MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
March 2, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:08 a.m., on Friday, March 2, 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, Chairman
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 James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Oceguera (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Bonnie Parnell, Assembly District No. 40

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dave Churchey, Private Citizen, Carson City, Nevada
John Tatro, Justice of the Peace, Municipal Court Judge, Carson City, Nevada
Mike Sprinkle, Nevada Counsel for the Prevention of Domestic Violence, Reno
Ed Flagg, President, Nevada Corrections Association, Carson City
Susan Meuschke, Director, Nevada Network Against Domestic Violence, Reno
Frank Adams, Nevada Chiefs' and Sheriffs; Association
Kimberly Surratt, Jenkins Law Office, representing Nevada Trial Lawyers Association, Reno

Chairman Anderson:
[Meeting called to order and roll called.]
We have BDR 4-1180, a piece of legislation that I requested before session.

BDR 4-1180—Makes various changes to provisions governing the admissibility into evidence of certain statements made by certain young children. (Later introduced as Assembly Bill 237.)

ASSEMBLYMAN HORNE MOVED FOR COMMITTEE INTRODUCTION OF BDR 4-1180.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (Assemblyman Oceguera was not present for the vote.)

Let us turn our attention to Assembly Bill 112.

Assembly Bill 112: Makes various changes to provisions governing protective orders. (BDR 3-48)

Assemblywoman Bonnie Parnell, Assembly District No. 40:
I am here to introduce A.B. 112. I would like to spend a moment to give a brief history of this issue in order to put this bill into context.

During the 2001 Session, I introduced and we passed A.B. 377, which added violators of temporary protective orders (TPO) to the 12-hour cooldown period which was already in statute for other violations. That bill was created in response to a murder in Carson City. Shortly after an individual had been released from jail on a TPO violation, he drove to the victim's home and murdered him. A year ago last fall, the same fate befell a mother of two in Carson City, who had a stalking order against her former boyfriend. It was at that time that I began to consider the issue of officer discretion in determining who should be held for a 12-hour cooldown after a TPO violation. In the original bill, the decision about holding the offender for a 12-hour period was left up to the discretion of the arresting officer. After the death of the mother in Carson, I looked back at the bill and wondered why we did not tighten that up a little bit. At the time, the only discretion used by the officer was if there was a direct or indirect threat of harm. The bill you have before you, A.B. 112, will eliminate officer discretion when the violator is under the influence of alcohol or a controlled substance, or if they have previously violated a TPO or an extended order for protection. This will ensure when somebody is under the influence and violating an order of protection, or, if that person has previously violated a TPO, they would automatically be held for a 12-hour cooldown period.

The bill also extends the same exception to discretion for individuals regarding temporary or extended orders for protection against stalking, aggravated stalking, or harassment. That was an area that was not taken care of in the prior legislation. I know this will not end the tragedies we read about or are touched by, but when I looked at what the law currently says, this just made common sense. If somebody is repeating a violation, or if they are in an aggravated state enhanced by alcohol or a substance, the likelihood that tragedy will occur is going to be increased greatly. By passing this law—by adding a couple of exceptions to the discretion—we might be able to protect additional individuals and save the lives of some.

Dave Churchey, Private Citizen, Carson City, Nevada:
The second case that Ms. Parnell alluded to was our 40-year-old daughter. She was brutally murdered after having several TPOs served against the gentleman

that took her life. I know the law is not changed quickly or simply, but things need to be added to it. This is from Detective White after the murder. He is responding to shots fired. The report states:

> It is important to note that I responded to 2076 Hawaii Circle on July 2nd, 2005 in reference to a possible burglary that had just occurred. Dispatch informed me while in route that the suspect had left the scene. I arrived and spoke with Shelly Hachenberger. She said she filed for a TPO against Chris Rasmussen. She advised that Chris was avoiding service and that he was just on her premises looking through the window. Shelly said 'Chris is going to kill me. I cannot even bring my kids home because I do not know what he is going to do.' Shelly was hysterical and crying. Several deputies attempted to locate Chris to serve him with the restraining order. We did not find Chris that day.

Shelly Hachenberger was our daughter. This report was filed on July 2, and she lost her life on July 18 because this individual could not be held. My daughter sincerely believed that our law enforcement system would protect her. Shelly had made the correct decisions. She was engaged to this gentleman and found out that he had issues with drugs, so she wrote him a letter telling him that it was over because she had to take care of her children. As her father, I feel that was a high point because she was doing the right thing.

I will give you a few facts of this case because it is the only one that I am 100 percent familiar with. This gentleman had a history of violence. He was well known to the sheriff's department, so there was a predisposition for this to happen. Can you imagine being the deputies trying to serve an order on a gentleman who had already violated a TPO at least twice, knowing that he had a stash of weapons, knowing that he was a violent person, and not being able to go into his home to serve him? This gentleman obviously knew the ins and outs. Now imagine being the deputy that gets a call a little after 7 a.m., right at shift change, and having to return to find that person who they personally knew—they had just been there—literally shot to pieces. It has to be a very tough job for the officers on the street. Every change that can be made without taking away rights needs to be seriously considered. This is going to continue, there will always be tragedies. This is a simple thing, not a major change; it is a tweaking of something that is already established. Twelve hours is a long time for a person to be put into a position where they cannot harm somebody. It can be the difference between life and death.

In this case, something as simple as this bill that Ms. Parnell has presented would have made enough of a difference to perhaps allow the mother of our

grandchildren to still be alive. Sometimes it is the little things that make a major difference.

Chairman Anderson:
I want to make sure that the TPO was actually served. Is it the fact that when they did serve it, they felt this individual was under the influence? Or is it that this was the third TPO that had been served on him? That would have put him in jail for 12 hours if this law was in effect at the time.

Dave Churchey:
The situation could have been altered. The TPO had been served and this was not the first TPO he had violated. Right before this, he attempted to run my daughter off the road with his motorcycle. He was arrested, and he then bailed himself out with a credit card.

John Tatro, Justice of the Peace, Municipal Court Judge, Carson City:
I am not here on behalf of the Nevada Judges Association. This is a bill that we did not even discuss. I am here personally in support of this bill. In the first case that Ms. Parnell discussed, the man got out of jail and murdered the victim immediately. I had a protective order hearing with the murderer several weeks before this happened. I told him, "You scare me. You are the kind of person we read about. You are the kind of person this law was designed for." I warned the people in the courtroom that there are very few people who come in that I really feel that way about. There are certainly cases that are warranted, scary and violent, but this was one of those that I just sensed—and in fact the psychologist did too—that this was a problem. In that case he was bailed out and murdered the victim.

I clearly recall the morning that Chris Rasmussen bailed out and committed that horrible crime. Had I seen him—and I would have seen him had he not been able to bail—he would have stayed in jail. This is one of those bills that just makes sense. You have to put yourself in the place of the defendant, the person who has the order against them. Imagine being served an order that says, "You are ordered to stay away from this person. If you violate this order, you are going to go to jail." No one can recall orders except the judge–not even the protected party can recall the order—but they still make the conscious decision to violate it. That is when things go up several notches and get scary. That is why, once someone gets arrested for violating an order—and I understand they are innocent until proven guilty, but it required probable cause to get that far—probable cause is looked at when setting bail. Just the other day, I had a protective order hearing where the gentlemen went from the hearing to the place he was not supposed to go. He had a big knife on him when he got there. I do not know what would have happened, but fortunately

in that case, my bailiff and I alerted police officers. They arrested him right away and he was charged with other things, so he stayed in jail.

Many of these people have lost sight of reality, especially if they are drunk, on drugs, or if they have violated an order before. If they have violated an order before, then they need to stay in jail until the victim can arrange to move, hide, or figure out protection. The bill just makes sense to me, and it allows for some discretion as well.

Chairman Anderson:
Are there questions?

Assemblyman Manendo:
Is it good public policy to keep a person who is under the influence of alcohol or a controlled substance for the 12-hour cooldown?

John Tatro:
I think it is a good policy. I know our jail in Carson City usually just does it as a matter of routine. If someone is under the influence, they do not let them bail until they are completely sober.

Under the influence of drugs is a different story. That test is more complicated. The officers are going to start checking and looking at people differently than they do now with this in the law.

Assemblyman Manendo:
How do they test for drugs?

John Tatro:
One thing they can do is have a drug recognition expert come in. In Carson City, we have drug recognition experts in the sheriff's department available most of the time. Some rural areas do not have those available. You can do a urine test, but you cannot order everyone who comes in to submit to a test. In our jurisdiction, if they are on probation, their probation terms would include a search and seizure clause and they can be forced to test.

Assemblyman Manendo:
I agree with you and I think this is worthy legislation. When you say the word sober, what level is that?

John Tatro:
I do not know what the sheriffs' or police chiefs' policies are, but I order that they be at level 0.00 before they are released. However, those are only the

cases that I am involved with. I do not have a blanket order in the jail that says that no one can be released until they are at a level 0.00.

Assemblywoman Parnell:
I should add that the man accused of murdering Shelly Hachenberger was a methamphetamine addict. When we look at the language "under the influence of alcohol or a controlled substance," we have to remember that there has been a huge increase in methamphetamine use and the problems associated with those on methamphetamine. I think that kicks it up another notch when we look at that language and consider the population out there that is under methamphetamine with a TPO or a stalking order, and what you might see as a result.

Chairman Anderson:
I see no other questions for this group.

Mike Sprinkle, Nevada Counsel for the Prevention of Domestic Violence, Reno:
We stand in strong support of this bill. We are concerned that when you start categorizing specific individuals, this may either prevent or cause peace officers to overlook the original law, which requires the 12-hour cool-off if the violation order is accompanied by a direct or indirect threat of harm. That needs to be the overriding sense that the police officers take into these scenes. We do not want them to be specifically looking for someone who is under the influence and forget the other mitigating factors. The 12-hour cool-off periods are especially important when we are talking about spontaneous acts of violence, which are really what we are talking about here. This is of great concern to anyone in the domestic violence prevention arena, and I think this bill is going to help prevent that. That being said, I do not think there is anything needing to be changed with this. What is far more important is the training for the police officers. That is probably our number one priority and it is something that we will continue to pursue. We want to be on the record that we are concerned when we talk about specific categorization of people that are breaking these TPOs and extended orders.

Chairman Anderson:
Have you had an opportunity to raise these concerns with the primary sponsor of the legislation?

Mike Sprinkle:
It has been mentioned to them, yes.

Chairman Anderson:
So you are not suggesting an amendment? You just want to make sure that your concerns are clearly on record, that during training, the officers are made aware that the fear of violence is the number one discretion they need to maintain? I have heard from many individuals that the officers generally prefer to have the level of expectation stated.

Mike Sprinkle:
To be very clear, we are in strong support of this bill. The training issues are an ongoing concern of ours. Concern is not even the correct word; it is something that we are going to continue to work on with counsel, and I do not believe that this Committee should address this through this bill. We stand in strong support of the language and the wording.

Ed Flagg, President, Nevada Corrections Association, Carson City:
We would like to be on record standing in support of this bill.

Susan Meuschke, Nevada Network Against Domestic Violence, Carson City:
[Read from prepared testimony (Exhibit C).]

Chairman Anderson:
Have we set a prioritized list in the language of the bill?

Risa Lang, Committee Counsel:
It was certainly not the intent to create any order of priority. It specifies an order of priority, but if we need to clarify it we can go back and look.

Chairman Anderson:
Let us create a specific statement that it is not the intent here to create a prioritized list, and if we need to look at it again, we will. Is there anyone else who wishes to speak in support of this legislation? [There were none.] With that I will turn to those who have concerns about the bill.

Frank Adams, Nevada Chiefs' and Sheriffs' Association:
We did not intend to speak on this bill, as we hold a neutral position. We understand the concerns of Assemblywoman Parnell and we understand those issues in the field. We do support the bill, but we have some issues with holding those individuals for that period of time. However, we do not think it overburdens us and we can handle it.

Chairman Anderson:
An issue that has come up from time to time is clarifying what the officer at the scene has to deal with, and the gray areas that often confront those officers.

As an officer, would you prefer to have the intent clearly stated? Does this make your job easier or harder when you are responding to these types of calls?

Frank Adams:
Discretion is something officers in the field deal with every day. It is much easier to have it in black and white and to know what the law is, but being human, we still need to have some level of discretion available. I do not believe the way the bill is written will cause us a major problem because the section is still there that talks about danger or eminent danger to the individual. An officer has to have some leeway in making that decision.

The part I see causing a problem is determining whether that person has been in violation of a TPO in the past. That is something that we can work out with our records division and the courts.

Chairman Anderson:
That is why some of us believe so much in technology and the Criminal History Repository.

Assemblywoman Parnell:
What needs to be done with the issue of the direct or indirect threat of harm is line (c) needs to become line (a). Then, line (a) and line (b) would be dropped down to line (b) and line (c). Then, when you read the initial exceptions, the first exception would be if such a violation is accompanied by a direct or indirect threat of harm. Under the influence would be line (b), and the repeat violator in line (c), and that would be consistent throughout the bill. So the "direct or indirect threat of harm" would override "under the influence" and "repeat violators." That might alleviate some concerns.

Chairman Anderson:
We will see what the bill drafters want to do with the bill. Hearing closed on A.B. 112. Let us turn our attention to Assembly Bill 117, introduced by Assemblyman Carpenter.

Assembly Bill 117: Revises provisions relating to the exclusion of certain persons from divorce proceedings. (BDR 11-217)

Assemblyman Carpenter:
[Read from prepared testimony (Exhibit D).]

Chairman Anderson:
Do you only want us to look at your suggested mock-up (Exhibit E) instead of the original bill?

Assemblyman Carpenter:
Yes, we need to look at the bill with the amendment so that we are clear on what I am trying to do here.

Chairman Anderson:
It is going to be difficult for those people who have not seen the mock-up who may be watching the proceedings on the Internet. They are not going to have that available to them. The bill we are dealing with is that in the mock-up. While it appears to be similar to the original, it does add some additional language in a few places which may be of critical importance.

Assemblyman Carpenter:
The amendment would require a hearing, and the judge could then decide whether certain people should be excluded. We all know there may be people at the hearing who have an ulterior motive or have had a history of violence. Some people have asked that this be further amended to include witnesses. Because these proceedings are so emotional, the parents or siblings should not be excluded like they are now. I did not know this was the current law until we went to court. I think this change in the law would help many families in these situations.

Assemblyman Horne:
On line 17 of the mock-up it states, "If good cause is shown for the exclusion of any such person, the court may exclude any such person from the court or chambers wherein the action is tried." Instead of "may," should that say the court "shall" include? "Good cause is shown" means that the person or witness should be excluded. That is the only change that I would make.

Assemblyman Carpenter:
I would have to really look at it and see how the other people feel about it, but it does not seem to me like it would be a major change.

Assemblyman Horne:
Keep in, "the court may, upon motion of either party, order a hearing." But if they are going to have the hearing and good cause is shown for the exclusion, then once that burden has been met, then the court should exclude it.

Assemblyman Carpenter:
It seems to flow okay, so I do not think I would have a problem. We could see what Legal and the other witnesses have to offer.

Chairman Anderson:
Will this diminish the courts' ability to carry out the provisions of *Nevada Revised Statutes* (NRS) 50.155? That is, the exclusionary and sequestration of witnesses does not authorize the exclusion of a party who is a natural person, an officer, or employee of a party which is not . . .. In examining this, have we taken that into consideration?

Assemblyman Carpenter:
I was going to mention that we did receive an email from someone who was concerned about NRS 50.155, but I do not believe that this bill changes that one way or the other.

Chairman Anderson:
Is there anyone else that you would like to testify in support of this legislation?

Kimberly Surratt, Jenkins Law Office, representing Nevada Trial Lawyers Association, Reno:
Mr. Carpenter's amendments make a significant difference. There were a couple of small changes that we would like to add with his mock-up. The "shall" that was just proposed by Mr. Horne in the last provision is a wonderful change. I think that would help significantly. The other thing we talked about changing was in subsection 2, where it says "except as otherwise provided in subsection 3, upon such demand of either party, all persons must be excluded from the court or chambers," because that will provide for the next provision that allows for the hearing and to demonstrate good cause.

The other thing we discussed with Mr. Carpenter this morning was the paragraph in subsection 3 that allows the court to have a hearing to exclude parents, guardians, or siblings, but does not include the word witnesses. I can give a specific example with problems that have been incurred with witnesses being in the court room. It does not interfere with the provision of excluding them if they have not testified yet, but if they have already testified, then they can remain in the courtroom. In the case I had, the other side was representing themselves, and would bring witnesses that were not what an attorney would have testify. He would put them on the stand for the sole intention of intimidating my client. This witness would testify on just about nothing and would remain in the courtroom. At opportune times when I was speaking or my client was speaking, the witness would make gagging noises. The court ended up kicking this individual out because of contempt and causing problem in the court room. Every single time we come in on this case—and I will have this case until this child is 18 years old—this individual is there. There is not a provision for the court to get this witness out of the court room. This will be a significant change and allow attorneys and judges to have a lot more discretion.

We support A.B. 117 with the modifications and additional changes I just testified to.

Chairman Anderson:
Ms. Surratt has made several additional recommendations to the mock-up that you presented. Do you want an opportunity to review those? Did you have an opportunity to have the trial lawyers look at this?

Assemblyman Carpenter:
I provided their representative an amendment yesterday evening. This morning I spoke to them on the other changes, and I believe with the expertise of Ms. Lang, we can figure this out.

Chairman Anderson:
Ms. Surratt, if you have language that you are suggesting in addition to Mr. Horne's changes, I would ask that you get it to Ms. Chisel and Ms. Lang.

Hearing closed on A.B. 117.

I have material on Assembly Bill 107 that needs to be put in the record. There are two emails: one is an email from Mr. Frierson and the Clark County Public Defender's Office who are neutral on the bill, and another one from Mr. Lussem with concerns on the bill (Exhibit F).

[Meeting adjourned at 9:22 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 2, 2007 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 112	C	Susan Meuschke	Prepared Testimony
A.B 117	D	Assemblyman Carpenter	Prepared Testimony
A.B. 117	E	Assemblyman Carpenter	A.B. 117 Mock-up
A.B. 107	F	Chairman Anderson	Email Testimony