

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 8, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:09 a.m. on Tuesday, May 8, 2007, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Assemblyman William Horne, Assembly District No.34:

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Christopher J. Lalli, Clark County District Attorney
Jason M. Frierson, Clark County Public Defender's Office
Nancy Hart, Nevada Network Against Domestic Violence
Frank S. Sullivan, Southern Nevada Domestic Violence Task Force
John Jensen, Acting Court Administrator, Family Division, Clark County
Wendy Wilkinson, Southern Nevada Domestic Violence Task Force

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Mike Sprinkle, Nevada Council for the Prevention of Domestic Violence
John L. Wagner, The Burke Consortium
Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department
Gina Session, Senior Deputy Attorney General, Office of the Attorney General
Frank Adams, Nevada Sheriffs' and Chiefs' Association
Mike Mieras, Chief of Police, Washoe County School District
Ken Young, Lieutenant, Carson City School District Police Department
Bryn Lapenta, Ed.D., Washoe County School District
Lonnie Shields, Nevada Association of School Administrators
Kathleen E. Delaney, Senior Deputy Attorney General, Bureau of Consumer
Protection, Office of the Attorney General
Brian Armstrong, Senior Deputy Attorney General, Bureau of Consumer
Protection, Office of the Attorney General

CHAIR AMODEI:

I will allow Assemblyman Horne to call the bills he would like to speak on since he has several to introduce.

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):

If it would please the Committee, I would like to with Assembly Bill (A.B.) 193 and A.B. 369 since they deal with the same subject matter.

ASSEMBLY BILL 193 (1st Reprint): Makes various changes concerning pleas, defenses and verdicts in criminal actions. (BDR 14-152)

ASSEMBLY BILL 369 (2nd Reprint): Makes various changes to provisions governing the civil commitment of a person found not guilty by reason of insanity. (BDR 14-1155)

I will start with A.B. 193. The Nevada Legislature enacted S.B. No. 314 of the 68th Session and abolished the insanity defense in criminal cases and provided for a defense of guilty but mentally ill.

In the 71st Session of the Nevada Legislature, the Nevada Supreme Court ruled that the absence of an insanity defense was a violation of the *Constitution of the United States of America* as well as the *Constitution of the State of Nevada* in *Finger v. State*, 117 Nev. 548, 27 P.3d 66 (2001). The 2003 Session of the Nevada Legislature abolished the guilty but mentally ill defense and reinstated the insanity defense when they enacted A.B. No. 156 of the 72nd Session.

During testimony, a question was posed to R. Ben Graham, Nevada District Attorneys Association, as to the likelihood of a person found not guilty by reason of insanity being released shortly after his/her commitment. The response was that it was not likely to happen.

In September 2004, Michael Kane was acquitted for the murder of John E. Trowbridge in Clark County, Nevada. He was deemed to be insane at the time of the offense; however, he was under the influence of a hallucinogenic drug.

In Nevada law, voluntary intoxication is not a defense to commit murder, and the debate as to why insanity was given is another issue. A plea of guilty but mentally ill was not available at the time of that trial.

The Legislative Commission's Subcommittee to Study Sentencing and Pardons, and Parole and Probation, which I chaired, decided to submit A.B. 193. During the initial hearing, Robbin Trowbridge, who was the mother of the victim, testified before our Committee. I would like her testimony from the Assembly to become part of the record ([Exhibit C](#)).

Assembly Bill 193 adds back the language, the finding of guilty but mentally ill, afforded to defendants if they plead insanity as a defense. This bill, along with A.B. 369, was extensively worked by a number of people on finding language for these pieces of legislation.

Assembly Bill 369 provides the procedures on releasing individuals who have been committed. Six months after Michael Kane was committed, Lake's Crossing Center made a determination that he no longer exhibited mental illness and therefore was released. There were lapses in the release procedures such as risk assessment and reentering into the community. Several people are here to speak on the bill. A proposed amendment for A.B. 193 delivered to this Committee ([Exhibit D](#)) deals with language on page 13, paragraph 2, lines 41 through 45 and page 14, lines 1 through 3.

CHAIR AMODEI:

Who is the lead person for the district attorney?

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CHRISTOPHER J. LALLI (Clark County District Attorney):

Our office supports both A.B. 193 and A.B. 369. These bills are public safety legislation that provide alternatives to releasing individuals who commit crimes while suffering serious mental illness. There is much to digest in these pieces of legislation, and they do several things.

Assembly Bill 193 restores a plea of guilty but mentally ill and provides this verdict as an alternative to a verdict of guilty by reason of insanity. It specifically excludes voluntary intoxication as the sole basis of insanity.

Assembly Bill 369 provides meaningful procedures for monitoring offenders found not guilty by reason of insanity. It is an important alternative to the current system that releases these individuals into our communities.

Exhibit D is a cleanup amendment to eliminate a potential conflict in the *Nevada Revised Statute* (NRS) 209.321. This amendment is at the request of the Nevada Attorney General.

CHAIR AMODEI:

Assemblyman Horne, what was the case you cited?

ASSEMBLYMAN HORNE:

The case cited was *Finger v. State*.

CHAIR AMODEI:

Was that case the impetus for this legislation?

ASSEMBLYMAN HORNE:

That case said the absence of the insanity defense was a violation of the constitution. We changed the law to provide "not guilty by reason of insanity," but because we had "guilty but mentally ill," we removed that language. The ruling did not say that "guilty but mentally ill" was inappropriate; it just said it could not stand alone. We are adding that as an alternative coupled with the tragic events of the Kane case.

CHAIR AMODEI:

Are there any further questions or comments on A.B. 193 or A.B. 369?

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MR. LALLI:

I have no further comments on either bill.

CHAIR AMODEI:

I would like a copy of Mr. Lalli's amendments for A.B. 193, [Exhibit D](#), sent to our legal staff.

JASON M. FRIERSON (Clark County Public Defender's Office):

I want to go on record to say that these bills are a collaborative effort with extensive work to develop language to address these problems, and we support both bills.

CHAIR AMODEI:

Are there any further comments on A.B. 193?

ASSEMBLYMAN HORNE:

For the record, I thank Christopher Lalli, Jason Frierson, R. Ben Graham and Scott Coffee for the work they contributed towards these bills.

CHAIR AMODEI:

We have received an e-mail from Lee Rowland ([Exhibit E](#)) in opposition to A.B. 193, and it will be entered into the record. Are you aware of this e-mail?

ASSEMBLYMAN HORNE:

I am aware of her opposition and provided testimony.

CHAIR AMODEI:

If there are no further comments on A.B. 193 and A.B. 369, we will close the hearing on these bills and open the hearing on A.B. 194.

ASSEMBLY BILL 194 (1st Reprint): Makes various changes to provisions regarding victims of domestic violence and sexual assault. (BDR 3-1055)

ASSEMBLYMAN HORNE:

I present A.B. 194 as an attempt to remove firearms from individuals who have an extended protective order issued against them. Domestic violence is something we have to deal with, and when an extended order of protection is sought, this becomes a volatile time. Sometimes domestic violence is escalated

by the use of a firearm against a targeted victim, but it has also been used against others.

This bill attempts to remove firearms during a period of time when tempers are at a peak. It is not a permanent relinquishment of firearms, but only while the extended order of protection is in place. I have worked with the Southern Nevada Domestic Violence Task Force and the Nevada Network Against Domestic Violence, law enforcement and the Attorney General's Office.

This bill was amended in the Assembly to clarify how the process of relinquishing firearms would work. Once a judge determines there is a risk of firearm violence, an order can be issued to relinquish them. A person who has been served has 24 hours to turn in the weapons.

What was missing was a provision for contempt. Nancy Hart will propose an amendment to give the judge the authority either to issue a search warrant for the home to seize those weapons or to issue an order for contempt. The bill was narrowed to give the judge more discretion; initially, the language was too broad and would apply to any and all extended orders. This became a burden on law enforcement and local governments. Not all cases of extended protection orders have threats of that type of violence.

The bill has a provision that deals with the testing for human immunodeficiency virus (HIV) that is primarily there to maintain federal funds. The NRS provision that these tests be performed within a reasonable time is stated in A.B. 194, section 9, page 7, starting with line 42.

An amendment submitted by Judge Max W. Bunch, Argenta Township, Lander County ([Exhibit F](#)), has objections on section 6, subsection 2, paragraph (b), subparagraph (5), of A.B. 194.

This bill will apply not only to parents seeking protective orders but also to legal guardians.

SENATOR WASHINGTON:

Is there any revocation for a temporary protection order filed under false pretenses? There is something dealing with law enforcement and their firearms.

ASSEMBLYMAN HORNE:

A judge would make that determination. As to the issue of law enforcement, there are protections. The officers will still perform their duties as protected by federal statute. This bill does not address false allegations in order to obtain a protective order.

Assembly Bill 194 deals specifically with extended orders of protection, which means this would be a second request for extension.

SENATOR CARE:

If an extended order is issued and it equates to a conviction, that person is no longer allowed to possess a firearm. I understood that the Lautenberg Amendment, officially known in the *United States Code* (USC) as "Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence"—18 USC, section 922(g)(9), Public Law 104-208—only went to the conviction of domestic violence. Therefore, if you are the subject of an extended order, does federal law mandate that you not possess firearms?

NANCY HART (Nevada Network Against Domestic Violence):

I have written testimony as well as a proposed amendment in my handout ([Exhibit G](#)). Under the Lautenberg Amendment to the federal firearms law, there are two scenarios in which a person who has been a perpetrator of domestic violence or convicted of domestic violence crime has a weapons prohibition. One case is when he is under the terms of an extended order following a hearing with a determination of domestic violence; this is what we are talking about. The other case is if you have been convicted, a permanent federal firearms disability occurs where you cannot possess a firearm unless the conviction is expunged from the record.

We are not talking about those cases in this bill. A protection order violation is a misdemeanor, which is a crime that does not meet the federal definition of domestic violence where permanent prohibition applies. The definition of federal crime includes the threats or use of force or deadly force. Protection order violations may include this, but it is not a necessary element of the crime and not counted under that permanent prohibition. In these bills, the permanent prohibition only goes into effect when someone is under the terms of an extended order.

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SENATOR CARE:

The federal law does not currently state this, correct?

Ms. HART:

What I just spoke about were the federal exceptions, and what we are attempting to codify in Nevada is a version of the extended order prohibition.

SENATOR CARE:

Assembly Bill 194, section 2 says, "A court may include in an extended order" Why would it not say, "shall include in an extended order"?

Ms. HART:

The language was chosen by the Assembly. The original bill had a statement saying that in every extended order, the judge will order the surrender of any firearms possessed by the adverse party. This language was too broad and should be limited to consider those cases with actual or threatened firearm use and a documented history of domestic violence as mentioned in section 2, subsections 2 and 3. Those are the only categories where Nevada law will apply.

The question was raised as to whether we are in violation of federal law; it means we are not codifying that part of federal law. It is up to federal law enforcement and prosecutors to uphold the extended order.

SENATOR CARE:

If someone is convicted of domestic violence, what happens upon conviction? Is there just prohibition where, if you violate this, you violate the law, or do the courts issue an order after a conviction where you must produce all firearms?

Ms. HART:

I am not familiar with any federal prosecutions in Nevada that involve either possession of firearms under an extended order or possession of a firearm after conviction of a domestic crime. I do not know the protocol of whether they are ordered to automatically surrender or if it is left to a subsequent violation.

SENATOR CARE:

I am trying to determine if laws exist where courts are empowered to issue search warrants for a person convicted of domestic violence.

MS. HART:

This bill was introduced because those provisions do not exist. The threat of firearms is a danger, and we want local law enforcement and prosecutors to have the tools necessary.

ASSEMBLYMAN HORNE:

In my practice, there have been convictions of domestic violence and an admonishment form that is read; one is the prohibition of firearms. I have never seen an order or search warrant issued to relinquish firearms with an extended protection order.

MS. HART:

Another bill, A.B. 482, from the Office of the Attorney General, attempts to codify a requirement that the court notify a defendant in a case that involves a domestic crime of the federal firearms consequence of their conviction.

ASSEMBLY BILL 482: Makes various changes to provisions relating to criminal procedure. (BDR 14-516)

CHAIR AMODEI:

Is there anyone else to testify on A.B. 194?

FRANK S. SULLIVAN (Southern Nevada Domestic Violence Task Force):

I formerly served as a domestic violence commissioner regarding the issuing and enforcement of temporary protective orders. The Task Force supports A.B. 194. About 60 percent of all domestic violence homicides are committed using firearms. In 2002, there were 27 domestic violence-related homicides in Nevada; 17 of those were committed using firearms and about 63 percent would be consistent with the national statistics. Nevada has been among the top 5 states since 1999 for domestic violence homicides of women per 100,000 female populations. Men are victims of domestic violence as well.

Any comprehensive plan to eliminate or reduce domestic violence must address the issue of firearms, and A.B. 194 does address this issue when a party is subject to a temporary protective order.

Assemblyman Horne indicated one of the most dangerous times for a survivor of domestic violence is when a party attempts to leave a violent relationship and file for a temporary protective order to assist in leaving the relationship safely.

This is the appropriate time to address the surrender of firearms, and A.B. 194 does provide due process to the adverse party before surrendering firearms. There is a hearing to extend; the party is given ample notice of the allegations and an opportunity to be heard before a determination is made to surrender any firearms.

The restriction on firearm possession or control is limited throughout the duration of the protective order and can be extended up to one year. The court may order the surrender of a firearm, but it is not mandatory. Also, the restriction on the possession or control of a firearm while subject to a temporary protective order has been upheld by the courts. Specifically, *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), prohibited the possession, control or purchase of a firearm while subject to an active temporary protection order and was sufficiently limited and narrowly tailored to specific exception or restriction to the Second Amendment.

MR. SULLIVAN:

Assembly Bill 194 is limited and addressed as the official use exemption that an employee who is required to use or possess a firearm as a part of their employment may possess a firearm during duty as long as the employer has a place of storage during nonbusiness hours.

To better protect the survivors of domestic violence and considering 60 percent of all domestic homicides are committed using firearms and the prohibition of possession or controlling firearms included in A.B. 194 is limited and tailored to the Second Amendment, I support the passage of this bill.

CHAIR AMODEI:

Is there anyone else in the Grant Sawyer State Office Building who wishes to testify?

JOHN JENSEN (Acting Court Administrator, Family Division, Clark County):

The Committee should be aware that the courts have followed this bill due to concerns with the original language. These concerns have been alleviated with current amendments, and we now take a neutral position. On the administrative side, we are aware of the provisions modifying NRS 441 with regard to HIV testing, and it is important for the future grant funding beginning in 2008.

SENATOR NOLAN:

Under what circumstance would a judge invoke the requirement of the adverse party to relinquish firearms on an extended order?

MR. JENSEN:

The judges use sound discretion given all the evidence taken in court. The masters hear the case first, and if there are any objections, a district court judge hears the case and applies factors to determine an extended order.

ASSEMBLYMAN HORNE:

Page 3, section 2, subsection 3, lays out what the judge looks for to make a determination to ask for the relinquishment of firearms. This is similar to alimony statutes without any weight given to any one item that is listed.

SENATOR NOLAN:

How many extended orders are issued in Clark County within a given year?

ASSEMBLYMAN HORNE:

I had asked the Las Vegas Metropolitan Police Department (Metro) to find those numbers for me, and I had them at one time. When applying this to all extended numbers, it became vast in trying to take all the weapons of an extended order and then find a place for storage.

MR. SULLIVAN:

I have with me Wendy Wilkinson, who is in charge of the violence intervention program in Clark County, and she can give some insight on your questions.

WENDY WILKINSON (Southern Nevada Domestic Violence Task Force):

In our office last year, we processed over 9,000 applications for temporary protection orders and, of those, we extended approximately 200 orders a month. We processed 2,400 extended protection orders last year.

SENATOR CARE:

What percentage of the applications for an extended order is denied, or is the extended protection order just granted?

MS. WILKINSON:

Not every extended order is granted. Sometimes, reconciliation has occurred or the master or judge has determined that the protection order, based on the evidence presented at the hearing, does not need to stay in effect.

One of our current hearing masters did a query of the applicants and adverse parties about firearm possession. In one week, several people willingly surrendered weapons. Extending this over a year, possibly 850 firearms would be ordered relinquished.

ASSEMBLYMAN HORNE:

Using the number of 850 firearm relinquishments, this would be only for the period of time the extended order of protection is in place. Once the order for protection has expired, the firearm may be recovered.

MS. HART:

I have a proposed amendment, [Exhibit G](#), to add a new subsection 5 to section 3, and it is a critical addition. All firearm provisions in this bill are temporary and discretionary. There will be a process if the weapons are not turned over in the specific time once ordered to do so by the courts. There will be a hearing date where the courts will determine probable cause that the weapons have not been surrendered, and then an order will be issued to have law enforcement seize the weapons.

It is not going to cover all extended order requests or where firearms are ordered to be surrendered due to the nature of judicial discretion. We do not anticipate many cases compared to the number of protection orders. This will be on a case-by-case basis and involve those who do not voluntarily surrender and where the danger may be most severe for the victim.

In section 3, you have 72 hours to relinquish a firearm to either a gun dealer or law enforcement. If it is to be relinquished to a third party or neutral friend, the time frame to report to the courts is tighter.

SENATOR MCGINNESS:

If there is still a possibility of a firearm after relinquishment, then an issuance for a search warrant can ensue, is this correct?

Ms. HART:

Yes. A proposal would be to add that provision as a new subsection 5 in section 2.

SENATOR MCGINNESS:

Is probable cause the lowest standard to initiate?

Ms. HART:

The lowest standard would be the evidence and is a civil matter.

SENATOR MCGINNESS:

What is the circumstance by which a person would have probable cause that the adverse party may have more weapons?

Ms. HART:

It could be testimony, the sincerity of the witness or pictures. The judge would make a determination after hearing the evidence.

CHAIR AMODEI:

Is there any discussion on what happens if someone borrows a weapon or if a judge designates someone and it is given back improperly?

Ms. HART:

Under federal law, it is a violation for another person to provide a weapon to the adverse party.

CHAIR AMODEI:

What is the record for prosecution by the Nevada U.S. Attorney for that federal violation?

Ms. HART:

I do not believe there have been any prosecutions.

CHAIR AMODEI:

Are there any instances where there could have been?

Ms. HART:

I have no knowledge of any specific cases.

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MIKE SPRINKLE (Nevada Council for the Prevention of Domestic Violence):
There were concerns with the initial language of this bill. The Council is in favor of the current proposals.

CHAIR AMODEI:
Are there any further comments on A.B. 194?

JOHN L. WAGNER (The Burke Consortium):
My concern is in the case of the vindictive spouse where the alleged victim goes to the judge for a restraining order. Several places in the bill mention "he and his." Why can it not be "he/she" and "his/her"? It should be gender neutral.

CHAIR AMODEI:
We will take a look at that language.

RAYMOND J. FLYNN (Assistant Sheriff, Las Vegas Metropolitan Police Department):

We have worked with the bill sponsor and are in support of A.B. 194. I am here to answer some questions, specifically the one dealing with numbers. We looked at the numbers and how it would affect the Metro. With the current language in the bill, there will be an additional 25 to 30 weapons entering our evidence vault that we can handle. A provision in the bill also adds a fee for storage.

SENATOR NOLAN:
If someone has a documented history of domestic violence by use of a firearm, would this incite someone with this type of violent history? If someone is determined to harm someone, they can. Was there any discussion that action taken may cause provocation to violence?

MR. FLYNN:
This issue was discussed and would be treated as a high-risk search warrant where Special Weapons and Tactics would execute the warrant.

SENATOR NOLAN:
This could be the lesser of two evils and would be an individual call.

ASSEMBLYMAN HORNE:

This is an area where perfect legislation cannot be formed to prevent tragedy. When a temporary order is issued, there are individuals who have never owned a gun in their lives, but due to circumstances, they decide to obtain a weapon. This bill does not address this on an initial temporary order of protection, but it has happened.

SENATOR NOLAN:

If an individual who has a firearm is stopped by law enforcement, would the terms of this order appear on National Crime Information Center?

MR. FLYNN:

Locally, it is entered into the Criminal Justice Information Services Division.

SENATOR CARE:

Federal law provides an exemption for the employee who needs a weapon in the scope of his duties. As this relates to the Metro, how would your agency deal with this situation? Is there a provision for domestic violence convictions?

MR. FLYNN:

You have raised several points. Officers are not required to be armed 24 hours a day, and arrangements can be made for that officer to have access to his weapon during working hours. Based on the wording of this bill and if an officer was accused, an internal affairs investigation would ensue along with criminal investigation. If he is found guilty, he will not be employed with the Metro.

SENATOR CARE:

Would it require a conviction? If the internal affairs investigation found merit to the charge for the extended order to be issued, then this is all it would take?

MR. FLYNN:

The extended order itself is not enough, but the actions of that officer may be cause to find conduct unbecoming of an officer.

CHAIR AMODEI:

Is there anyone who has not testified on A.B. 194? We will close the hearing on A.B. 194 and open the hearing on A.B. 230.

ASSEMBLY BILL 230 (1st Reprint): Revises certain provisions relating to the jurisdiction of justice courts. (BDR 1-519)

GINA SESSION (Senior Deputy Attorney General, Office of the Attorney General): I am joined by Rick Gimlin, Deputy Director, State Department of Agriculture. This bill was introduced as a favor to the State Department of Agriculture to address enforcement issues within the Department. Five agricultural officers cover Nevada, and they deal with heavy-duty pickups, gooseneck trailers and mobile livestock. Often an offender is cited in several counties across the state. The grazing areas also cross county lines; as the law exists, we go to separate county justice courts to issue citations. This bill allows for consolidation of citations in one justice court to show a pattern of violations and promote judicial economy for the justice courts.

An amendment was made in the Assembly to ensure the Department did not make an in-state offender report to a different county to handle the citation. This is the summary of A.B. 230.

SENATOR CARE:

I understand the intent of the bill, but under what conduct may an arrest be made by someone from the State Department of Agriculture?

Ms. SESSION:

It could be health violations by transporting animals into the state without proper vaccinations or stealing animals where an arrest can be made.

SENATOR MCGINNESS:

The Legislative Counsel's Digest, lines 6 through 9, states, " ... the jurisdiction of the justice courts" If you were a justice of the peace in Nye County, you could extend to the Idaho border because Idaho borders with Eureka and Lander Counties. This is a huge area; do you see any jurisdictional problems? What was the reasoning for the "neighboring county" language?

Ms. SESSION:

There are large counties in this state, and the language is for citations in adjoining counties. This will allow us to put together a better case instead of going to one justice court with one citation and then going to another court for a citation. This allows us to put these citations together for one case.

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SENATOR MCGINNESS:

If an arrest was made in Nye County for stealing livestock and operating in Lander County, where will the case be heard?

MS. SESSION:

We would have the option of prosecution.

SENATOR MCGINNESS:

Is this common practice in any other instance in state law?

MS. SESSION:

Yes, it is with the Nevada Highway Patrol under similar circumstances where they have statewide jurisdiction.

SENATOR MCGINNESS:

What about transportation of illegal substances; is it also common in these cases?

MS. SESSION:

I am not familiar, but I would think they could use choice of prosecution in these instances as well.

CHAIR AMODEI:

We will close the hearing on A.B. 230 and open the hearing on A.B. 107.

ASSEMBLY BILL 107 (2nd Reprint): Revises the provisions governing the possession of weapons at certain locations. (BDR 15-764)

FRANK ADAMS (Nevada Sheriffs' and Chiefs' Association):

This bill was brought forward due to a large proliferation of weapons seen on our school grounds. Our organization supports this bill.

MIKE MIERAS (Chief of Police, Washoe County School District):

Under the NRS, we do not have the authority to charge someone for having a dangerous weapon on school campuses. I have a packet ([Exhibit H](#)), and pages 8 through 14 list items taken off of school grounds statewide.

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Under possession of dangerous weapons in the NRS, we cannot charge an individual—either student or not—for entering on school grounds with these weapons.

In considering our rural communities, page 6, line 24 of [Exhibit H](#) describes a dangerous knife, using page 7 as a guide.

KEN YOUNG (Lieutenant, Carson City School District Police Department):
We have had some of the same issues, and we support this bill.

SENATOR MCGINNESS:
Mike Mieras, did you indicate the articles on page 7 were legal or illegal?

MR. MIERAS:
The items listed will be illegal under this bill.

SENATOR MCGINNESS:
Are we getting to the point where nail clippers will be illegal? How far are we going?

MR. MIERAS:
Under the current bill draft, these items on page 7 would not be against the law to have on school grounds; we have made an exception for those items. There is discretion of law enforcement whether to take action.

SENATOR MCGINNESS:
I am confused. After the passage of this bill, if someone has one of these items exhibited on page 7 in their pocket on school grounds, are you saying this would be all right?

MR. MIERAS:
It would be fine, correct.

SENATOR CARE:
Exceptions for carrying a knife have been made in section 1, subsection 3. Schools as well as universities have barbeques on campuses manned by employees. People tending the barbeque will not be covered under this bill and may be something to consider.

MR. ADAMS:

If you look at section 1 in subsection 5, paragraph (c), persons coming onto campuses to do work will be covered through the permission of the principal or person in charge of the institution.

SENATOR CARE:

I am thinking of someone not knowing the difference, an informal barbeque being conducted by or through different fraternities.

LT. YOUNG:

Anytime an individual is encountered by an officer, consideration is taken into account of the situation.

SENATOR MCGINNESS:

What about the parent dropping off a child on his way to hunting. The parent may be in possession of weapons. Technically, they are in violation.

LT. YOUNG:

Once again, we are looking at circumstances. This will be commonsense judgment. Our concern will be when a parent comes in with a knife and, during a heated discussion, uses it as a threat. In those circumstances, we will take law enforcement action.

CHAIR AMODEI:

Are there any other testifiers on A.B. 107?

BRYN LAPENTA, ED.D. (Washoe County School District):

The Washoe County School District supports A.B. 107 and believes this legislation will increase student safety.

LONNIE SHIELDS (Nevada Association of School Administrators):

There has been a concern at the elementary level about a student inadvertently bringing a knife to school. After speaking with those in charge, I have been assured that it would take a brandishing or a threat in order for the law to take effect. If a weapon is inadvertently brought to school, the principal should report the incident to the campus police and have them handle the situation. We are satisfied with the explanation and support the bill.

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CHAIR AMODEI:

We will close the hearing on A.B. 107 and open the hearing on A.B. 521.

ASSEMBLY BILL 521 (1st Reprint): Revises provisions relating to the crimes of fraud and racketeering. (BDR 15-500)

KATHLEEN E. DELANEY (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

Assembly Bill 521 is our attempt to enhance the protection provided to consumers under NRS 598 by creating a felony for a first offense on a certain type of business fraud.

The Federal Trade Commission Act, 15 USC, sections 41-58, as amended, prohibits unfair or deceptive trade practices in the marketplace under section 5. It does not allow for a felony charge as a first offense, no matter how egregious. We can only prosecute civilly or as a misdemeanor.

Since last session, apparent schemes have been formed with the intent to defraud through bogus businesses. This has led to large-scale losses for consumers. Currently, the only way to prosecute is to prove theft and by the time all the evidence is gathered, these companies have closed.

This bill is intended to address the situation where businesses are established for the purpose of perpetuating a fraud on the consumer. Many fraudulent businesses consider a misdemeanor fine a slap on the wrist.

For the record, we have worked with the president of the Nevada Attorneys for Criminal Justice. Concerns were expressed in the Assembly that the original language was too broad. We revised the language to make it clear that it is one cause of action with numerous elements requiring a certain amount of loss with victims and time frame to charge a felony. This bill meets the intent and has been agreed upon by the president of the Nevada Attorneys for Criminal Justice.

Some examples of fraud are eBay, auto subleasing, mortgages, grant schemes and others.

I have several amendments ([Exhibit I](#)). These sections did not survive when we attempted to include them in another bill. In [Exhibit I](#), provisions clarify the

authority of the Attorney General's Office to enforce the deceptive trade practices to initiate both civil and criminal proceedings.

SENATOR WIENER:

In your proposed amendments, you are adding "treble" damages to section 13, subsection 2, paragraph (a). Can you put this into perspective?

MS. DELANEY:

Section 13 amends the Unfair Trade Practices Act, NRS 598A, and only applies to the antitrust content. What exists presently is the availability for treble damages where criminal activity of a deceptive nature can be pursued. Mr. Armstrong may be better to explain this situation.

BRIAN ARMSTRONG (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

These antitrust civil litigations are very complex with multiple plaintiffs involved with other states. You can expect to find private class action attorneys pursuing similar lawsuits for the same type of conduct. This overlap can create a battle as to whose representation is superior. One of the concerns is that the private class action attorneys can claim their representation is superior because they can pursue treble damages.

Currently, Nevada can only pursue treble damages for public purchases, such as proprietary purchases by the state or political subdivisions. Section 13 will even the playing field in this type of circumstance.

SENATOR WIENER:

In multiple plaintiffs or repeated behavior, there has been no corrective action taken and you have seen repeated harm caused by these parties.

MR. ARMSTRONG:

I am not sure what you mean by repeated behavior.

SENATOR WIENER:

If you see repeat behavior by the person you are pursuing, could this be a case where treble damages can be applied?

MR. ARMSTRONG:

I am not sure that example would apply to antitrust as opposed to traditional deceptive trade. Treble damages are available for all types of antitrust lawsuits, and we can try to achieve fraud on the first offense.

MS. DELANEY:

Nevada Revised Statute 598.0999, subsection 3, allows for whether a certain level of intent includes willfully and knowingly engaging in a deceptive trade practice. For the first offense, a person is guilty of a misdemeanor; for the second offense, guilty of a gross misdemeanor; for the third offense, guilty of a Category D felony.

Treble damages are not available in a civil context as the statute is written. Treble damages will not be available because section 2 of A.B. 521 amends the theft chapter, NRS 205, and we have not sought treble damages in that chapter. The only aspect of treble damages in place is in the antitrust arena to level the playing field.

SENATOR MCGINNESS:

Are there any further questions for the testifiers?

SENATOR CARE:

Yesterday, I received and reviewed this amendment. I also read the bill without the amendment. Under section 2 of the bill, I did not understand what we were trying to do with fraudulent in a business context. The use of the word "enterprise" suggests racketeering.

The first reprint talks about NRS 205; your amendment talks about NRS 598. Could you tie together the first reprint and the amendments?

MS. DELANEY:

To answer your question as to whether this would take a basic civil deceptive trade and make it a felony, the answer is no. We are amending NRS 205 which pertains to crimes relating to persons and property. When this bill was conceived, the thought was to place it in NRS 598. In the original bill draft request (BDR), it was to be placed as a stand alone in NRS 598. It was later determined there was no precedent for not having these add-on sections of NRS 598 loop back into the general provisions of NRS 598 and make these penalties available for typical civil violations. We wanted this amendment and

language to stand alone as a crime that warranted charging but was not applicable to your typical civil deceptive trade.

The original deceptive trade bill S.B. 538 did not make it out of its original committee. We went back to that committee and asked guidance to putting this language in another bill.

SENATE BILL 538: Revises provisions regarding trade practices. (BDR 52-501)

MS. DELANEY:

We went to the Legislative Counsel Bureau for further guidance to see if this bill was germane with A.B. 521. In some respects, it clarified and enhanced our enforcement in the civil context of deceptive trading and unfair trading practices and in the criminal context of enhancing and creating a new crime in a deceptive trade context. Assembly Bill 521 encompasses the whole spectrum.

In section 2, a question was raised by the Assembly Committee on Judiciary whether you can deal with this conduct as racketeering. In order to have racketeering, you have to aggregate two felonies together. We do not have felony conduct for deceptive trade practices other than proving theft.

Subsection 1 of section 2 was taken from a particular Nevada case dealing with the elements of criminal fraud.

SENATOR CARE:

I am looking at the proposed amendment, Exhibit I, which adds a new section 7, subsection 4. Does it make any difference on how the intelligence is gathered by a federal or any other state agency?

It further says, "may obtain and use such intelligence or information." It does not say how this information is to be used or whether it has to be used at trial. You may have evidence at a trial based upon evidence received from another agency that did not gather it properly.

Can you address the use of intelligence information?

MS. DELANEY:

Our goal with this language is to address whether a federal agency or another state that gives us information we request will maintain confidentiality. We are

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not always in a position to know how information has been gathered from other states. This language came from several other states that have a similar desire to share information across state lines.

MR. ARMSTRONG:

Information we receive from other states will be confidential pursuant to a state or federal agency's subpoena power. Some information can be provided voluntarily to other states on a confidential basis.

SENATOR MCGINNESS:

Are there any other questions for our testifiers? We will close the hearing on A.B. 521. Having no further business to come before the Committee, the meeting is adjourned at 10:55 a.m.

RESPECTFULLY SUBMITTED:

Carolyn Allfree,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____