MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
April 25, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:30 a.m. on Monday, April 25, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Mike McGinness (Excused)
Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Susan Gerhardt, Assembly District No. 29
Assemblyman Richard D. Perkins, Assembly District No. 23

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County
Dave Mincavage, Assistant City Attorney, City Attorney, City of Henderson

Mark Stevens, Deputy City Attorney, City Attorney, City of Henderson
Alexandra Chrysanthis, Chief Deputy District Attorney, District Attorney, Clark County
Gerald J. Gardner, Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General
Suzanne Ramos, Victim Advocate, City Attorney, City of Reno
Henry N. Sotelo, Deputy City Attorney, City Attorney, City of Reno
Vicki LoSasso, Nevada Women's Lobby
R. Ben Graham, Clark County District Attorney; Nevada District Attorneys Association
Kathleen M. O'Leary, Deputy Public Defender, Washoe County Public Defender
Cotter C. Conway, Deputy Public Defender, Washoe County Public Defender
Mike Sprinkle, Nevada Domestic Violence Prevention Council
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys
Dan Coe, Sergeant, Las Vegas Metropolitan Police Department
Joe N. Roy, Officer, Problem Solving Unit, Police Department, City of Henderson
Stephanie Scales
Brenda West
Jeannette N. Welsh, Nevada Association of Counties
Donald L. Cavallo, Public Administrator, Washoe County
Steve Zuelke, Arundel Auctions

CHAIR AMODEI:
The hearing is opened on Assembly Bill (A.B.) 21.

ASSEMBLY BILL 21 (1st Reprint): Prohibits civil compromise of certain misdemeanor offenses. (BDR 14-846)

ASSEMBLYWOMAN SUSAN GERHARDT (Assembly District No. 29):
Current State law allows a court to compromise or settle a misdemeanor charge. An accused offender can have misdemeanor battery charges dropped in exchange for a civil compromise with a victim, such as monetary payment or a simple apology. The Legislature has identified circumstances in which compromises are not acceptable: offenses committed upon a judicial officer while executing his duties, offenses committed during a riot or offenses committed with the intent to commit a felony.

Assembly Bill 21 would expand the list to include an offense that constitutes domestic violence and an offense that violates an order of protection against

domestic violence. In certain cases, domestic violence with substantial bodily harm is a felony in Nevada and not subject to compromise. For domestic battery with injuries up to the threshold of broken bones or injuries that require hospitalization, the charge is only a misdemeanor. It takes a third conviction of this type of domestic battery 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 their victims to compromise. Not surprisingly, many abusers will threaten victims with more severe violence if they do not do what the abuser demands. The victims are vulnerable to these threats because abusers who face misdemeanor battery charges usually spend no more than a week in jail, often much less time if they bail 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 receiving satisfaction for the injury is true and not, 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; therefore, the abuser's actions can never be counted as one of the three prior convictions needed to raise a future charge to the level of a felony. Assembly Bill 21 is a straightforward, important measure to provide protection to victims of domestic violence, many of whom are unable or do not have the resources to protect themselves.

KRISTIN L. ERICKSON (Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County):
Domestic violence is about power and control, both physical and financial. Without changes to the existing statute, this abuse of power and control will continue. This is not a level playing field. The batterer is allowed an attorney, and if he or she cannot afford an attorney, one is appointed. The victim does not have an attorney, which leaves him or her in the unenviable position of having to agree to his or her batterer's demands of a civil compromise or suffer the consequences.

What are the consequences? Another black eye, bruising, biting, strangulation, even death, a roof over his or her head, a roof over his or her children's heads

and food on the table. The victim is in no position to barter and bargain with his or her batterer. This is not a level playing field.

Several sessions ago, the Legislature decided to remove discretion from police and prosecutors with regard to domestic violence cases. If the police see evidence of domestic abuse, they must arrest the abuser. Prosecutors, unless it is obvious to them the case cannot be proven beyond a reasonable doubt, must prosecute and cannot dismiss or reduce the charge. This leaves the ultimate decision of guilt or innocence to a neutral third party, the judge.

Why do we have mandatory arrest and prosecution? The reason is because not enough was done to protect the victim. The intent of mandatory arrest and prosecution was to remove the onus from the victim on whether or not to prosecute. The existing civil-compromise statute is completely inconsistent with these ideals. The intent of the civil-compromise statute directly places the decision of whether or not to prosecute on the shoulders of the victim rather than the prosecution. This is a burden no victim of violent crime should ever have to bear.

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

SENATOR CARE:
Was this type of bill considered in the 2003 Legislative Session?

MS. ERICKSON:
The *Willmes v. Reno Municipal Court*, 118 Nev. Adv. Op. 82 (2002), decision came out rather late. Although there was discussion, I do not think the full impact of the case was realized until a year or so had passed.

SENATOR CARE:
Are justice courts allowing parties to compromise domestic violence charges? Are there statistics as to how often it happens in Washoe County?

MS. ERICKSON:
I do not have statistics. Domestic violence charges are being compromised; however, judges are taking different approaches. Some judges listen to all the evidence and decide whether a compromise is appropriate; others decide whether a compromise is appropriate before a trial. There has been some argument that the state bringing criminal charges is not a party to the proceedings to civil compromise and should not be allowed to respond. The state has taken the position this is ridiculous since the state is the party bringing the cause of action, which is the subject of the civil compromise. Therefore, some Reno and Sparks justice court judges are granting civil compromise and some are not.

DAVE MINCAVAGE (Assistant City Attorney, City Attorney, City of Henderson):
The Willmes case stated the Legislature chose not to exclude misdemeanor domestic battery charges from civil compromise eligibility. Assembly Bill 21 provides that opportunity, and we ask you to support it.

MARK STEVENS (Deputy City Attorney, City Attorney, City of Henderson):
I prosecute many battery cases. Civil compromise has become an issue and a problem in the courts; it delays justice in many cases and puts victims in a difficult position. Assembly Bill 21 should be supported.

ALEXANDRA CHRYSANTHIS (Chief Deputy District Attorney, District Attorney, Clark County):
I currently run the Domestic Violence Unit in Clark County and strongly support A.B. 21. Over the past year, I observed more requests for civil compromise because this apparent glitch in the legislation, as it exists today, has been identified and noticed by more defense attorneys. In the last hearing involving civil compromise that was granted, the victim indicated, although she still loved her batterer, she had no interest in having his career ruined because he had abused her. Those are not reasons a prosecutor can use to justify negotiating a case.

Because we are addressing emotions, situations of financial gain by one party or the other, or children involved, we are not playing with a consistent playing field. Prosecutors must have reason to believe they cannot win a case beyond a reasonable doubt before they can consider negotiating the case downward. There are hundreds of victims who are constantly manipulated by their abusers and remain with them for a host of reasons. Because they intend to go home

with the person who abused them, they often feel compelled to sign whatever piece of paper the defense attorney prepared for them.

It is worth noting that the defense attorney's paperwork and guidance is leading the victim who is accusing his or her client of committing the battery. Victims are often in a vulnerable position. I urge you to pass A.B. 21.

GERALD J. GARDNER (Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General):
I will present my written testimony (Exhibit C). I would like to follow up on Ms. Erickson's point with respect to the inconsistency of this particular glitch in the law. Not only does current law require mandatory arrest, prosecution in a case that can be proven beyond a reasonable doubt and a mandatory jail sentence, but the court cannot suspend the sentence and grant probation. There are mandatory enhancements for second offenses and mandatory felony treatment for third or subsequent offenses. The idea of allowing civil compromise is completely inconsistent with everything the Legislature worked for in the past to lift the burden from victims in order to prosecute this serious offense.

Other legal issues are inconsistent with allowing civil compromise; for example, normally in contract law, a civil compromise has to be entered into with both parties receiving consideration. Both parties must get something out of it. As Ms. Chrysanthis pointed out, rarely does the victim get anything out of this so-called compromise. The paperwork we have seen in the past has been drafted by the defense attorney on defense counsel letterhead, and for the moment, the only thing the victim gets is not being subjected to ongoing psychological abuse by his or her abuser. He or she is unlikely to have independent counsel; therefore, all motions and affidavits are drafted by the defense counselor for the abuser.

In a case I prosecuted last year, the release and affidavit of the victim were on the defense counsel's letterhead, and the compromise was obviously entered into for the sole benefit of the defendant to avoid a conviction. Another legal contract term that comes to mind in these cases is "illusory promise" or contract, because the victim gets nothing out of it. It is for the sole benefit of one party.

As Senator Care mentioned, in the Willmes case the court said, unlike other states, the Nevada Legislature has chosen not to exclude misdemeanor domestic battery charges from civil compromise eligibility. I firmly believe it is because the issue was not at the forefront of our conscience at the time the legislation was drafted. It was back in the 1960s, and domestic abuse did not hold the place in our conscience that it does today. I have read the decision by the Nevada Supreme Court as an invitation to this Legislature to do something about that loophole.

As I pointed out in Exhibit C, Arizona, Alaska, California, North Dakota, Oregon and Washington have specifically prohibited civil compromise laws to apply to domestic battery cases. I ask your support for A.B. 21.

SENATOR CARE:
Did the Supreme Court ignore Nevada statutes, or was it determined a contract trumped the work the Legislature did in prior sessions? Was the arrest prior to the effective date of the statute?

MR. GARDNER:
My understanding is the Supreme Court felt bound by the strict language of the existing law in *Nevada Revised Statute* (NRS) 178.564 and NRS 178.566, which allowed civil compromise in all but a few types of misdemeanor battery cases. The only crimes specifically excluded were things such as riotous crimes or crimes against officers. The Willmes case was reversed because the Supreme Court felt the judge had declined to allow a civil compromise as a matter of public policy. The judge ruled that civil compromise should not apply to domestic violence. The Supreme Court indicated the ruling could not be done that way and each case had to be considered on the facts.

SUZANNE RAMOS (Victim Advocate, City Attorney, City of Reno):
I am present to speak on behalf of victims who have compromised their cases for minimal monetary gain. There was a case in which a pregnant victim, who had no attorney, ended up accepting $10 from her boyfriend's attorney. Whatever money the abuser had in his pocket is what she received at the time the civil compromise was reached. Another case involved a victim undergoing chemotherapy whose husband threatened to divorce her and take away her medical insurance which would end her treatment. She had no legal representation and signed the civil compromise.

These types of cases are often seen in the Reno Municipal Court. Legally unrepresented victims are approached by defense attorneys in hallways and asked to accept whatever money the defendant has in his or her pocket. There are cases in which children observe domestic violence, and the perpetrators do not receive any type of counseling. The victims accept the compromise for financial gain and because they still love the abuser. Their abuser promises to change; without proper counseling, they will not change and will continue the same pattern. They will continue to have power and control over the victim who will remain in the situation.

HENRY N. SOTELO (Deputy City Attorney, City Attorney, City of Reno):
I support A.B. 21. I am a line deputy and prosecute these cases every week. I have been working at this job for seven years and have seen many different variations on these cases. I would like to address the issues regarding the justice of the statute as it exists today, as well as the Willmes case.

The statute was created prior to the domestic battery statute the Legislature passed in 1997 requiring enforcement of domestic battery and mandatory minimums. There does not seem to be a conflict with the Legislature changing the statute now. The law was created without the intent of the domestic battery statute that now exists in Nevada.

In regard to the Willmes case, the court did the best job it could under the circumstances. The statute does not allow these types of cases; the court did not try to undermine the statutes as they existed in the domestic-battery realm. However, attempting to compromise them both or allowing them to work together created a loophole.

Currently, things happen in court that never would have happened prior to the Willmes case. In the past, there might have been one or two a year. Within the last month, I have seen two or three cases. Some cases are extreme, but some are not. They seem harmless because the victim is not injured and goes along with the situation. There have been cases in which the victim is represented by an attorney; however, the problem with seemingly harmless situations is they serve to undermine the intent and spirit of the law. A conflict has arisen between the actual application of the Willmes decision and the spirit and intent of the domestic battery statute as written by the Legislature.

Guilt is never addressed; the issue is whether or not a civil compromise can be deemed valid by the court. It is a factual decision. There are different circumstances, consequences are uneven and there are inconsistent findings by the courts, which was not the intent or spirit of the Legislature.

The intent of the domestic battery statute is to hold wrongdoers accountable. Based upon my observations, a batterer is a sick person who was raised and treated in a way that skewed his or her viewpoint in regard to controlling other people. Batterers need education and help in that respect and should not be permitted to buy their way out of these situations.

Finally, in regard to the monetary issue, a basic premise in the Nevada Constitution is that everyone is treated equal. Those who have money are able to get out of these situations. There will be extreme cases; many more will be compromised because of money, which undermines the spirit and intent of both federal and state constitutions.

SENATOR CARE:
Assembly Bill 21 would become effective upon passage and approval, which is a shorter time frame than the normal October 1 date seen in most bills. Have you an opinion whether A.B. 21 would apply in cases in which the arrest occurred prior to the effective date of the bill?

MR. SOTELO:
Any arrest prior to the effective date of A.B. 21 would still fall under the bill because the issue becomes the decision at the time of the civil compromise and whether or not the civil compromise is offered prior to that time. It would not be at the time of arrest, but the time of the so-called trial date.

VICKI LOSASSO (Nevada Women's Lobby):
I have counseled battered women for many years and have concerns about their vulnerability in these cases, as well as concerns about the batterers, their accountability and ability to make changes in their lives. For those reasons, I urge you to pass A.B. 21.

R. BEN GRAHAM (Clark County District Attorney; Nevada District Attorneys Association):
I apologize for not addressing this issue in 2003. It was blindsided because the whole concept of domestic violence was structured and the concept of utilizing

the statute to, in effect, continue abuse of the victim was not contemplated. A number of bill draft requests (BDRs) were proposed this Session to address this concern.

There are real issues in the domestic violence arena. Assembly Bill 21 addresses something not considered by the constitutional framers in 1861, when the compromise statute was enacted. The concept of compromising an issue with a person you have abused is contrary to legislative intent, as well as obtaining help with the situation. We urge you to pass A.B. 21.

The Department of Corrections anticipates no fiscal impact regarding this issue. The courts, prosecutors, police and defense bar have had issues with domestic violence legislation; however, A.B. 21 does not address those particular issues. This is an area in which the abuser will not be allowed to continue to abuse the victim. A judge in a divorce decree ordered a domestic violence case dismissed with no input from the police, the judiciary on the effective court, the defense or the prosecution. Although I applaud members of the defense bar for their ingenuity, we would like to close off civil compromise in this area because it only encourages continuing abuse.

KATHLEEN M. O'LEARY (Deputy Public Defender, Washoe County Public Defender):

I present my written testimony (Exhibit D) in opposition to A.B. 21. The mandatory laws passed by this legislative body regarding domestic battery have abolished discretion, which is your prerogative; however, it opens the door for the potential of abuse in enforcement. The district attorney is no longer the safety valve in the system to evaluate cases, neither are the law enforcement officers on the scene. Judges are the only alternative, and they are under the civil compromise statute, which is the safety valve that justice requires, as well as the only remaining tool for exercise of jurisdiction.

I have had over 100 domestic battery cases over the past 2 years, and I am only 1 of 4 Washoe County public defenders managing domestic battery cases. Every case does not involve the classic examples of physical and financial power and control over individuals with which the supporters of A.B. 21 are concerned. A large proportion of minority cases that bring a civil compromise involve minor scratching and pushing regarding a single incident in a long-term relationship. I provided an example in Exhibit D. The family loses a great deal in terms of a domestic battery conviction. In one case, the power and control was

in the hands of the alleged male victim, who was a highly-educated physician with the financial resources in the relationship. He was the one who requested the civil compromise in the case.

Supporters of A.B. 21 have not documented abuse by the courts, except for a single incident wherein Mr. Graham indicated a family court judge included it in a family court decree. I submit that judge had no jurisdiction to allow the civil compromise and dismiss a criminal prosecution. We have proposed an amendment in Exhibit D that addresses the concern of the supporters and preserves a measure of discretion in the hands of well-educated judges. The State of Nevada has done an extraordinarily good job in educating judges, both through the Administrative Office of the Courts and local and state judges associations. Nevada is also the site of The National Judicial College and the National Council of Family Court Judges.

Judges have made it clear that domestic battery is an important subject. They have educated themselves and are capable of exercising discretion. What has not been said is just because two parties enter into a civil compromise, a court does not have to grant it. Allow the judge to exercise discretion that is otherwise not available in this area of the law.

COTTER C. CONWAY (Deputy Public Defender, Washoe County Public Defender):
I echo Ms. O'Leary's comments in opposition to A.B. 21 and present my written testimony (Exhibit E). The domestic violence legislation in Nevada covers far more than the situations addressed by proponents of A.B. 21. If it was just related to marital or dating relationships, I would not be testifying. I am opposed to the broad blanket prohibition because there are a number of other types of relationships affected. One example is brothers; the other is friends. If they are both involved in a physical altercation, the brothers would be charged under the domestic violence statute; the friends would be charged under the simple battery statute and can effect civil compromise, whereas the brothers cannot. It is an absurd result which is not the intent of the Legislature or the domestic legislation.

That is not the only example. There are a number of people covered under domestic violence legislation, in addition to the traditional relationship. For that reason, this legislation, which proposes a blanket prohibition, is wrong and should either be thrown out or amended with different restrictions. It should be limited to just those relationships the proponents have discussed. The

proponents of A.B. 21 are concerned with traditional relationships. A blanket prohibition will do more harm than good.

SENATOR CARE:
In the event of scratching or minor pushing, is it correct that the prosecutor must prosecute unless there is a good-faith belief that he or she cannot obtain a conviction?

MS. O'LEARY:
The civil compromise admittedly indicates something occurred between the two parties; until the court actually hears the case, it does not know the extent of it. Even minor scratching, pushing and shoving, under the definition of the statute, is domestic battery. The civil-compromise statute allows unintended consequences to be addressed by the court and bar prosecution if the court feels the interest of justice and fairness merit it. The statute also allows the court to address the compensation issue with which the supporters of A.B. 21 are concerned. Judges can decide contracts and weigh whether or not there is actual or usury consideration.

SENATOR CARE:
When assigned this type of case, are you given an opportunity for some type of dialog with the deputy district attorney or whoever has the case at the onset?

MS. O'LEARY:
We often have discussions and point out de minimis injuries and the fact no medical attention was required. Photographs usually document injury. The response is, I have no choice because our office policy is to prosecute these cases. The definition of domestic battery does not exempt a de minimis injury kind of case. If that level of injury can be proven, it is domestic battery. If unlawful touching with some measure of force can be proven, it is domestic battery, and the discussion is ended. A standard penalty, in terms of negotiation, is offered. Dismissal is never considered because of the way the statute is written.

MR. CONWAY:
It is important to note an injury is not required. There could be no injury, and the person did not even fall down. If that is proven, it is prosecutable as domestic battery.

MIKE SPRINKLE (Nevada Domestic Violence Prevention Council):
Some of the issues raised by the public defenders should be addressed, but are not in this legislation. We ask you to think specifically about the reasons for A.B. 21. The Nevada Domestic Violence Prevention Council strongly supports A.B. 21 and asks you to pass this legislation.

BRETT KANDT (Executive Director, Advisory Council for Prosecuting Attorneys):
The Advisory Council for Prosecuting Attorneys promotes the aggressive prosecution of misdemeanor domestic violence as the best practice for assuring victim safety and offender accountability. For this reason we support A.B. 21.

CHAIR AMODEI:
Did Ms. O'Leary and Mr. Conway indicate they did not present the proposed amendment to the Assembly?

MS. ERICKSON:
I have not seen the amendment.

CHAIR AMODEI:
Since there seems to be consensus on the stereotypical situations, I would ask Mr. Graham and Ms. Erickson to discuss with Ms. O'Leary and Mr. Conway whether they can reach common ground. In light of Mr. Sprinkle's testimony indicating satellite or tangential issues, perhaps something could be worked out that would be agreeable to everyone without compromising the spirit of the legislation in the context of processing A.B. 21. Perhaps they can create an amicable amendment. That being the case, they will inform the staff. If not, the Committee will vote on the bill, as is.

MR. GRAHAM:
Keep in mind that arrests are not made unless there is probable cause for arrest. If it is not probable cause, it does not go. Obviously, there is some discretion involved. We will work with the individuals to address collateral issues.

SENATOR WIENER:
What happens when there is violence and it is impossible to ascertain who started it? Many times there is a presumption the male started the altercation; it is not always easy to determine.

MR. GRAHAM:
If it is a family in a mutual combat situation, both parties will be arrested.

CHAIR AMODEI:
The hearing is closed on A.B. 21 and opened on A.B. 190.

ASSEMBLY BILL 190 (1st Reprint): Prohibits person from entering upon certain property, with intent to surreptitiously conceal himself on property and peer, peep or spy through opening in building or other structure used as dwelling. (BDR 15-631)

ASSEMBLYMAN RICHARD D. PERKINS (Assembly District No. 23):
After spending more than 21 years as a police officer, I found a disturbing problem in our neighborhoods. We have prowlers invading our privacy by peeping into homes. Nevada has trespassing laws but no laws to prevent prowlers from peeping into homes. As a result, police officers have difficulty arresting these individuals. This problem is going to escalate. In fact, police in the Las Vegas Valley receive more than 2,000 calls about prowlers every year.

Imagine yourself or someone in your family, particularly a single woman living alone in her dwelling going about her normal business; a perpetrator goes on her property, sneaks around, conceals himself or herself and looks into the windows. As long as the person does not know it is happening, there is no concern; however, as soon as it comes to his or her attention, it creates terror. They do not know why the perpetrator is there or what the person is doing.

In my experience investigating individuals who commit sex crimes, as well as other perverts that exist in our society, peeping is where it starts. When the pervert is unable to get the same excitement after a while, the behavior escalates into more serious and often violent crimes. The crimes involve weapons, sexual assault and things of that nature.

Assembly Bill 190 would prohibit a person from entering the property of another with intent to spy or peep into a home. As I described, many acts of violence are started by a prowler lurking on private property. We cannot stand by and hope these prowlers do not break into our homes. We must prevent it. This problem has reached the point where some residents have taken matters into their own hands by installing surveillance cameras and watch dogs to alleviate their concerns.

Nevada residents need better protection. There are people being terrorized in their homes, and it is time to enact laws to address the problem. The issue comes down to safety. We must install a higher standard of safety for our neighborhoods. Nevada families deserve peace of mind that the State is doing its best to protect their privacy.

DAN COE (Sergeant, Las Vegas Metropolitan Police Department):
In 1992, the Nevada Supreme Court decided the case of *State v. Richard*, 836 P.2d 622 (Nev. 1992), wherein Nevada's prowling statute, under both the NRS and the Las Vegas municipal code, was deemed unconstitutional. The Nevada Supreme Court decision was supported by a U.S. Supreme Court decision entitled *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), which ruled the prowling statutes were void for vagueness, failed to give fair notice of forbidden conduct and encouraged arbitrary or erratic arrests by police.

Specifically, NRS 207.030 said every person who loitered, prowled or wandered upon the private property of another without visible or lawful business of the owner was a vagrant, and as a vagrant should be punished with a misdemeanor. The proposed statute does not use that language; it is modeled after legislation already passed as constitutional in other states.

This statute was drafted based upon two propositions. First, citizens possess a right to reasonable expectation of privacy from subjects entering upon their property who seek to conceal themselves, peep, or spy on the occupant. Second, citizens have a heightened expectation of privacy that a stranger should not and cannot intrude upon their property with a recording device or deadly weapon.

The need for new legislation in the Las Vegas Metropolitan Police Department jurisdiction is evident in the fact that in 2002, we responded to 1,841 prowler calls; the following year we responded to 1,944 prowler calls; and for reporting period January through October 2004, we handled 1,436 prowler calls. One example of a call was a female home alone in her bedroom with the window open. She heard a noise outside the window, looked outside and saw an unknown male concealing himself in the shrubs just under her windowsill. She inquired as to the reason he was in her backyard, and he responded she should leave him alone because he was only listening and had issues. He then fled over the wall, and when officers arrived, they recovered a knife from the shrubs where the suspect was last seen. The loss of the NRS statute and the

Las Vegas municipal code rendered law enforcement powerless to cite or arrest for any of these types of acts. It is for this reason the Las Vegas Metropolitan Police Department supports A.B. 190.

JOE N. ROY (Officer, Problem Solving Unit, Police Department, City of Henderson):
About one and half years ago, we received a call from a victim regarding an individual in her backyard who had been there several times. When we arrived on the scene, we were able to identify the individual and began working a case against him. It took approximately 14 months to put the perpetrator in prison, but he was not put in prison because of peeping. There were numerous cases of trespassing and stalking against him, but he continued to escalate his actions. He was responsible for burglaries and breaking into cars. He was eventually put in prison for possession of stolen credit cards.

He haunted his neighborhood in a terrorist manner for a number of years, and the citizens in the community felt the police were unable to take care of the situation because of the law. Since then, the Henderson Police Department conducted a month-long surveillance on another perpetrator and arrested him for peeping into various apartment complexes. We followed him through Boulder City, Henderson, Las Vegas and North Las Vegas. He would go into apartment complexes and peek into windows. When we began our investigation, we found he had been arrested 20 years earlier for the same type of activity.

Currently, there is an individual who uses a video camera to peek into apartments. A woman who lives downstairs from the perpetrator noticed a red light in a vent in her bathroom while she was taking a shower. Law enforcement cannot do anything about this individual because there is no law for peeping. I urge your support of A.B. 190.

SENATOR CARE:
Is there anything in the law that addresses a situation in which a person walks through my backyard in broad daylight with a weapon? The person would not attempt to conceal himself, he would just walk through my property without permission from me.

OFFICER ROY:
Law enforcement could arrest the individual for trespassing.

STEPHANIE SCALES:
One night in 2003, after my family and I had gone to bed, I arose during the night to prepare a bottle for my daughter. I was in the kitchen with no lights on when through the window I saw a man sneaking up to the backdoor. I screamed and my husband woke up, jumped out of bed and chased the man. He was unable to catch the man, and we called the Henderson police. The officers came to our house, searched for the man and told us there was a Peeping Tom in the neighborhood. They also informed us the man had been in our backyard for quite some time that night because they found evidence of his presence all over the yard. Obviously, I was uneasy.

In 2004, after taking a shower in the morning, my daughter and I were in a state of undress when I caught sight of a man peeking in the window. I called the Henderson police, and they arrived promptly. They knew the identity of the man and had tried to prosecute him in the past. Since that time, cameras have been installed in my house and lights in my backyard. My sense of safety in my home has been shaken, and my three-year-old daughter watches surveillance cameras every day. I strongly support A.B. 190.

BRENDA WEST:
I live in the same neighborhood as Ms. Scales and across the street from the Peeping Tom. My husband and I moved into the neighborhood in 1999, and a neighbor informed us that his neighbor was a Peeping Tom. Therefore, we were watchful. Every month, the neighborhood association letter came out indicating there was a Peeping Tom, and we should lock our windows and be careful. We knew who it was, but never saw him.

In 2002, the man was caught peeping at a 14-year-old girl who lived 5 houses from him. He had also been peeping at another woman that night. He was charged with two counts of trespassing, one count of evading police and one count of annoying a minor. He received six months for each count, served them concurrently and was released in approximately five months. As soon as he was released, he began peeping again. It was the second time he peeped at Ms. Scales and her daughter.

Ms. Scales and I became friends, canvassed the neighborhood, put out flyers and got the neighbors together. The Chief of the Henderson Police Department assigned the problem-solving unit to our neighborhood and had a meeting informing us the man had been a problem since he was 12 years old. We ask

you to support and pass A.B. 190 because the police cannot do anything to help us, except give the Peeping Tom 6 months for trespassing.

CHAIR AMODEI:
What is the pleasure of the Committee on A.B. 190?

SENATOR WIENER MOVED TO DO PASS A.B. 190.

SENATOR HORSFORD SECONDED THE MOTION.

SENATOR CARE:
I have no reservations with the intent of A.B. 190; however, there are a couple of issues I would like to explore. How do we establish intent of a perpetrator to surreptitiously conceal himself or herself?

SENATOR HORSFORD:
I have a technical question. We passed the video voyeurism bill which established a gross misdemeanor with a person possessing a photographic, digital or video camera. Would A.B. 190 be consistent with the provisions passed in that measure?

CHAIR AMODEI:
If it is agreeable with the maker of the motion and the second, we can work session A.B. 190, which will give Senator Care a chance to consider his concerns, as well as compatibility with the video voyeurism issue.

SENATOR WIENER:
I withdraw the motion to do pass A.B. 190.

SENATOR HORSFORD:
I withdraw my second.

CHAIR AMODEI:
The hearing is closed on A.B. 190 and opened on A.B. 78.

ASSEMBLY BILL 78 (1st Reprint): Makes various changes concerning administration of estates. (BDR 12-592)

JEANNETTE N. WELSH (Nevada Association of Counties):
I will present my written testimony in support of A.B. 78 (Exhibit F).

DONALD L. CAVALLO (Public Administrator, Washoe County):
I support A.B. 78. Section 1 of A.B. 78 deals with NRS 148.105, which places a 10-percent cap on commissions of sale of personal property. Assembly Bill 78 raises the percentage to 25 percent unless a higher rate is deemed necessary to receive preapproval from district court. It would only apply to personal property such as household furnishings and items that belong to the estate. Mobile homes, manufactured homes and motor vehicles would remain at 10 percent. The bill was altered two years ago when there was no commission cap for the sale of any personal property. Assembly Bill 78 is an attempt to bring the commission into a more reasonable percentage.

Section 2 of A.B. 78 adds changes to NRS 239A.075. The first addition is the requirement of a death certificate, which would be provided to financial institutions. Proof of death would consist of a statement or death certificate from the coroner's office to the financial institution, which would help determine the decedent's assets on the date of death. In the past, through a number of vehicles, unscrupulous individuals have gained access to decedent's accounts and cashed them out before the bank was aware the person had died. The banking institution agrees with the change and added a fee up to a maximum of $2, to which we have no objection.

Section 3 of A.B. 78 deals with NRS 253.0403, regarding an affidavit of a public administrator. The current language allows a public administrator to file an affidavit for an estate of $5,000 or under with the district court. Assembly Bill 78 increases it to $20,000, which provides a consistent level within the probate process. *Nevada Revised Statute* 146.080, known as the small-estates statute, would allow family members to file an affidavit up to $20,000 to streamline the transition of the property. After having the affidavit signed by the judge and probate commissioner, the public administrator files it with the district court. The affidavits done by the public administrator are consistent and spell out all the assets within the estate.

A void in the small-estate statute regards a clearinghouse for the filings of affidavits. A person can go to the Department of Motor Vehicles with an affidavit and transfer a car valued at less than $20,000. A person can go to a stockbroker and clear an asset valued at under $20,000. A person can go to

a financial institution and clear an asset under $20,000. A family member can be manipulated, whereas a public administrator provides another step to file the affidavit. Section 5 of A.B. 78 adds language authorizing a trustee to supply information about medical records.

SENATOR HORSFORD:
In section 1 of A.B. 78, would you explain the justification for moving the cap from 10 percent to 25 percent?

MR. CAVALLO:
No numbers in the statute charged a percentage basis for the sale of personal property, and we originally requested it remain that way. It was being done per jurisdiction. The statutes require any sale of personal property be approved by the district court, which was a check and balance system for approving commission fees. However, the Assembly wanted a specific, finite number, which is how 10 percent came about. Further discussions raised the percentage to 25 percent.

I worked 16 years with auction companies in Washoe County for disposal of personal property, and their commission rates were 22 percent up to as much as 35 percent. Disposal of personal property entails picking up the personal property from the residence, taking it to the warehouse, preparing it for auction, storing it until the auction and advertising in local newspapers. An estate sale is required to be advertised three times in a ten-day period. There are a number of additional costs involved in the sale of personal property; even at 25 percent, the auction companies may not be compensated for the work they do in the process.

The intent was to make it a viable and proper way to sell the assets of an estate, while allowing auction companies to conduct business. I am not an auctioneer and have no interest in auction companies, other than they are a valuable part of the liquidation of the estate assets.

SENATOR WIENER:
If there was no definition of a commission or the cost of selling, what was the industry-standard range prior to your effort to change it to something specific?

MR. CAVALLO:
The original bill had no cap on commissions, and the Assembly suggested 10 percent. At the end of that process, I notified all public administrators in Nevada of the 10-percent cap and sent letters to every auction company in northern Nevada and the Las Vegas area. The auction companies could then be part of the process, explain what is involved in the sale of personal property and what would be a more reasonable cap. I feel 25 percent is a reasonable cap because the auction companies with which I have worked in Washoe County have historically used that percentage. That percentage has also been used in district courts, as well as bankruptcy courts. The estates I deal with are not the larger more valuable estates; the higher percentage made it more financially reasonable for auction companies.

CHAIR AMODEI:
Changing $5,000 to $20,000 involved an affidavit, a summary proceeding and regular probate. Has the affidavit changed to $20,000 for anybody? Where is the summary?

MR. CAVALLO:
In statute, apart from the public administrator's office, the small-estate affidavit is signed by family members up to a maximum of $20,000; a set aside proceeding is zero dollars up to $75,000; the summary process is $75,000 to $200,000; and full administration is anything over $200,000. A number of years ago, the public administrator's office determined the cost of administering a $4,000 estate and petitioning the court only paid the funeral and attorney's fees. The public administrator's office did not receive a fee for processing small estates. Public administrators now have the ability, up to $5,000, to administer estates pro per, which has streamlined the process.

Although small estates are not returning much revenue to creditors, some is returned to them because the fees on the process have been curbed. Raising it to $20,000 will enhance the process. Approximately 60 percent to 65 percent of cases that go through my offices in Washoe County consist of estates valued under $20,000. Attorney fees for small, set aside proceedings can run up to $2,500 and almost $3,000, due to the cost of advertising and hourly wages. To bring the threshold from $5,000 to $20,000 will save the cost borne by estates and return more of the assets to the creditors and the beneficiaries.

CHAIR AMODEI:
Does this bring public administrators on a par with what is available to family members insofar as the affidavit?

MR. CAVALLO:
That is correct.

STEVE ZUELKE (Arundel Auctions):
I represent Arundel Auctions in Carson City. Arundel Auctions and I presume the vast majority of auction and professional liquidators in the State would be in favor of A.B. 78. I will address section 1 of A.B. 78, which has the most contention. The question primarily raised pertains to percentages paid professional liquidators. The important factor is professional liquidators are just that, they are professional. The 25-percent cap does not mean a specific and set fee. The cap can, in fact, be exceeded in the event circumstances warrant such. For instance, a few years ago, there was a little hotel casino called Sharkey's in Gardnerville. The individual had an extensive collection of Western memorabilia which ultimately sold at auction for in excess of $2 million. That commission did not rate 25 percent.

In the event of a larger estate, individuals such as Mr. Cavallo, who are hired to protect the public interest, would recognize such an estate as valuable and would not normally award a 25-percent commission. As he pointed out, most of his estates are under $20,000. In the vast majority of estates handled by a professional liquidator, the combination of personal property and automobiles is frequently $10,000 or less. Professional liquidators have overhead, such as labor and advertising. An important factor is to keep professional liquidators involved in the process because they have the experience to realize the maximum value of an estate.

Assembly Bill 78 not only affects estates liquidated through a public administrator, it affects estates under any court jurisdiction. We have all seen the *Antiques Roadshow*, wherein a person bought an article at a yard sale for $5 which is worth $50 million. I will cite some local examples. Arundel Auctions liquidated an estate for a family in Carson City who had several nice pieces of art work, one of which was identified as a fairly rare, original painting. If they had liquidated the item themselves, they would have realized about $50; the painting was subsequently sold at auction for almost $3,000.

Another example was a piece of World War I memorabilia an individual placed in a yard sale for $15, prior to coming to Arundel Auctions. It now resides in a museum in Europe and was worth over $1,000 to the individual who bought it. Professional liquidators bring a wide variety of abilities to this particular practice. They come on-site, pick up items, move them to a location and sell them through a single public auction or an on-site sale. They also locate unusual pieces and sell them through an Internet auction. The key is to maximize the value of the estate.

A bone of contention has been that 10 percent maximizes the interest in the estate. With a cap of 10 percent, professionals will not be interested because it is not worth their time; or else, they will accept 10 percent and bill for every single expense incurred beyond 10 percent. At that point, 90 percent of the value of an estate will realize $5,000 using a nonprofessional, or 75 percent of an estate will realize $10,000. There is a difference of about $2,500 which is something professional liquidators will bring.

In the same vein, professional liquidators have a close working relationship with public administrators. Without earning the trust of public administrators, professional liquidators lose a source of business and revenue. In that regard, it is not in their best interest to undervalue an estate to a public administrator. In that event, the public administrator would not continue to utilize us because there is nothing for them to gain. We strongly urge you to support A.B. 78 as written.

CHAIR AMODEI:
What is the pleasure of the Committee on A.B. 78?

SENATOR WASHINGTON MOVED TO DO PASS A.B. 78.

SENATOR CARE SECONDED THE MOTION.

SENATOR WASHINGTON:

I withdraw my motion to do pass A.B. 78.

SENATOR CARE:

I withdraw my second.

CHAIR AMODEI:

The Chair requests a motion to introduce Bill Draft Request R-1426.

BILL DRAFT REQUEST R-1426: Urges Washoe County and City of Reno to study feasibility of colocating or unifying Justices' and Municipal Courts. (Later introduced as Senate Concurrent Resolution 21.)

SENATOR WASHINGTON MOVED TO INTRODUCE BDR R-1426.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR McGINNESS AND SENATOR NOLAN WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
There being no further business to come before the Committee, the hearing is adjourned at 10:52 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: