 2001 and 2003, dealing with the Boyd School of Law at UNLV [University of Nevada, Las Vegas]. I would imagine that you are utilizing some of their statistical reports. Is that not your understanding, sir?

Assemblyman Ocegura:

Mr. Chairman, that is affirmative. I hope that is what they are doing, but I wondered if we were ever going to get there with the Repository.

Chairman Anderson:

I'm under the impression that UNLV was supposed to do that and the Repository was to be the filing cabinet.

Bob Wideman:

[PowerPoint presentation, continued. Slide 17 ([Exhibit B](#)).]

The Program Development and Compliance Unit at the Records and Identification Bureau:

- Program Development
- NCJIS [Nevada Criminal Justice Information System] Training
- NCJIS [Nevada Criminal Justice Information System] Auditing
- System validation

The Programs Development Unit tests the created and enhanced programs for the NCJIS. It works with the NCJIS users, the northern and southern technical subcommittees, and the steering committee, to enhance NCJIS programs.

They provide hands-on training to the users. That system is somewhat complex and has binders full of rules about what you may and may not do. So they provide the training for the law enforcement agencies about what those issues are.

The Audit Section physically visits law enforcement agencies and conducts audits verifying that the use of the system was for authorized purposes and appropriate records are kept.

[PowerPoint presentation, continued. Slide 21([Exhibit B](#)).]

A brief overview of 2004:

• Total number of persons with arrest record	519,110
• Total number of charges	948,810
• Total charges with disposition	443,472
• Total arrest	91,262
• Total civil prints processed	131,093
• New sex offender files received	1,408
• Total point of sale checks	54,975
• Total civil name checks	67,145
• The Ratio of civil processes to criminal processes	3:1

The last bullet point is a very significant issue, based on the concept that the purpose of the Repository, when it was started, was to maintain criminal history and now about 75 percent of our work is related to doing civil background checks. That has an effect on our ability to keep up with the rest of the work. It is particularly important that civil checks do not provide a great deal of value if the quality of the criminal history that they are being checked against is not up to standard.

Total charges with dispositions are approximately 47 percent of the total arrests and have dispositions recorded in the system. That is lower, certainly, then we would like. Although to keep that in perspective, the FBI for their own criminal history records has about a rate of 55 percent. The standard is not anywhere near close to 100 percent.

Assemblyman Horne:

Regarding the civil processes, doesn't that process ensure that the people we have operating certain professions in our state are not going to victimize our citizens through criminal acts? Whether they are sex offenders or whether they, like for me when I applied for my license to practice law, wanted to make sure I am not an embezzler. If I am a physician they want to make sure I don't have convictions for child pornography, so they are interlinked. This backlog in civil processes is supposed to provide that level of protection. The backlog is also stopping legitimate professionals, or it is delaying them from practicing in their profession because they have to wait for the background checks to be completed.

Bob Wideman:

If I made it sound like I think the civil applicant process is not important, I apologize, that was not my intent. My intent is to recognize that the civil processes and criminal processes are a constant tug-of-war within our level of resources that we have available. The criminals rarely complain when we are behind on their process; however, the people seeking civil applicant processes do. That pressure causes us to pay attention to that civil process; however, when we do the civil process, if the records we are checking against are incomplete then the value of the civil process is diminished. My intent is to keep that balance in focus. The civil processes, the checks, and the protections we seek through that process are vitally important. If we don't have adequate criminal records to check against, the information we obtain will not be as valued as we would hope it would be.

Lastly these are some of the larger scale issues that we would want to work toward in the future. This is some of the basis of what we hope to do with some of the extra revenue that we generate based on fee increases. Our vision for the future is: [PowerPoint presentation, continued. Slide 22 ([Exhibit B](#)).]

- Move toward an integrated exchange of justice information across the boundaries of the criminal justice agencies in Nevada.
- Electronic exchange of disposition information using a partnership between the Department of Public Safety, the Administrative Office of the Courts, and local courts of jurisdiction.
- Electronic exchange of incident-based law enforcement information between local, state, and federal agencies using the Nevada Criminal Justice Information System.

This has implications in our abilities for homeland security. It has implications for our abilities to adequately investigate crimes all across Nevada, and it also has implications for our ability to further the function of uniform crime reporting and make that process more automated and more complete. These are large scale projects and, certainly, they will not be done quickly, but we must be moving toward those if we are ever going to achieve those.

The electronic exchange, I think, is the biggest single thing we can do to improve the quality of the criminal history records and thereby extending that value of the civil process as well.

That concludes my presentation.

Chairman Anderson:

In 2002 the Legislative Auditor did a major audit of the Department of Public Safety relative to the integrity of the state's Criminal Repository in which it

created 14 recommendations ([Exhibit C](#)). I know that you reported to our Interim Study Committee the compliance with several of these, but there are a couple that continue to stick out at me. One of them is the backlog of cases that have to be rekeyed because they are older in nature, before the court system was put into place. Clearly, 93 percent of passwords tested did not meet the criteria of a strong password. The two big questions are: what are you doing about the backlog, and how significant is it? You have cleared up the access to the system so that it has a higher level of integrity and the simplistic password problem has been taken care of.

Bob Wideman:

I will take the second question first. In terms of our access and the password strength, the entire Department of Public Safety, through our Information Technology shop, underwent an access and security change in 2002 and 2003. So, all of our users in the Department, not just at the Repository, are now in compliance with the strong eight-character password format as recommended by the Department of Information Technology.

On your first question, that is a significant issue and touches on the larger issues related to how the Repository has gone in many areas. Since July, I have learned new things about the Repository virtually every day. There have been a wide variety of processes that I think have been inadequately supervised and managed. We found a workforce that was undertrained, did not understand its mission, and did not have a sense of urgency. We have approached that from starting at square one, in terms of explaining what the responsibilities were. We are providing training to our employees and providing supervisor and management training to the more senior staff so that we can identify and implement some performance management techniques and can get the best we can get out of the staff we have.

The issues of backlogs are a prime example in that process. When I took over the program, it was reported to me that we had some 400,000 disposition backlogs in banker boxes lining the halls. I instituted a process. I want someone to touch every one of those and I want to know something about the characters and why this backlog is occurring.

Obviously, the 400,000 backlog turned out to be grossly inaccurate. When we actually counted them, it was 200,000 instead of 400,000 pieces of paper. Once we got into those pieces of paper, I wanted to know what courts they came from, what levels of information they had, and whether or not there was something stopping us from linking them to a fingerprint record. When that was all done, the number that actually had enough information to start matching it to fingerprints was 39,000. We have cut that in about half. The other documents

that were submitted frequently do not contain enough information for us to link it to a fingerprint record. It will come from a court, for instance, and it will be a formalized disposition for Timmy Smith Jr., no identifying information. I can't link that to a set of fingerprints. We see that sort of process routinely.

[Bob Wideman, continued.] Of course I am not picking on any court. Courts run for court purposes not for my purposes. I don't mean to place blame in this process at all. For instance, the Las Vegas Justice Court is the largest court we receive information from. Most of the information comes from there. They have a records management system.

We discovered that when we conduct bookings and enter information, a control number is assigned to the record such that we can identify and index that particular set of fingerprints.

As a person moves through the Las Vegas Justice Court system they also have a control number that is part of their records management system. It has the same format and looks like it is consistent with our booking format; however, we discovered it's not. It's assigning its own number, so when that disposition comes back to us, we can't make the link.

That is the biggest obstacle in terms of getting the dispositions in and having proper and accurate information. That is why one of our highest priorities is to create an electronic disposition record, and the first court that I am going to want to establish that with is Las Vegas Justice Court. I am very hopeful that they will participate in the Multi-Court Integrated Justice Information System, and if they won't, I want to find away to get it done for ourselves.

Chairman Anderson:

Major, I can't tell you how angry this issue makes me. The Criminal History Repository, sexual offenders, TPOs [Temporary Protection Orders], the operation of the court system, all links through you. If we can't get cooperation from the territorial agencies of government, then it would appear to be the only way we can do it is in these blue binders.

Bob Wideman:

I was not pleased when I discovered this information myself. Our previous Repository Manager, Dennis DeBacco, had done an excellent job in creating the linkage that allowed us to get fingerprints into our system in a common sense way. The way that happened is that we created a revenue reserve, the state paid for it, the state maintains it, and it is consistent. I believe the same sort of approach will probably work for the rest of the issues in Criminal History. I don't believe any of the courts are uncooperative, I don't believe they don't want to

share, but I believe that those local jurisdictions spend their money in the way that they think suits their purposes the best.

Chairman Anderson:

Mr. DeBacco came to this legislative Body and convinced us of the importance and need for the agency. Mr. DeBacco then went to the 17 counties and the justice courts in all of these counties and convinced them of how their system could work and the need for cooperation. With all due respect, Director Togliatti, we need somebody who believes that the system can work and convince the judges that it can work and that the cooperation will give them a more efficient product or they're not going to do it. We as elected officials hear from our constituents, who are concerned because sex offenders are out there, TPOs are not being enforced, because domestic violence is going up. We hear from law enforcement agencies who want to do the job that they are paid to do but can't figure out how come drunk drivers are out there when one court won't talk to another court. I guess you get to take the heat for it. It just causes me heartburn more than any other single thing that we have going on here, when we pass statutes and only see them ignored or not implemented or only partially implemented. I see, by your report, that you are charging \$8 for background checks; maybe you should be charging them \$10, if that \$2 more is going to give you more capital. This group is a larger percentage of your overall business and your time because you have a limited staff.

Bob Wideman:

It is our absolute intent to use every level of revenue that we can generate toward this issue first. I agree it is the most significant issue that we face and I think that it is funding driven. I believe all entities will be happy to cooperate with us if we can bring money to the table to create the interfaces.

Chairman Anderson:

I don't want the courts to dump the responsibility of funding the court on us. At the same time I do want to be sure that we carry our share of the responsibility for this important part. I consider it to be the most important part of the web.

George Togliatti:

I have made it a point to meet with the judges in the south and to spend some serious time with the court administrators to see what we could do to rectify some of these problems. I will keep it a top priority.

Assemblywoman Buckley:

I was just going to say, it sounds like a project for the AOC [Administrative Office of the Courts.] That way you don't have to run to every court.

Bob Wideman:

The Administrative Office of the Courts is already heavily engaged in a project called Multi-Court Integrated Justice Information System that is intended directly toward this issue. At every opportunity we support that program. A single system would be much easier for us to interface with and obtain information to the Repository. We have even supported offering particular grant monies that we might share and giving it to them for that particular purpose. I know the Administrative Office of the Court is working very diligently in that regard. And I also know that they do face some challenges related to the various other local initiatives' willingness to participate in the system versus have their own.

Chairman Anderson:

If I can be of any service in any of the meetings at any time, please include me in your discussions.

Of the 14 recommendations, how many of them have been complied with?

Bob Wideman:

Mr. Chairman, I don't know. I don't want to give you the wrong answer here. I will check on that and get that back to you.

Chairman Anderson:

Is there anything you want to add to our discussion?

George Togliatti:

This has been a top priority as far as the issues of the Repository. That is why we took a few months to take a look at it and to see where some of the ills were and then started to redesign it in July 2004. I think it is nothing but onward and upward.

Chairman Anderson:

Based upon the background of people that are there, do you feel we have enough people with computer knowledge and the public relations skills to keep the various turf groups happy? Because it requires both computer and public relation skills to do this job, I don't envy Major Wideman's position here.

George Togliatti:

Correct, when I first arrived the answer was more money, more resources, and I don't see that as necessarily being the answer until you actually pinpoint where the problems are and make sure that you deal with some inefficiencies. I think that is where we are now so we can make a better judgment as to what we do need.

Chairman Anderson:

Let's turn to the agenda of the day.

Assembly Bill 8: Revises qualifications for master appointed by court to take testimony and recommend orders in actions concerning orders for protection against domestic violence. (BDR 3-220)

Gene Porter, Legislative Advocate representing Nevada Judges Association:

[Introduced Judge John Tatro and Judge Robey Willis.] Both Judge Tatro and Judge Willis are the duly elected Justices of the Peace in Carson City and they are here to explain to you and testify in support of A.B. 8.

Robey Willis, Justice of the Peace, Justice and Municipal Court I, Carson City, Nevada:

Assembly Bill 8 is a bill that the Nevada Judges Association has to make domestic violence masters consistent with the townships that they would serve in, as far as qualifications are concerned. In metropolitan Clark County, you have to be an attorney to be a judge in the lower courts. It would still remain the same as far as domestic violence masters are concerned. All we were saying is in jurisdictions in the rest of the state, where you don't have to be an attorney to be a Justice of the Peace, we don't feel that masters who would hear domestic violence TPOs [Temporary Protective Orders,] should have to be an attorney. We don't feel as though it is a necessary qualification for them to sit, and number two it would be very difficult in the rural areas and the areas like ours to have somebody come in and read the TPOs an hour or two a day. It would be very difficult to get attorneys to do that, or hold hearings, or to take care of some of our backload when we get overrun with our regular caseload. And we have hundreds of these types of TPOs and TPO hearings every year. Both Judge Tatro and I and a lot of the other rural judges from Elko, Douglas, and Lyon support A.B. 8.

John Tatro, Justice of the Peace, Justice and Municipal Court II, Carson City, Nevada:

I echo Judge Willis' sentiment. We just thought it would be appropriate that a master, serving under the Justice of the Peace, need not be more qualified than the Justice of the Peace. The bill just makes sense.

Assemblyman Carpenter:

Who would be doing these orders if the lawyer isn't doing it? Are there qualified people out there to do it?

Judge Willis:

There are numerous people out there that have law enforcement type backgrounds or people like Chairman Anderson, who taught government and history for so many years, could certainly do this sort of work. We would look into their backgrounds and ask our board of supervisors to approve certain people to do this sort of work and we would certainly look into what their capabilities were. I gave the clerk NRS [*Nevada Revised Statutes*] 33.018 ([Exhibit D](#)), which tells you what the relationship is. That person can then look there for the relationship there has to be to be considered for domestic violence and temporary protective orders. Then they could look at the relationship that the Legislature has laid down, saying, "Was it a battery? Was it assault? Was it stalking? Was there trespassing?" If it doesn't fit into any of these categories then they say no and turn it away. If it is just like you laid out in NRS 33.018, then they would sign it and send it to the Repository and sheriffs office. We had this backed by the State Judicial Council unanimously, which are all levels of the courts, and NACO [*Nevada Association of Counties*].

Chairman Anderson:

This has to be approved by the county commission to be a master. They will be able to ask those specific questions, as to the qualifications and the particular needs within the community. It can be more community based upon availability of people in that particular justice's court. Would that be the short answer?

Judge Tatro:

Yes.

Assemblyman Horne:

Judge Willis, are we so short of attorneys that we can't find any to serve as masters?

Judge Willis:

There are no attorneys that will take an hour or two a day out of their practice to come over and read these TPOs in our jurisdiction. If we were in Las Vegas and Reno they could have this be a full-time type of position. If attorneys in the areas wanted to do it, fine. It is just that we don't think it's a criterion that is needed. We don't think you need to be an attorney to do this sort of thing.

Chairman Anderson:

Relative to the interim study on rural courts, the availability of certain types of people within the community was one of the major issues that were identified.

Assemblyman Horne:

I just have a concern. There are certain nuances in the legal profession—in the laws and statutes—that seasoned attorneys would read and misinterpret. My concern is we are just going to have a hearing master that doesn't have a legal background.

Gene Porter:

Perhaps a little bit of historical background might be helpful. For 125 years there was not a requirement in Nevada that you be a licensed attorney to be a Justice of the Peace. In 1989, that law was changed. We put a population cap on it so if you were the Justice of the Peace in Reno or Las Vegas, you had to be an attorney, and the rest of Nevada you do not.

This bill just simply says that currently those Justices of the Peace in rural Nevada, which do not have to be licensed and who do this work now, are going to be able to select other people who are not licensed lawyers to do the same work; that is all it is.

Chairman Anderson:

A member of the Supreme Court pointed out that citizen Justices of the Peace had fewer reversals than attorney Justices of the Peace and that was because they had a tendency to follow the letter of the law.

Assemblyman Carpenter

In those areas where we have Justices of the Peace that are not attorneys, there are people that you referred to that I think would be more willing and bring a little more expertise than an attorney that is real busy. I think in those areas that I represent that there is really not going to be a problem finding qualified people to do this.

Chairman Anderson:

[The Chair will entertain a motion.]

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
ASSEMBLY BILL 8.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:

Let us turn our attention to what I consider one of the more important issues, A.B. Bill 7, A.B. Bill 10, and A.B. Bill 21. The Committee has noted the three

bills are very similar in structure and we are going to deal with all three of the bills simultaneously. A.B. Bill 7 and A.B. 10 are from the City of Henderson. Ms. Gerhardt will introduce A.B. 21 first.

**Assembly Bill 7: Prohibits civil compromise of certain misdemeanor offenses.
(BDR 14-104)**

Assembly Bill 10: Prohibits civil compromise of battery that constitutes domestic violence. (BDR 14-342)

**Assembly Bill 21: Prohibits civil compromise of certain misdemeanor offenses.
(BDR 14-846)**

Assemblywoman Gerhardt, Assembly District No. 29, Clark County (part):

I would like to introduce A.B. 21 to the Committee. Current state law allows a court to compromise or settle a misdemeanor charge. In the case we are going to talk about today, an accused offender can have misdemeanor battery charges dropped in exchange for a civil compromise with a victim, such as a monetary payment or even a simple apology. The Legislature has identified circumstances in which civil compromises are not acceptable: Offenses committed upon a judicial officer while exacting his duties, offenses committed during a riot, or offenses committed with the intent to commit a felony. Assembly Bill 21 would expand that list to include an offense that constitutes domestic violence and an offense that violates an order for protection against domestic violence. In certain cases, as many of you realize, domestic violence with substantial bodily harm is a felony in Nevada and not subject to civil compromise. For domestic battery, the case we are talking about, with no broken bones or injuries that require hospitalization, the charge is only a misdemeanor. It takes a third conviction for domestic battery, without substantial bodily harm within a seven-year period to rise to the level of a felony.

Civil compromises should not be allowed in misdemeanor domestic violence cases. Without an exception for domestic violence cases, it is easier for abusers to continue their violent behavior because they know they can avoid prosecution if they can convince the victims to compromise. Not surprisingly many abusers will threaten the victim with more severe violence if they do not do what the abuser demands. The victims are vulnerable to these threats because abusers who faces misdemeanor battery charges usually spend no more than a week in jail, often much less time if they're bailed out quickly pending court hearings that could be weeks away. We cannot know with any certainty in domestic violence cases whether the victim's written

acknowledgement of satisfaction for the injury is true or, in reality, coerced. Finally, domestic violence cases typically involve a pattern of abuse that often escalates and can result in the death of the victim. When civil compromises are allowed, no conviction is obtained so the abuser's actions can never be counted as one of the three prior convictions needed to raise future charges to the level of a felony.

Assembly Bill 21 is a straightforward, important measure to provide protection to victims of domestic violence and many of whom are unable or do not have the resources to protect themselves.

I want to thank you in advance for your consideration of this bill.

Sitting here is Kristin Erickson. She is the Chief Deputy District Attorney.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office, representing Nevada District Attorneys Association:

Domestic violence is about power and control. This power is both physical and financial. Without changes to the existing civil compromise statute this physical and financial control will continue by the abuser. This is not a level playing field. The batterer in this case receives an attorney. If he can not afford an attorney, one will be appointed to represent him. The victim does not have an attorney. This leaves the victim in an unenviable position of having to succumb to the demands of her batterer and the terms of the civil compromise or suffer the consequences. What are the consequences of not agreeing to the civil compromise—another black eye, bruising, biting, strangulation, or even death? The victim of domestic violence is certainly in no position to bargain with her batterer. It is not a level playing field.

Several sessions ago, this Legislature decided to take away the discretion from the police and the prosecutors. The police now if they see evidence of domestic violence, domestic abuse, must arrest. The prosecutors, in addition, should they file charges, must prosecute the case. They cannot reduce or dismiss the charge unless they know or it is obvious to them that they cannot prove the charge. The ultimate decision, of course, as to guilt or innocence, is left to a neutral third party, the judge. Now why was this discretion taken away from the police and the prosecutors? Simply, not enough was being done to protect the victims of domestic violence. The intent of the mandatory arrest and prosecution was to take the burden away from the victim, regarding the decision to prosecute. The pressure upon her is to drop the charges. The civil compromise statute, as it exists today, is in direct conflict with the mandatory arrest and prosecution statutes. It places the burden of the decision to prosecute directly back on the victim. Frankly, that is a burden that no victim of a violent crime should have to

bear. The Nevada District Attorneys Association urges you to level the playing field and to hold the batterer responsible for his violent behavior and remove the victim from this no-win situation in which she is placed.

**Gerald Gardner, Chief Deputy Attorney General, Criminal Justice Division,
Nevada Department of Justice:**

I thank you for allowing me testify in support of a bill that would abolish the civil compromise as it would apply to domestic violence offenses and victims over the age of 60. To allow domestic batterers to avoid criminal charges by obtaining a civil compromise from his or her victim, who is often a long-term victim of an ongoing abuse, is inconsistent with virtually every other provision of domestic violence law, including mandatory arrest. In my written statement, ([Exhibit E](#)) I have provided you with the statutory cites for:

- Mandatory arrest
- Prohibitions against prosecutors dismissing or plea bargaining
- Mandatory jail sentences
- Prohibitions against the court suspending the sentence or granting probation
- Mandatory enhancements for second or subsequent offenses
- Felony treatment for third offenses, or subsequent offenses

The civil compromise itself is inconsistent with all of those statutorily established provisions.

Any prosecutor and police officer can testify that victims of domestic violence are frequently intimidated into dropping charges or recanting previous accusations. This is all part of the cycle of violence. The victims are physically and psychologically oppressed and burdened all the way into the courtroom itself. Allowing domestic violence cases to be dismissed by civil compromise undermines all the efforts of police and prosecutors to prosecute these offenders in these difficult circumstances. It merely provides another means by which a violent abuser can bully his victim into not proceeding with criminal prosecution.

Furthermore, a civil compromise, as we have heard already today, is premised on the assumption that both parties are on equal footing in the bargaining processes and both parties can gain some consideration in the agreement. In domestic violence cases, this just isn't the case. The victim gains nothing by entering into a civil compromise. The victim is unlikely to have independent legal counsel, thus the motion and affidavits and releases that we see in these civil compromise cases are almost always drafted by defendant's lawyer. In fact, I have provided the Committee with an actual example of a release and affidavit and a motion in a recent case that I prosecuted. Where, as you will see, the

motion was drafted by the defendant's lawyer and the affidavit and release signed by the victim were on the same lawyer's letterhead. So the victim in this case had no independent legal representation on her part. The compromises are entered into for the sole benefit of the defendant, who is trying to avoid criminal liability in these cases. Under contract law, for the lawyers here, that would be considered an illusory contract. It also raised the specter of an unconscionable contract. In the example I provided this committee, it was committed in front of the victim's children, as is the case of 57 percent of all domestic violence cases.

[Gerald Gardner, continued.] Recently, the Nevada Supreme Court declared that it had no choice but to allow civil compromise provisions in domestic violence cases because, to quote the Nevada Supreme Court, "Unlike other states, our Legislature has not excluded misdemeanor domestic battery charges from civil compromise eligibility." That is in *Willmes v. Reno Municipal Court* [118 Nev. 831 (2002)], which is also attached in ([Exhibit E.](#))

As Chairman Anderson alluded to earlier, I respectfully submit that if this issue of domestic violence had been at the forefront of our conscience back when civil compromise was drafted, domestic violence crimes certainly would have been excluded from consideration. So I read the Nevada Supreme Courts comments as an invitation for this Body to reexamine the status of the law and update it to include domestic violence as one of the crimes that should be excluded. I should also point out the other states that already explicitly prohibit or exclude the compromise of domestic violence crimes include: Alaska, Arizona, California, North Dakota, Oregon, and Washington State. I would respectfully request that our Legislature revise the statute to prohibit civil compromise of violent domestic offenses.

Chairman Anderson:

The Chair would like to note that if we were to move forward with this bill, we want to make sure that some of the supporting material from A.B. 7 that is not in A.B. 21 be included, specifically, with reference to the elderly. That would be an important factor that we would be looking for.

Would that be correct?

Gerald Gardner:

Yes, that is the only notable difference that I see between the two.

Chairman Anderson:

Would you have any objection to that, Ms. Gerhardt?

Assemblywoman Gerhardt:

No.

Assemblyman Mortenson:

What constitutes domestic violence? How simple an offense can be considered domestic violence? Just one guy shouting at his wife, could that be domestic violence?

Kristin Erickson:

No, simple shouting is not domestic violence. There has to be a willful and unlawful touching. There can be an assault where there is no touching; however, the victim is in fear of personal harm. So that can also be domestic violence. I believe it is defined in *Nevada Revised Statutes* (NRS) 33.018.

Chairman Anderson:

I believe we were given a copy of NRS 33.018; it may be there in your notes Mr. Mortenson.

Assemblyman Mortenson:

You said there could be domestic violence without touching, but the victim has to feel fear. Is that what you said?

Kristin Erickson:

Yes, that's correct. The victim has to be in fear for her physical safety, and the judge has to look at that and it really has to be reasonable. Just to simply say, "I am afraid," without any type accompanying conduct, would not suffice.

Assemblyman Mortenson:

I am just so appalled with how many people are in jail, how many people are getting arrested, and how complex our society is getting. I defy you to find a marriage in existence where a husband or a wife did not really angrily shout at the other partner.

If that happens, the victim, whether they really were in fear or not, can get angry, call the police, and an arrest occurs. Now a life can be ruined because somebody has a record now.

Chairman Anderson:

Mr. Mortenson, possibly the discussion of NRS 33.018 would be relative when we take this up with a piece of legislation with the domestic violence questions. I believe that the Chairman has asked for a piece of legislation to be drafted in this particular area relative to a different set of topics. I don't believe that is the intent of the particular legislation.

Assemblyman Mortenson:

It seems to me that is a good safety release. If the civil apology or whatever you call it could be used for minimal cases, maybe it could be graded somehow so that in cases where there was no violence inflicted physically, that could still be negotiated with this civil compromise.

Gerald Gardner:

Just a minor point with relation to what we are talking about. Here, almost 99.99 percent are battery cases. In all my 13 years of prosecuting cases, I have never prosecuted a domestic assault case, which Assemblyman Mortenson was referring to. An assault can be either an attempted battery that fails or it can be an act which puts the victim in apprehension of fear that she will be harmed. What we are talking about here, in virtually every case, is an actual act of physical violence committed against the victim. An act that constitutes domestic violence can include battery, assault, stalking, and all the things numerated in NRS 33.018, but what we are talking about here is 99.99 percent of the cases have actual acts of violence.

Assemblywoman Angle:

My question has to do with how many offenses. I know you were talking someplace in your testimony that it might not be just the first time that someone is accused or brought before a judge. I don't see that in the bill. Were you thinking of a provision that this would not be the first offense or is this the first offense? What are you thinking about this?

Assemblywoman Gerhardt:

No, this would be for the first offense.

Assemblyman Holcomb:

What is the percentage of arrest that involves domestic violence?

Gerald Gardner:

I don't have that particularly figure, as to what percent of all arrests in the state of Nevada constitute domestic violence.

Assemblyman Holcomb:

I would think that is a relationship between a husband and wife. Even jerking your wife is a battery. It is an unlawful touching and that would be considered ... and if your wife was emotionally upset she could call the police and have you arrested. I would think it would be rather high. I would like that figure. I think that is very important in consideration.

What is the jail term for a domestic violence conviction?

Gerald Gardner:

For a first offense, it is a mandatory two days, or up to 6 months. In Clark County, the standard for a first offense is the two days.

Chairman Anderson:

Since it is a misdemeanor, it is six months and a gross misdemeanor is one year.

Assemblyman Holcomb:

So is that a misdemeanor for a battery in domestic violence?

Gerald Gardner:

Yes.

Assemblyman Holcomb:

So wouldn't that be six months?

Gerald Gardner:

Six months is the maximum, two days is the minimum for a first offense domestic battery.

Chairman Anderson:

We have statutorily set that and taken the judicial discretions away from both the police officer and from the courts.

Assemblywoman Gerhardt:

I think it might be an appropriate time to hear from some of the victims.

Suzanne Ramos, Victim's Advocate, Reno City Attorney's Office, Nevada:

I am here to give a couple of case examples that we have seen in our office as to civil compromises that have been initiated.

An example that occurred in a case last week involved a husband that committed an act of domestic violence in public in which a law enforcement officer witnessed the battery. The husband's attorney spoke of the civil compromise, which was the first for the victim and the prosecution office. At that time the husband's attorney offered the victim in the case \$10. The couple were going to remain together, as she is 17 weeks pregnant and having severe illness in the pregnancy and is dependent on her husband. They have no plans of divorce, but in order for him to be accountable for the domestic battery his attorney offered her \$10. She agrees so that he wouldn't have to do the counseling.

[Suzanne Ramos, continued.] The second case involved a married couple, who weren't planning to divorce, but had talked about separation. She was going through cancer treatment and relied on his medical insurance to provide her the chemotherapy radiation treatment. At that time, a civil compromise was again offered the day of trial for a minor \$5, so that she could remain on his insurance and he would not file for divorce. The battery on that was an act of violence where it left her with bruises. She relied solely on his insurance and his providing for that. If he did file for divorce, she would not have the medical insurance to further her treatment.

Another one was an attempt to do a civil compromise on the day of trial in which the victim in the case was cooperative. There was a battery in which the perpetrator broke her pinky. They were having a discussion that day of court and his attorney discussed a civil compromise with her. She did not agree to that because she wanted to have him accountable to do the counseling. She did not want another victim to be in that relationship with him if he did not get the help. She refused to sign the civil compromise. The attorney did offer her the cost for paying the medical bills for her broken finger. She felt that she could pay for her own insurance regardless of her outstanding bill. She would rather have him, the perpetrator, get the treatment of the domestic violence counseling, so that another victim would not have to go through what she went through with him during their relationship.

In those examples none of the victims were represented by legal counsel. It was always the perpetrator's attorney that did the agreement and talked to the victim on those cases.

Henry Sotelo, Line Deputy, Reno City Attorney's Office, Nevada:

I'm in court every day prosecuting domestic violence year-round and I've seen many cases. I work hand-in-hand with Suzanne Ramos. We get to see a lot of factual scenarios. I am here to tell you that the civil compromise statute that allows domestic battery or domestic violence to be civilly compromised goes against the logical intention of Nevada's approach to domestic violence, which is holding the perpetrator accountable and making sure the victim is not put in a position where the decision to prosecute is on her. That is what the statute does at this point. What we see as prosecutors, and I was able to discuss this with my fellow prosecutors, it prohibits our ability to seek criminal sanctions against the perpetrators. This is contrary to the domestic violence policy and the statute itself. This statute can be used to circumvent the enhancement for repeat offenders. Perpetrators are not being held accountable; therefore, we see domestic violence as also an illness issue. That is part of the statute, the requirement for mandatory counseling, from six months to one year, depending on the aggravation of the violation and also if it's a first or second offense.

When people are not being treated this will continue. What we see happening is the perpetrator is allowed to circumvent the enhancement or the requirements. They are not getting the treatment they need so this actually works as a disservice towards the victim, family members in the household, and perpetrator who needs us to help him help himself. And again this forces the prosecution to become victim oriented or victim driven versus law enforcement driven. We want to allow us to prosecute the cases. I also agree with all the statements made by Mr. Gardner, Ms. Erickson, and Assemblywoman Gerhardt.

Chairman Anderson:

These are people who need help, clearly. Besides the fact that they are batterers and the victim needs protection and the person who is doing this needs counseling in behavioral change, they may have a drug addition problem; they may have other addictive problems that may need to be addressed. Are we preventing that from happening by doing this?

Henry Sotelo:

That is a very distinct possibility, because once again, if the perpetrator is not being held accountable or not allowed to become under the jurisdiction and the power of the court, there is no reason or basis for the perpetrator to change the conduct. There are many times, that I have sat through court, where we will get pleas to domestic battery or other types of domestic violent crime including the stalking harassment, and the defendant will thank the court for the ability to change their behavior. We all know human nature and if human nature is to change, it needs to be forced. I hate to think in those terms, but through my experience in court, I can see that is necessary in many respects.

Assemblyman Holcomb:

Would this fill up the court dockets? Would it be better served to make counseling mandatory for domestic violence crimes? It is a sickness from everything I have read. Could rehabilitation be a better approach then filling up the court docket with criminal cases?

Henry Sotelo:

In answer to your first question, I don't see passing a law against civil compromise and domestic violence cases, as filling up the courts. I don't see that effect at all as a possibility. In answer to your second question, speaking as a lawyer and as a legislator and a prosecutor, I'm thinking it would be difficult to mandate the forced counseling of the defendant prior to a conviction. Defendants can do that on their own, and many of them do it beforehand, but I can't see that based on the statute that we have and the laws that we have in Nevada of that being a possibility.

Chairman Anderson:

Let me make sure that I understand your response to that question. If this individual is arrested for domestic violence, agrees to voluntarily go into a treatment program, and then comes to court, the court would then no longer have the option to dismiss the charges. That is basically what we are saying in that particular scenario. Is that correct, if this were to be the new statute?

Henry Sotelo:

This statute would not allow that to happen.

Assemblyman Holcomb:

What is the percentage of arrests involved in domestic violence?

Henry Sotelo:

In the Reno jurisdiction, that is the only thing I can attest to. We estimate between 2,000 and 2,500 cases through our courts a year.

Chairman Anderson:

The better question would be the percentage of the overall court load rather than the actual number.

Henry Sotelo:

I can't answer the percentage of the court load.

Assemblywoman Buckley:

In my day job when I am not up here, I run the Clark County Legal Services and we have a domestic violence unit. It's my experience that because the police need probable cause to arrest, and the police weren't there at the time, they look primarily for physical evidence that an actual battery has occurred before they arrest for domestic violence. Would you agree with that?

Henry Sotelo:

I would agree with that.

Assemblywoman Buckley:

You require guilt beyond a reasonable doubt that an actual event occurred, correct?

Henry Sotelo:

That is correct.

Assemblywoman Buckley:

The actual hitting of someone, especially when it pertains to spouses, has been declared by public policy as no longer just something that is a spouse's right to do in their own home. So hitting is not a marital privilege, is that correct?

Henry Sotelo:

That is correct.

Assemblywoman Buckley:

This bill, no matter what, has nothing to do with that but has to do with whether you have the right to buy your way out of a crime, correct?

Henry Sotelo:

Exactly.

Assemblyman Horne:

Are there instances, ever, where a civil compromise was appropriate or has worked? As Ms. Buckley pointed out, police officers go by physical evidence, because they simply weren't there. The act turned out to be an accident or something like that, due to a domestic argument. Has that ever occurred? Has it ever been beneficial?

My second question would be, is there a way if you have this type of person, that it appears to be aberration. Let's say a husband tries to leave the house instead of lose his temper and she follows him. He opens the door and it hits her in the head. It seems like an aberration. We are going to put this down and mark it a civil compromise if anything else ever were to happen. We know that we could never give him that compromise again. Has anyone ever explored that?

Henry Sotelo:

In answer to your first question, whether or not I have seen any civil compromises that have been beneficial, no. In answer to your second question, whether an accident or a situation where there was a misunderstanding that could have occurred, and probable cause was formed by the officer to arrest, based upon the evidence, it is handed over to the prosecution, and they have the burden to prove beyond a reasonable doubt. While I know that there has been earlier testimony that we have no discretion, if there is not evidence of an unlawful and willful use of force of violence, the prosecution does not have to prosecute and that is in the statutes. That is the built-in safety valve. If there is a situation as in the hypothetical you outlined, there would be room to not prosecute based upon the fact that reasonable doubt exists, whether it was a willful and unlawful use of force and violence.

Chairman Anderson:

Mr. Horne, are you happy with that answer?

Assemblyman Horne:

No, not really. Are there any other jurisdictions that have a partial civil compromise where they track offenders who have used civil compromise and then come forward to use it again?

Henry Sotelo:

We don't have any information regarding your specific questions.

Assemblyman Mortenson:

We heard testimony earlier that 94 or 98 percent of cases are plea bargained. Whether you're guilty or not, many people plea bargain. How many domestic violence cases would you guess are plea bargained, rather than go to court?

Henry Sotelo:

In regard to my personal information, I would agree with the 90 percent figure that most are plea bargained one way or another. It is a reality that we deal with in prosecution in the criminal area. Regarding whether or not someone is pleading guilty if they are not guilty, I have no knowledge of that information specifically, but I can tell you as a prosecutor when I'm looking at a case, I look at the evidence. There is always representation on the other side, a legal defender or public defender or the person has an attorney, who is well versed in the area of criminal law and exercises his knowledge in regard to that. Some of those cases are plea bargained based upon evidence or lack thereof. They can be plea bargained anywhere from a dismissal to a guilty plea for the domestic violence charge. It is factually driven and that is why it is such a challenging job. Everyday it is a different factually driven situation. I can tell you there are a lot of plea bargains, but the reality is based on evidence, based upon whether we have victims appearing, based upon the previous testimony of the defendant, witnesses or victims.

Chairman Anderson:

Mr. Mortenson, let me remind you that NRS 200.485, subsection 7, states, "If a person is charged with committing a battery which constitutes domestic violence pursuant to NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty or [nolo contendere] to a lesser charge or for any other reason unless he knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial. A court shall not grant probation [to and,] except as otherwise provided" under other criminal statutes.

Henry Sotelo:

That is my understanding, yes.

I think what you just read there says that they will not plea bargain anything unless they don't have any evidence. Is that what I just heard? In other words the guy might be innocent, so those are the only circumstances where we will plea bargain. Is that what I heard you read?

Chairman Anderson:

You are kind of leading them into the conclusion you want them to make.

Assemblyman Mortenson:

I had some very bad experiences communicated to me from several very young people, my constituents, during this interim and I got the impression that everything is weighted terribly in favor of the conviction of people over that of when they have accidentally had a bad situation. They were arrested and there is virtually no evidence, but they were told to plea bargain.

Chairman Anderson:

Ms. Sundberg you have sent us a copy of your testimony, which I presume you're going to read to us.

Andrea Sundberg, Community Outreach Coordinator, S.A.F.E. House, Inc.

That is correct.

Chairman Anderson:

Would it be sufficient to have it entered into the record?

Andrea Sundberg:

That would be sufficient for me.

Chairman Anderson:

A letter from Ms. Sundberg ([Exhibit F](#)) has been provided to the Committee relative to S.A.F.E. House. Is there some anecdotal information that you wish to give to us in addition?

Andrea Sundberg:

I agree with a lot that has been said. We have not had that much experience with civil compromise cases. We have had approximately ten clients since 2003 where there has been a civil compromise offered. In all of those cases the victim did not accept the civil compromise, and I think that was because they did have the support of an advocate that would go to court with them. They had the

shelter that they could stay at, so they didn't have to rely on the abuser for any financial support.

[Andrea Sundberg, continued.] My concern in the civil compromise cases is that the victims may not have the support of other family members, a domestic violence advocate, or the advocate that works within the system and may rely on that civil compromise hoping that they are able to get some financial stability from it or have the abusers attend counseling programs.

The one thing I can tell you about S.A.F.E. House's state-certified Batterers Treatment Program and what we have discovered is that we do occasionally get offenders that will come in voluntarily before they are arrested for a domestic battery charge, but we have not had a single person who has come in voluntarily that has completed that counseling program and that is part of my concern. The counseling is very vital to ending the cycle of violence and if they fail to complete the program our concern is that they are going to re-offend.

Chairman Anderson:

Would the people from Henderson who have also appeared on Assembly Bill 10 come up? I noticed that one of key differences in the three bills that we have is on page 2, Section 1, subsection 4 of A.B. 10 and it states, "Committed is a battery that constitutes domestic violence." The key difference between the three bills here is that your particular bill includes this relegated to the battery, rather than the long list of things. I presume that is part of your concern.

Mark Stevens, Deputy City Attorney, City of Henderson, Nevada:

I am in favor of all of these bills. I think they all cover similar aspects. In fact, Assembly Bill 21 covers additional items to include the temporary protective orders which go along with domestic batteries, typically. Certainly in support of that, Mr. Chairman, I agree with the other speakers that have spoken so far, and I am not going to get into those statements because I concur with them. One of the reasons we want to hold these individuals accountable is to get them the six months domestic battery counseling that is required by statute for the first offense and one year counseling that is required for a second offense.

One other thing we have seen in civil compromise situations is a delay in actual trials so that we can have hearings on the merit of the civil compromise. In our courts, except for one instance, civil compromises have never been allowed by our judges after weighing the merits of the civil compromise. In that exception, we actually had a family court in its divorce decree go ahead and indicate specifically that our municipal court case for domestic battery was to be civilly compromised based upon the divorce decree. In fact, the family court judge signed the divorce decree and our municipal court judge then went ahead and

dismissed the criminal case of domestic battery, which was certainly a concern of ours. In part, because we have no input into any family court divorce matters, and so the city's merits on going forward with the case certainly weren't allowed to be heard and the family court judge signed the divorce decree. We are very much in support of this. On a day to day basis, one-third of my cases are domestic battery related cases, and I am in favor of this.

Assemblyman Holcomb:

You just said one-third of your cases involve domestic battery and we heard that 90 percent are settled by compromise, so what would your caseload be if there was no compromise permitted?

Mark Stevens:

Realize that I do only misdemeanor cases, that is why my percentage may be a one-third of my cases. I would say a large percentage of those cases are resolved. One of the reasons they are resolved is that there is a power and control issue. The victims in the case may still be with that individual and it affects them financially as well. We have a great deal of problems with victims actually appearing in court after the case being suspended. So, a lot of cases, by necessity, are resolved because of that. I would say a good 90 percent or better are resolved via negotiation or sometimes a simple plea. They plea straight up to the offenses, but sometimes they are forced to be negotiated further.

Chairman Anderson:

Because of economic, housing, and family considerations they often do not choose to leave a domestic relationship even though they should. Is that a fair statement?

Mark Stevens:

Mr. Chairman, it is a very fair statement.

Chairman Anderson:

That is the reason why we mandated the treatment modality that follows first time offenders, so that we would be able to break that cycle. There are many groups and many of whom are waiting to testify today who provide emotional and financial support.

Mark Stevens:

Yes, Mr. Chairman.

Chairman Anderson:

Does that help you Mr. Holcomb?

Assemblyman Holcomb:

I am actually concerned about the effect and overload on the courts. If there are no civil compromises, what would the effect be on the court system that is already overloaded now?

Assemblywoman Buckley:

There is a difference between plea bargaining, which was described earlier as being an overwhelming way that cases are resolved, and civil compromise. I believe from the testimony that civil compromise has been done perhaps less than a dozen times, compared to thousands and thousands of plea bargains. Certainly we should get the exact number for our information, but they are two separate things.

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, representing Nevada District Attorneys Association:

The organizations I represent are in support of these measures that we face here. Keep in mind that we are talking about municipal court and justice court. True municipal courts and justice courts are very, very busy but they are very, very geared to dealing with mass caseloads, particularly, in the misdemeanor realm.

The current compromise statute goes back to 1862 and is quite frankly being abused further, victimizing the exact people that need the protection that the domestic violence laws were enacted for. We need to close this loophole. Hopefully, this abusive part of the system will be stopped. To argue that current misuse of the compromise statutes allows a judge's discretion is not really a realistic view. A victim is not protected by counsel and the district attorney or quite frankly the courts aren't either. It is generally a perfunctory matter to compromise these things in a domestic violence case, and then it is dismissed without any input from anyone except generally the abuser and his counsel. We urge support of closing this loophole and if there are other issues of domestic violence, that can be for another day.

Paula Berkley, Member, Nevada Network Against Domestic Violence:

[Handed out her testimony ([Exhibit G](#)).] We are very concerned about this issue because we feel it is public policy that we are affecting. We feel that this is weakening the statutes in domestic violence, the chances to protect public safety, and even the accountability toward the perpetrator. The underlying issue that everybody keeps saying is that this is an issue and concern about the balance of power. If intimidation is basically the underpinning of domestic violence and because all those people recant as you had heard earlier, why would we offer someone another means to be intimidated, which is basically civil compromise. She was never in an equal power situation and now we are

putting her into a situation of negotiating from way down on the steps. We really question why you would even take a criminal case and put it into a civil situation where money is basically the product. We would prefer protection; we would prefer justice; and we would prefer that person to stop the cycle of violence.

[Paula Berkley, continued.] When we read the cases on civil compromises, the judge usually says that I am going to compromise this because of two conditions: One is the lack of violence or history of violence in the situation and other is because of minor injuries. What is a minor injury? There is no stipulation of any of this. Would you be happy with just black eyes or a broken nose or is it strangulation? That is a real problem, figuring out what is a minor injury.

As far the history of domestic violence, that's basically what is happening here. We are going to destroy the history of domestic violence through civil compromise. So we are actually creating the problem that we are trying to get documentation and history on. When a domestic violence battery is compromised, there is no record of it. The prosecutors are trying to get these guys to quit beating their wife before they accidentally or on purpose kill them.

They need as much evidence as possible and this civil compromise is cleaning the record. Civil compromise could be in a dating situation. If I beat this girl and pay her \$1,000 she'll go away and now I can go beat this girl up and civil compromise; it's always the first offense, right? There is no record of it anywhere so we're creating a loophole that is so large that the trucks run through. If this came into legislation, for first offenses, there would be no reason why we would ever convict anybody of a first offense anymore. Because all they have to do is pay off somebody. What is the message we're sending to the kids in that family?

We are creating a pay as you go situation in the criminal courts. We certainly can't support that. We wonder how some of this accountability of the perpetrator can ever be established if we are going to allow him off simply by paying money. Money is not extremely important to some people. Are we creating a system where, if you have money, you can get out of domestic violence batteries? If you don't have money, then you can't get out of it. So even to the perpetrators it's not fair. If the guy doesn't have the money to go to the civil side and pay for an attorney, he's then charged with battery. So it is uneven.

Nancy Hart, Volunteer, Nevada Network Against Domestic Violence:

The 90 percent compromise that Assemblyman Holcomb mentioned is not accurate. I couldn't put a percentage on it, but I would definitely say that if we eliminate this loophole it will not appreciably increase any caseload across the state. It is literally a handful of cases compared to the volume.

I would just like to say, everybody has talked about the unequal bargaining power involved in these relationships. I think it is really important for everyone to know, under the existing laws, a victim of domestic violence has a cause of action against the perpetrator for damages that are caused to her. Her medical expenses, property damage, and that kind of thing are provided under NRS 41.134. It's an action that she has, and I use "she" because the vast majority of victims are women. She has that in addition to the remedy of a criminal case against him. Actually what you are doing is you're compromising the civil claim that you have under the law, and it makes absolutely no sense to me. I think it is quite possible to compromise that civil claim for medical expenses and prosecute the criminal case.

I know that Assemblyman Horne was talking about the concept of restricting this to first offenses and tracking it somehow. I do not believe that any of the states that provide for civil compromise have such a tracking system. There is no mechanism in place in Nevada at this point that would even keep track of the first compromise. There is nothing in this bill and there is nothing in Nevada law that says this is only available for the first offense.

Chairman Anderson:

I also have a letter from Committee to Aid Abused Women which I presume you wish to enter into the record ([Exhibit H](#)).

Valerie Cooney, Member, Nevada Network Against Domestic Violence:

I simply want to remind the Committee that there are a great many women in the rural counties that don't have the benefit of some of the assistance that is offered in the more urban communities. There are few programs that are funded well enough to have any paid staff. There are few shelters. There are few advocates other than a handful of women that appear from time to time on behalf of victims in court. The women in the rural counties are unrepresented in many situations and cases. In this particular situation, the civil compromise problem is exacerbated in the rurals. It is exacerbated because women who are victims do not have good representation or good advice. They don't know whether or not compromise is in their best interest and they certainly don't understand the long-term ramifications of such a compromise. I also would direct the Committee's attention to a recent article in the *Las Vegas Review-Journal*, about a civil compromise that was approved and granted in

Elko County. It was for the benefit of a law enforcement officer who was allowed to enter into a civil compromise which was opposed in large part by the officer's supervisor. The problem with civil compromise in such situations is that law enforcement officers can be given special treatment or special privilege. Of course, it is difficult for a law enforcement officer to face or deal with the likelihood of the loss of his job and his profession and potentially all of the benefits he may have earned over a long period of time. Notwithstanding that fact, the reality is that special privilege should not be allowed to any perpetrator, whether it is a law enforcement officer, who loses the right to carry a weapon, and, therefore, loses his job or otherwise. I could ask that the Committee consider the people and the women in the rural counties when making a decision about this bill. Bear in mind that those people need representation and need protection, and this bill is going to provide a great deal of protection which would otherwise not exist.

Vicki LoSasso, Member, Nevada Women's Lobby:

I just want to say that the Nevada Women's Lobby represents both victims of domestic violence and older citizens. We believe both are particularly vulnerable because of the innate power that you have heard about all morning. We feel they need extra protection from those who attempt to manipulate the legal system to perpetuate abuse and we are in support of these measures.

Chairman Anderson:

I was just going to read the other people who have indicated support for the piece of legislation and I see many of them sitting here. Former Senator Diana Glomb, Committee to End Domestic Violence, League of Women Voters, and Diane Loper from the Nevada Women's Lobby. Is there anybody who feels we need to get something on the record that has not already been said on the record, why this is a good piece of legislation?

Isaac Henderson, Private Citizen:

I am in favor, but I would like to add a little bit more to it if possible. What I would like to point out is this: it is the training that we give to our officers, attorneys, and judges. I would like to explain that most women are very elegant, kind, and gentle and are taught this from childbirth all the way up to womanhood. Men need to have the same type of training in order for them to appreciate the type of women that they are marrying.

**Cotter Conway, Public Defender, Washoe County Public Defender's Office,
Nevada:**

Kathy O'Leary is with me and is also with the Washoe County Public Defender's Office. I did submit my testimony in writing ([Exhibit I](#)). First of all, I will note that much of the discussion involved in this bill today involved the adult relationships between a man and woman, and whether they are married or in a dating relationship. If that was the limit of the statute, I probably wouldn't be here. My concern is the other cases, and I think I put five examples in my written testimony. What I would call the fringe cases. The cases that aren't what any of us discussed today. The broad application of the statute includes people other than in intimate relationships. We are talking about parent-child, we are talking about step families, we talking about in-laws, we are talking about roommates, and we are talking about other relationships, brothers, cousins. We see those cases on a regular basis and they are the ones that I am concerned about.

I'm also concerned about the simplicity of conduct that Assemblyman Mortenson mentioned. It can be as simple as a push. For example, there could be a heated argument between a married couple. Let's say they are in each others face, and one pushes the other one back. That is a domestic battery under the law. Those types of cases concern me, if we get rid of the civil compromise. I think that it is very important because of the unusual cases that are outside the intimate relationship and the cases involving nothing more than a push and brought on by the prosecution. We talked about the issue of plea bargains and they really aren't plea bargains per se. Plea bargains to me are a reduction in the charge or something of that matter. In a normal domestic battery, the offer is a plea to the domestic, standard penalties, which are in addition to jail time, a minimum fine, counseling, and community service. They're really not plea bargains in those situations. We have these unusual cases, the simple push, or the cases involving other family members or other people that fit under this very, very broad statute. The civil compromise is a valuable tool to reach an equitable result as I pointed out in my written testimony. And again, we are talking about a small handful of cases.

This is not a thing that is happening all over the place and all these people are getting away with something. It is a small handful of cases that are on the fringe that should not result in a person receiving a conviction for domestic battery, which we know is a very significant misdemeanor. Of all misdemeanors, it is the most significant and it has the most impact, not only within our state and not only with the enhancement provisions but also in the federal system. It is a significant conviction and in these cases that are on the outside, especially when there is no discussion coming from the prosecutor, we

need a tool like the civil compromise to avoid convicting this broad range of people who are outside the intimate relationship or are involved in such a simple thing as a push. We need to have that tool. The rest of my testimony is written so I have no further comments at this time.

Assemblyman Mortenson:

I was told that when a policeman is called to a domestic violence case, he better grab somebody and bring them in. If he doesn't there are some consequences to pay. Maybe some legal suits in the future. Could you confirm that? We also heard testimony that if there are no bruises that he won't bring anybody in, if he can't pin it on somebody. These conflict and I would like to know what the real case is.

Cotter Conway:

There are a lot of answers to that question. Yes, the rule-of-thumb is that they are supposed to make an arrest when they are called to a domestic battery situation. It is not through only the presence of injuries. If the complaining party makes a statement, they will arrest on that statement. They are required to evaluate the situation and determine who the person is termed as the "primary aggressor". So in a situation where both are alleging facts, alleging that she did that, he did that, they are to determine who the primary physical aggressor is. In essence the person who started it. That is one of the things. That doesn't mean they are going to find injuries, so it may be as simple as that persons story makes more sense than the other persons story so that person is going to be arrested.

Assembly Mortenson:

Or who got to the phone first.

Cotter Conway:

Many times that is a factor. Who reported it? Who called the police in? I will also note that I have spoken to some police officers and they do have situations where they have a list of people where they won't report on. The reason being is that they have been out there a thousand times, on the same call for the same complaints. The rule-of-thumb is they are to make an arrest; they are to determine if there is a primary physical aggressor and if there had been physical contact between the two individuals.

Kathleen O'Leary, Deputy Public Defender, Washoe County Public Defender's Office, Nevada:

We are here opposing the language. I will pinpoint A.B. 7 since it is the most comprehensive language. The civil compromise statute that creates new exceptions for a civil compromises, specifically, subsections 2, 5, and 6. I

would urge you to read the companion section, which I believe is entirely relevant, in the statute that talks about what happens when parties enter into a civil compromise and that is they put it before the court. The court looks at it and the court may dismiss based on that civil compromise. There is no mandatory language in the civil compromise statute that requires a judge to dismiss simply because the parties have entered into a contract. This is a contract. Civil compromise is a small word compared to all the legal literature and rules of construction that are associated with contract law. The court should be applying contract principles and make sure that the parties were adequately informed, free to bargain, and could consider what was most important to them in terms of consideration.

[Kathleen O'Leary, continued.] We have heard that these cases can be settled for monetary damages. I submit to you that is not at the heart of these civil compromises, in the cases that I have seen. What is at the heart of the compromises is what Assemblyman Horne talked about, an aberration in a family relationship that everyone feels regret about. Everyone feels that perhaps there may be other contributing factors. The parties put on their table what it is they choose to bargain with, whether it is counseling, parenting classes, or it is just simply more time together to nurture their relationship. It's not monetary in the best compromises. When they go into that contract, it goes before a court who can inquire into the voluntariness. It can inquire into the type of injury that was involved. They can make an assessment as to the fairness, justice, and equity and suggest that this compromise is an adequate settlement. We have heard many, many people before this Committee this morning talk about an uneven bargaining relationship. Who better than a court to determine whether in fact there was an uneven bargaining relationship, and whether or not the contract should be enforced? Judges are uniquely qualified to do that.

This legislative Body has mandated that law enforcement in the form of both police and prosecutors are required to arrest and required to prosecute. You have eliminated discretion from the system in one area of the law, domestic violence. What happens is then we need a safety valve in the system where in the right case a civil compromise can be adopted by a court and the court can therefore dismiss the proceedings.

We have heard that although compromises are advanced, very rarely are they granted. I suggest to you that that is the proper approach here.

If you eliminate discretion from law enforcement across the board in this class of cases and now eliminate it from the courts, you may have a separation of powers problem. The court is well equipped to make sure that the compromise keeps that level of justice and fairness alive in the system. The Legislature

always depends upon discretion in criminal justice. You always depend upon the judgment, training, and expertise of our officers on street and our prosecutors on a daily basis to make good decisions. That's not possible in domestic violence cases any longer. So the civil compromise statute is in fact a legal contract that may or may not result in a dismissal.

Chairman Anderson:

I think we've got it.

Kathleen O'Leary:

May I address subsection 2 and 6?

Chairman Anderson:

I am kind of curious. On the face of A.B. 7 we have added a new part to the legislative program that has not been here in the past. It is called the Legislative Counsel Digest. We have not had that in bills in previous sessions. The Legal Department presents that to us so that we would have some level of understanding. It would appear that in *Willmes v. Reno Municipal Court*, in 2002, the Supreme Court indicated that these settlements have to be accepted, there is no choice.

We need to be very, very clear and we understand why you feel this is the issue here.

Kathleen O'Leary:

In the *Willmes* case, the Reno municipal judge rejected the civil compromise simply because it was a case involving a domestic battery. In that case the municipal court judge, as a public policy matter, was not even going to consider a compromise when it involves a domestic battery. The Nevada Supreme Court said, you can not reject out of hand any civil compromise simply because it involves a domestic battery. You need to consider the adequacy and fairness and justice associated with this particular compromise and make your decision on a case-by-case basis. That is the holding of the *Willmes* case. Not that judges have to accept every civil compromise in domestic battery cases. That is the flip side of the same issue.

Chairman Anderson:

I understand that the City of Henderson and the Attorney General's Office requested this legislation because of an apparent invitation of the Supreme Court to have the Legislature settle that dispute, since Nevada statutes are silent on it.

[Chairman Anderson, continued.] Am I correct on that? That is kind of what I gleaned from initial testimony that Ms. Gerhardt had prepared for the committee.

Kathleen O'Leary:

I don't read that in that case, at all. I see that the court said, you cannot reject out of hand for policy reasons, you have to decide these cases on a case-by-case basis. I think that is good law. I think that the civil compromise statute as it exists is a good law, for that reason.

Assemblyman Carpenter:

I have in front of me a document ([Exhibit E](#)) that the Attorney General submitted and it is entitled a "release." In this release there is no mention of anything that the alleged batterer is going to do for the person that was battered. There is no mention of any money, or that he is going to go to counseling or anything like that. It is so vague and there is absolutely nothing here. It is way out of line. If you go to a real compromise, there should be something in it for the party that was damaged. In this release there is nothing like that. Another point that I want to make regarding the situation that happened in Elko is as I understand it, this was a police officer who was accused of battering his wife. There were strong objections from the community about the injustice that they felt had been done when the judge accepted this compromise. The judge basically said she had no alternative other than to enter into this compromise when the victim entered into a so-called release. I don't see the relationship between what you are saying and the benefit to society and the abuser by these releases.

Kathleen O'Leary:

We did not receive that handout. I would submit to you that this is an evolving area that a release is insufficient. What should be before the court is the actual contract between the parties so the court can make determination. The *Willmes* case and the civil compromise statute do not mandate dismissal upon the filing of a release. I think what can be developed is a compromise which means a contract that an alleged victim of a domestic battery is free to make sure he or she get what they feel is valuable consideration. The only consideration that the accused defendant should consider, in my opinion, is the dismissal of the charge being agreed to by the alleged victim. It doesn't mean it will in fact be dismissed by the court. The Reno Justice Court and the Sparks Justice Court are struggling to determine what standards are going to apply when they are presented a compromise. That includes the actual bargain between the parties and their affidavits saying that this is what they want, and the opportunity to examine the witnesses to make sure that is what they bargained for, that it was a voluntary contract, and this is what they feel is a just result for their family.

Assemblyman Carpenter:

If what you are saying is being done then maybe it might have some validity. I would think that the court would need the contract. On here there is absolutely nothing. It is a release. This goes in favor of the defendant; it has his heirs, executors, administrators, successors, and assigns hereby release and forever discharges "releasee" from any and all claims. To me they are putting something over on the court. I don't know if they have some kind of a hearing, but it says nothing about that.

Kathleen O'Leary:

It is unclear to me whether in fact the court accepted that, as a valid civil compromise. That may have been what was presented to the court, but it remains in the discretion of the court to reject it if they feel it is inadequate for the court to make a determination as to whether it should exercise its discretion to dismiss the procession. I would submit that it is.

Chairman Anderson:

Let me draw Mr. Carpenter's attention to a point I think Ms. O'Leary trying to make, page 13 of [Exhibit E](#). I think the statement that Ms. O'Leary is alluding to deals with the statement from the court that says it is a matter of public policy at least in this department that domestic batteries and the associated cases of harassment and stalking should not be compromised, and that was the opinion of the court. Then, however, the Supreme Court turned around in subsection 3 and chided the Legislature for not having taken in the dialog between Justice Cliff Young and Justice Robert Rose regarding the decision to grant or deny each case based upon its own merit and our Legislature has chosen not to exclude misdemeanor domestic battery charges. Then in subsection 5, page 13 ([Exhibit E](#)), which says that the Legislature did not create an exemption for domestic battery. That is the reason we feel somewhat chided and why we feel we need to enter into this and why Henderson, Las Vegas, Reno, and the Attorney General's Office has come in front of us.

Kathleen O'Leary:

I would bring your attention to A.B. 7 subsection 2 and 6. If you accept the premise that a civil compromise is a legal and binding contract between parties that may or may not be accepted by the court in its discretion, subsection 2 eliminates persons 60 years of age or older from entering into a civil compromise. I would submit that as unconstitutional. The right to contract is an individual right guaranteed by the *Constitution* and it should not be barred by a matter of age. Subsection 6 violates a temporary or extended order of protection against domestic violence. I have not heard a single example before this Committee of a compromise being advanced where there was a temporary or extended protection order and there is a very simple reason. The alleged

victim in that case is in fact the court that issued that order. It is absurd to think that a court would participate in a contract that would allow for dismissal of a prosecution. So for that reason I would submit that those two sections should be eliminated as well as the section on domestic battery.

Chairman Anderson:

The importance of this particular piece of legislation relative to this area of the court is one that we are very, very sensitive to, and we have been building over several different sessions. When we find there is a discrepancy, it becomes so glaring and that is what has happened here.

I would ask the two of you to work with the Attorney General's office, the City of Henderson, Mr. Graham, and all the rest of you to come up with language that you feel might be necessary. In my opinion, it is essential that we close the gap so that if a judge wishes to have this opportunity they should have this opportunity, rather than saying, no you don't because the Legislature has not spoken to it. We need to provide some sort of mechanism so the judge is on firmer ground to do what he needs to do.

Assemblyman Horne

What do you say to the argument that the parties aren't contracting from equal positions? That the defendant has counsel but oftentimes the victim does not. That is different than most contracts that you would enter into, so how would you compare this to qualified valid contract?

Kathleen O'Leary:

I have two responses. That is certainly an inquiry the court should be making. Ask both sides what their intent was and how the negotiation ensued, make sure that it is voluntary, and make sure that there was an equal bargaining position. As a practical matter I have advanced several compromises before the court. I have not had rulings in all of the cases. I have not had one granted but when I submit them to the court, I ask the parties to bring to me, in their own words, what their contract is and why they want the court to accept it. Both sides must submit it in their own handwriting. That is what is presented to the court along with an affidavit affirming that is what they wish the court to review and act on. The court has ample opportunity to do that. They can put the parties under oath, they can ask them questions, and they can make sure it is a meaningful contract between the two parties.

Chairman Anderson:

Ms. O'Leary, I would draw your attention to the last page of Attorney General's handout: "Receipt of motion to place on calendar for order of dismissal is hereby acknowledged."

That is a pretty straightforward. Because of the Supreme Court decision, it would appear, in part anyway, it had to be accepted. So that kind of scares us.

Kathleen O'Leary:

I think that this is probable, a filing that is required by the local practice in Clark County. It is simply an acknowledgement that they have received a copy of a motion that is pending before the court. It is not a resolution of the matter at all.

Fritz Schlottman: Administrator, Offender Management Division, Nevada Department of Correction

I don't rise either in support or against this piece of legislation. Assuming that the legislation goes through and that people are adjudicated on this misdemeanor charge, that charge would be interpreted by the Department of Corrections as a violent offense, and, therefore, this individual may subsequently return to prison either on a parole violation or on a new charge. Depending on the number of these cases that are out there that are being adjudicated, this would have a fiscal impact on the state because it would require us in the future to build more additional prison beds.

Chairman Anderson:

We would ask both Legal and Research to look for a way out of the fiscal impact to the prison system.

Helen Mortenson, Private Citizen:

You have talked about the training and counseling for the batterer, but are we not talking about the training and counseling for the victims. These women or men go on and perpetuate these situations. They go from one abusive relationship to another. I think you will find that in most cases, these women need counseling as much as the batterers. They need to know how to get out of that situation instead of perpetuating it.

Assemblyman Mortenson:

I think that is a very good point. The victim often can invite aggression and should be counseled at not inviting aggression.

Chairman Anderson:

Let me close the hearing on these bills and indicate that I would like to try to get them to our first work session. If we do not have the writings that are necessary, the Chair is of the opinion that it will have to go to a subcommittee for additional testimony on the bill.

[Adjourned at 11:59 p.m.]

RESPECTFULLY SUBMITTED:

Judy Maddock
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Judiciary

Date: 2/15/05 **Time of Meeting:** 8:00 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A			Agenda
	B	Bob Wideman	Nevada Dept. of Public Safety	Power Point Presentation
	C	Audit Division		Audit Summary
AB 8	D	Robey Willis	Carson City Municipal Court	Copy of NRS 33.018
AB 7,10 & 21	E	Gerald Gardner	Attorney General	Written Testimony
AB 7,10 & 21	F	Andrea Sundberg	S.A.F.E. House	Written Testimony
AB 21	G	Paula Berkley	Nevada Network Against Domestic Violence	Testimony from Susan Meuschke
AB 7,10 & 21	H	Barbara Spring	CAAW	Written Testimony
AB 7,10 & 21	I	Cotter Conway	Washoe County Public Defender's Office	Written Testimony