

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

**Seventy-Fourth Session
February 20, 2007**

The Committee on Judiciary was called to order by Chair Bernie Anderson at 8:17 a.m., on Tuesday, February 20, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chair
Assemblyman William Horne, Vice Chair
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary

Minutes ID: 270



OTHERS PRESENT:

Rob McCorkle, Lieutenant, Henderson Police Department, Nevada
Cotter Conway, Attorney at Law, Deputy Public Defender, Washoe
County
Susan Meuschke, Executive Director, Nevada Network Against Domestic
Violence
Ron Titus, Director and State Court Administrator, Administrative Office
of the Courts, Carson City, Nevada
Rick Loop, Nevada District Judges Association, Eighth Judicial District,
Clark County, Nevada

Chairman Anderson:

[Meeting called to order and roll called.] Mr. Oceguela, would it be acceptable to you if we moved Assembly Bill 58 to a later agenda?

Assemblyman Oceguela:

That would be fine if you delayed it.

Chairman Anderson:

A.B. 58 will be reposted in the first week of March.

Let us turn our attention to Assembly Bill 45.

Assembly Bill 45: Revises the factors used in determining the unfitness of a parent as grounds for terminating parental rights. (BDR 11-135)

Rob McCorkle, Lieutenant, Henderson Police Department:

I am here on a professional level but also on a personal level to tell you the story of the last five years of my life. I approached my Chief, Richard Perkins, approximately a year ago to get this bill in front of you for this legislative session. I felt it was a bill that needed to be put in front of the people, and an amendment needed to be made. This will have no personal impact on my situation or what I am going through right now with the family courts, but it may impact other people who will face the same situation.

In November of 2002, I filed for divorce, and my daughter was then three years old. Everything at the beginning of the divorce seemed to be fine. I went through the family court system, which is an extremely tough system, especially for fathers. I accepted that it would be hard going in, and I did the best I could to represent myself by hiring attorneys and trying to be as fair as possible. During that process, my ex-wife chose a different path. She chose a

path of lies, manipulation, deceit, and outright criminal activity. I was basically dragged through the mud for about a year and half. During that time, there were false criminal cases filed against me and Child Protective Service (CPS) was constantly brought in. After a year-and-a-half, everyone finally saw through the smoke screen. Las Vegas Metropolitan Police Department, Henderson Police Department, the head of CPS, and the Family Courts all finally got involved and determined that my ex-wife was manipulating the system. I voluntarily subjected myself to numerous polygraphs, interviews, and whatever it took. She obviously refused. After a year and a half and approximately \$50,000 in attorney fees, I was finally awarded primary physical custody of my daughter. I thought it was finally over, but it was not even close to over.

In April of 2005, I received a phone call from a lieutenant stating that a plot had been uncovered to have me murdered. I was told that my ex-wife was attempting to hire someone to have me killed. I terminated all contact with my girlfriend at the time—who is now my wife—for approximately six months, while we figured out what was going on. My ex-wife was finally arrested in June of 2005, after a lengthy sting operation. Between April and June, I was forced to continue contact with my ex-wife and continue to give her custody of my daughter on the weekends to portray myself as not knowing anything was going on. I could not say anything, I could not change my habits, and I could not do anything to protect myself that may have tipped her off that we were aware of what was going on.

In June of 2005, she was arrested, and in 2006 she was convicted of solicitation of homicide. She received a sentence of three to seven-and-a-half years. The solicitation of homicide is one of the most heinous and calculated crimes. It is one thing to walk up and murder someone—that may sound cold, but it can be just a momentary lapse of judgment—but solicitation of homicide is not a momentary lapse of judgment. It is a calculated crime. It takes planning, intent, and a long period of time to be able to find, organize, and pay to have another person murdered. As a police officer, I can say that it is, without a doubt, one of the most heinous crimes on our books.

My concern today is about parental rights. You would assume that by this crime having been committed against me, the primary physical custodian of my daughter, that it would terminate my ex-wife's parental rights. That is not true. During her time of incarceration, she has continued to manipulate the courts, lie, harass me, and harass my attorneys because now that she is incarcerated, she gets free attorney representation. I have a wife who gave birth to triplets four months ago. Now, I not only have to think about the protection of my daughter, but I also have my wife and three new babies to think about. My ex-wife is up for parole in June of 2007 and her mandatory release date is in

February of 2009. I have tried to think of any way I can protect my family. The main thing I thought of was to get her parental rights terminated and eliminate all contact. I then proceeded to start researching law.

Nevada Revised Statutes (NRS) 432B.393, Section 3, gives the State the right to terminate parental rights of someone found guilty of solicitation of homicide, only in the case that the State has custody of the minor child. For example, Assemblywoman Allen, let us say that you are a single parent and had chosen to commit this crime. Your child would end up in the custody of the State. If that were the case, upon conviction, the State can automatically terminate your parental rights, put your child up for adoption, and move on. As the father of this child, I do not have that right. I do not have the right—as the victim of this crime and as the primary custodian of my daughter—to have my ex-wife's parental rights terminated. I am now stuck in a court battle in which she has court-appointed attorneys, and I am paying \$300 per hour to an attorney to beg the courts to terminate her rights. I filed the paperwork to have her rights terminated over a year ago. We are finally scheduled to go to court in May. The total cost to me for the parental termination is going to be in excess of \$25,000. My retirement is gone, and my children's college fund is gone because there is nothing to protect me in the State law. I do not have the right to terminate her parental rights, and I do not think that is fair or proper, and it needs to be fixed.

About a year ago when I started this process, I approached Richard Perkins, who was the Speaker of the House, and asked him to help me. We put together the amendment before you in the attempt to save other people the suffering that I am going through right now. I cannot fix what she has done, or change the past. Like I said, this bill will have absolutely no effect on what I am going through right now. What I am asking you to do is to look at what is going on and what has happened. In the end, I am asking you to change the laws to protect people in the future who are victims of crimes like these. I greatly appreciate your time and I hope you take this into consideration.

Chairman Anderson:

I am more aware of the solicitation of murder issue than you might believe. A close family member of mine was murdered that way in a divorce proceeding. I can tell you from personal experience how that affects all members of the family and how fortunate you are that they were not successful. I am concerned because I do not see anyone here from the District Attorney's office that might want to discuss this question. Voluntary manslaughter is also included here, which is a much broader general topic. In drafting the legislation, had you made that part of your choice, or is adding voluntary manslaughter a choice the bill drafters made?

Rob McCorkle:

I did not write the voluntary manslaughter section in the bill. The only thing that I added was the solicitation of homicide because it was the only significant difference I saw in the State's rights to terminate compared to the parental rights to terminate. I do not believe the voluntary manslaughter section should be in the bill because it is too broad of a definition. Solicitation of homicide is very specific. Voluntary manslaughter is often a plea bargain down from other crimes.

Assemblyman Horne:

Could you not achieve your objective if the bill was more specifically addressed to solicitation to commit murder of the other parent? The reason I ask for that distinction is, as you stated in your testimony, sometimes people make ill-advised choices. Someone could solicit murder to someone other than a parent and get a sentence of three to seven-and-a-half years, but it does not really reflect whether or not they should be the parent of their child when they get out, and if they should still have that relationship when a parent is not involved. In your situation, clearly there are interfamilial issues with a shared child. In instances where it may be the same crime but outside the family, say for instance, a person's boss. Should that parent do his time for that solicitation of murder, but then be denied that relationship with his child for the rest of his life?

Rob McCorkle:

I did not put that in because it did not accurately reflect the wording of the law in regard to the State terminating parental rights. I believe that is a good defining point, but the wording in the State law specifically says "murder and solicitation of murder." It does not say with or without a parent, so therefore, I did not add that verbiage. Obviously, my case is specific to a parent upon parent, but it could possibly be parent upon another family member.

It comes down to the fitness of the parent who is willing to commit such a crime. It is such a heinous crime that requires such calculation, deceit, and violence of spirit that whether the crime is committed against a parent or anyone else, in my view, is an irrelevant point. Such a heinous crime automatically brings into question a person's ability to parent and raise a child in a way that is conducive to being a member of our society. I do not personally feel it needs to be so drastically defined as to state just a parent. If that were to be the decision of the Committee, then I will take what I can get. My ultimate goal is to protect people who are in a situation like mine, in which the crime was committed against the parent. The wording is put in so that it matches the wording of the other State law.

Assemblyman Horne:

Not to be argumentative, but we have other crimes that we may be pulling in as well by questioning the fitness of parents to raise their children. Sexual assault, for instance, is not in there. Someone could be paroled for that crime and still have parental rights. That is just one example of a crime that we may pull into this, using that standard. That is my concern, and I would like to find a way to draft it so we can get exactly to where we are trying to get to.

Rob McCorkle:

Absolutely, I completely understand your point.

Chairman Anderson:

Line 24 of Section 1, subsection 6 says "conviction of the parent for the commission of a felony." That phrase was not sufficient grounds—you wanted it specifically listed?

Rob McCorkle:

The problem with the felony section of that statute is that it has been pretty much rendered null and void by judges because numerous other felony offenses would technically fall into that category. Unless it is specifically defined in the statutes as a reason for terminating parental rights, our family court judges do not terminate. My intent was to make this bill to accurately mirror the acts of the State. Then, if you commit this crime, this State will—and is not required to do anything but—terminate your parental rights. There is a whole list of factors that are not automatic termination of parental rights issues. They are taken into the totality of the circumstances and the judge can decide. When you are talking about specific termination of parental rights, as in Chapter 432B of NRS, it is basically automatic within the State. If those crimes are committed, your rights are terminated and the child is then either adopted out or given to another person. That is what I am trying to get to with this bill.

Chairman Anderson:

I think Mr. Horne's point was the danger of us creating a laundry list by stepping up to this.

Cotter Conway, Attorney at Law, Deputy Public Defender, Washoe County:

We are to some degree opposed to this bill because it does not directly address the concerns. I have prepared and submitted to the Committee written comments ([Exhibit C.](#)) I sympathize with the lieutenant, and I do agree that the solicitation of murder is a heinous crime. But I do not believe that this will result in automatic termination anyway. Looking at the language of A.B. 45, the "conviction of the parent for murder, voluntary manslaughter or solicitation

to commit murder," would be something that the court "shall consider that may diminish suitability as a parent." I do believe that subsection 6—the commission of a felony—does cover that as a consideration. Chapter 432B of NRS is where this should be stated if we are truly going to be addressing the concerns of the lieutenant. This does not do that, and this is already covered in subsection 6. My comments in written form give examples of where both murder and involuntary manslaughter would not be a real reason to suggest that the person is not fit as a parent. You would have to look at them through case-by-case analysis and determine whether or not the person is unfit as a parent.

Assemblyman Cobb:

So it is the position of the Washoe Public Defender's Office that the judge should not even consider the solicitation of murder for removing parental rights?

Cotter Conway:

No. That is already to be considered under subsection 6. It states "conviction of the parent for commission of a felony." The judge should consider those facts and make a decision. I think this is being considered under existing statute, and given the comments of the lieutenant this morning, it seems likely that his concerns are really with the State having an automatic right to termination. Therefore, it should probably be addressed in the area of solicitation of murder. The court is obligated to consider that, and it is already considered under the language of subsection 6.

Assemblyman Cobb:

Is voluntary manslaughter a felony?

Cotter Conway:

Yes, voluntary manslaughter is a felony.

Assemblyman Cobb:

In the testimony you passed out, it says voluntary manslaughter is sometimes not that bad of a deal. Do you not think that the judge should consider that, even under subsection 6?

Cotter Conway:

No. I am saying that they should consider it, but they are allowed to weigh the circumstances under subsection 6. Clearly, I gave a couple of examples in my written testimony where the person was involved in a family argument and discharged a gun. An individual was killed by a deflection. That person was granted probation. That does not have anything to do with the fitness of a parent, but it is certainly a consideration. It was a young girl who was 19 at

the time of the manslaughter. Again, you have to look at everything and let it be weighed by the court.

Assemblyman Cobb:

The lieutenant's testimony was that often judges are glossing over subsection 6. I think the intent by the lieutenant was to have these areas carefully reviewed and considered when discussing termination of parental rights. I think that is entirely appropriate and it is sending a message to the Judicial Branch that we will not tolerate murder, voluntary manslaughter, or solicitation to commit murder. Again, it is discretionary. All we are asking them to do is consider these things.

Cotter Conway:

I agree, and I understand the seriousness of it. I do not believe this particular amendment changes what subsection 6 already says. I do not know if this is the appropriate avenue to add this to the law. I agree that it should still be done, and I am very interested in what the legislation was that he referred to that says that the State has an automatic right to terminate parental rights. If it is that serious for the State, maybe changing that piece of legislation should be looked into. All this does is tell the court to use its discretion so it does not really change anything that already exists. Given the comments in my written testimony, you need to be able to weigh the facts of the case.

Assemblyman Cobb:

So you agree that this does no harm?

Cotter Conway:

It is not a question of whether it does harm. I do not think it is a necessary amendment because it is not changing what already exists in subsection 6.

Chairman Anderson:

Is there anybody else who wants to be heard on A.B. 45? [There were none.] Let me close the hearing on A.B. 45. I would like to ask Research and Legal to look at the question that was raised in testimony relative to the State statute so that we are clear if we are going to move with this. We need to consider whether we wish to begin to make a laundry list of issues that the court will be dealing with, or rather, whether we are clarifying the specific heinous nature of a murder for hire. Voluntary manslaughter is not what they seem to be trying to get to here. Ms. Lang, could you clarify that for us?

Risa Lang, Committee Counsel:

This was partially taken from NRS 432B.393, which talks about children who are taken into protective custody. It discusses when there must be efforts made to reunite children with their families and, it says:

An agency which provides child welfare services is not required to make reasonable efforts required by subsection 1 if the court finds that a parent or other primary caretaker of the child has committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter.

I think that is where the voluntary manslaughter wording came from, and that is perhaps what he was referring to in terms of the State having the ability to take children away from their parents.

Chairman Anderson:

There seems to be a level of consistency with existing State statutes from which the voluntary manslaughter wording came. When I use my reference guide, I see some circumstances where there is a dramatic difference between solicitation of murder and voluntary manslaughter. The Committee needs to decide if we want to begin to create a list or whether we feel the existing statute is efficient. Are there any observations before we move away?

Assemblyman Horne:

When terminating parental rights, you do not terminate parental rights solely of that parent. That termination extends through that family lineage, for example, the grandparents or the inheritance. There are always issues on grandparents' visitation, but those would be further implicated by terminating rights as well, which is something to keep in mind.

Chairman Anderson:

Let us turn our attention to A.B. 52.

Assembly Bill 52: Makes various changes relating to domestic relations.
(BDR 11-421)

Assemblyman Carpenter:

[Read from prepared statement ([Exhibit D.](#))] People from the Nevada Network Against Domestic Violence (NNADV) would like to explain their reasons for their amendment.

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:

[Read from prepared statement ([Exhibit E.](#))]

Chairman Anderson:

As you may or may not be aware, I co-chair the Advisory Committee for the Central Repository. One issue that comes before that Committee is the ability to fund the many programs that it is required to do. For example, we recently dealt with concealed carry issues, and we also have to put out community notification of people in the community who are sexual offenders. Public access to that information is very high. If we are to take your amendment, it would require the analyzing of data in such a way to differentiate between the number of restraining orders that were carried out and those that were not delivered. The raw number we can report back to the original source—the court system—and then repealing that through the Administrative Office of the Court (AOC) is a function of numbers. But the analysis of how many have fallen into one category or another may be a different kind of methodology. Do you see my concern?

Sue Meuschke:

I certainly understand your concern. I am not the best person to talk about how much money it would cost them to analyze this. We were helpful in getting grants to create the repository so that the cost to the State of developing the technology and software, and the training for court clerks, was absorbed through this grant fund, rather than through the State. I do not know how much time it would take to create the queries to pull out the data in order to report this. I cannot give you that dollar figure, but once that query is developed, it can be used over and over again. The data sits there; it is being collected as we speak. My concern is that there is no reporting of that data, so we have no way of really understanding how effective the temporary protection order (TPO) process is.

Chairman Anderson:

Looking at the mere counting of TPOs and the detailed information that you are asking for are two very different things. I do not know if they are currently gathering the statistical information by queries, or if their format is also the format required by the courts to gather that information. Whether this is practical is the question.

Susan Meuschke:

There are people from the Administrative Offices of the Courts (AOC) here to testify who would certainly be more informed than I.

Chairman Anderson:

Are there any questions for Ms. Meuschke or Mr. Carpenter?

Assemblyman Horne:

In Section 1, paragraph 8, subsection (j) says "the award, other than child support and alimony, of the spouse who would receive the alimony." It is unclear as to the award of what. There might be a word missing or something.

Chairman Anderson:

Ms. Lang, on page 4, subsection 8 j, lines 15 and 16—is this a bill drafter's error?

Risa Lang:

Each paragraph was taken from the case law so I just need to look at the case law and see if we missed something here.

Chairman Anderson:

Is there anyone else wishing to testify in support of A.B. 52? Mr. Titus, I see that you are neutral on this bill and wish to speak, and then I also have someone against who wishes to speak.

Ron Titus, Director and State Court Administrator, Administrative Office of the Courts:

We are neutral on this bill, but I do think there may be a more efficient way of collecting this information in the criminal history repository. I talked with Mr. P.K. O'Neill this morning concerning this bill and he may have something to say on this as well. I have seen reports from the criminal history repository on the number of TPOs filed. I have seen those reports broken down into those against men and those against women. I have also seen reports from the repository on TPOs that have been served by the Nevada Highway Patrol (NHP.) The way the repository currently works is when a warrant is sent into the repository, it pulls up information concerning an unserved TPO. At that time, the officer can serve that order. I know they do keep some information on TPOs. Several years ago, as Ms. Meuschke mentioned, we worked very closely with the criminal history repository to create that repository and to ensure that the courts could actually use that program to enter that information into the repository and create the TPO at the same time. The main concern of Mr. O'Neill is getting the TPOs into the repository. Not all of the courts are currently using that particular program to create their TPOs, and there are a number of courts sending copies of the orders to the repository. Then the repository has to enter those, which takes time and manpower. We are working closely with the criminal history repository to ensure that all courts can electronically transfer that information into the repository. Again, I cannot necessarily address the cost to the repository for the additional information that Ms. Meuschke has suggested, but it may require some authorization of the TPO as well to ensure that information is easily gathered. The courts would have to

set up an entirely new system to collect this information. That system is pretty much already in place with the criminal history repository.

Chairman Anderson:

Have you had an opportunity to review the suggested information from the Nevada Network Against Domestic Violence (NNADV) submitted by Ms. Meuschke?

Ron Titus:

I just saw that this morning. She did give me a copy of her proposal. I think Mr. O'Neill would be the best person to address a lot of these issues. I do now know what would be required as far as expired TPOs. They fall out of the database or they are put in another part of the database based upon dates. Mr. O'Neill would need to have his staff take a look at this to see exactly what would be required.

Chairman Anderson:

Would it be possible for you and your office to determine which of these are currently normal parts of the court function? I believe that subsection 8, clauses b, c, e, and even f, may be part of what you normally do, whether it is granted to a woman or a man, whether they vacated or expired, and whether the custody of the minor child was involved in the TPO. Those things all seem to be pretty well stated. That would probably be more a function of numbers in terms of how long they last. If you could evaluate the suggestions and get back to us on that, it would be helpful. The question of TPOs is an ongoing issue, and I would not want to see us lose ground on the domestic violence issues that are in front of us. A meaningful response from the court to the central repository of information is what we are really looking for here, in addition to the issues Mr. Carpenter raised in the initial bill. You do support the original bill?

Ron Titus:

Yes, we support the collection of information, but we just think it would be more effective to do this through the criminal history repository.

Chairman Anderson:

Would the original bill, as put forth by Mr. Carpenter, present an unusual hardship for the courts in terms of substantiating the Rodriguez decision and the *Sprenger v Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994), decision, and setting up this rubric so that some of the problems can be avoided? Nobody in the courts had any difficulty with the initial bill?

Ron Titus:

Mr. Loop may be better able to address that and clarify these issues on the record. It is my understanding that the courts are neutral on this and have no problem with it.

Assemblyman Carpenter:

I would be willing to talk to Mr. O'Neill and get his take on this.

Chairman Anderson:

I was going to do that. We want to make sure that we are not putting an unfunded mandate on an agency that has been over-taxed in the past. Is there anybody else who feels it is a necessity to speak on this bill?

Rick Loop, Nevada District Judges Association, Eighth Judicial District, Clark County:

The judges are neutral on this bill. However, it does create more work for them in each individual case. Their caseloads are high and that is a concern. But as you can see, no one has come forth to testify against the bill because they are neutral.

Chairman Anderson:

In codifying this bill, there is going to be a paperwork process for the courts, taking into consideration the precedence that has already been set in these cases that are now being codified in the State law. All we are doing is taking past practices of the court and putting them into statutory language.

Rick Loop:

That is correct.

Chairman Anderson:

Is there anyone else who feels that information needs to be put into the record on A.B. 52? Hearing closed on A.B. 52.

We have the amendment that has been suggested by the NNADV. We would like to have information from Mr. P.K. O'Neill—who is with the technology division of the Department of Public Safety—and has the responsibility of putting this information into the system. We also need to check with the AOC on whether the formulations of information on the forms that are currently being used are as suggested in the amendment. If we are going to move forward with the amendment, we need to have those pieces in place. Are there any other open questions or issues to come before the Committee today? [There were none.]

[The meeting was adjourned at 9:28 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 20, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 45	C	Cotter Conway	Prepared Testimony
A.B. 52	D	Mr. Carpenter	Prepared Testimony
A.B. 52	E	Susan Meuschke	Letter to Chairman and Committee