

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

**Seventy-Fifth Session
February 23, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:40 a.m. on Monday, February 23, 2009, 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/75th2009/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 Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager

Kyle McAfee, Committee Secretary
Nicole Bailey, Committee Assistant

GUEST LEGISLATORS PRESENT:

None

OTHERS PRESENT:

James W. Hardesty, Chief Justice, Nevada Supreme Court
Bryan Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada
Nancy Hart, representing the Nevada Network Against Domestic
Violence, Reno, Nevada
Andrea Sundberg, Executive Director, Nevada Coalition Against Sexual
Violence, Las Vegas, Nevada
Kristin Erickson, representing the Nevada District Attorneys Association,
Reno, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association, Mesquite, Nevada
Tom Roberts, Lieutenant Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney
General, Reno, Nevada
Miranda Smith, Private Citizen, Las Vegas, Nevada
Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada
Kathy Jacobs, Executive Director, Crisis Call Center, Reno, Nevada
Keith G. Munro, First Assistant Attorney General, Office of the Attorney
General, Carson City, Nevada
Lori L. Fralick, Supervisor, Victim Services Unit, Reno Police Department,
Reno, Nevada
Julianna Ormsby, representing the Nevada Women's Lobby and the
Attorney General's Victims of Crimes Subcommittee, Reno, Nevada
Margaret McLetchie, representing the American Civil Liberties Union of
Nevada, Las Vegas, Nevada

Chairman Anderson:

[Roll call was taken. The Committee rules were stated to those present.]

James W. Hardesty, Chief Justice, Nevada Supreme Court:

As I indicated to the joint meeting of the Senate Judiciary Committee and the Assembly Committee on Corrections, Parole, and Probation, one of the areas that the Advisory Commission reviewed is the matter affecting victims of crime. While the Advisory Commission on the Administration of Justice was expanded

under Assembly Bill No. 508 of the 74th Session to include a review of a panoply of issues concerning the criminal justice system, one cannot reasonably examine that issue without also reviewing the impact of crime on victims. As a consequence, the Commission appointed a subcommittee, chaired by the Attorney General and Gayle Farley, who was the victim's advocate on the Committee. The purpose of the subcommittee was to examine matters concerning victims of crime. There were several benefits to this.

First, it brought together victims of crime organizations and advocates for victims of crime who had collaborated with each other before. I feel this had a tremendous statewide benefit in identifying issues that are of mutual concern to victims of crime. I urge this Committee to listen carefully to the testimony received this morning from those who advocate for victims of crime and have an interest in this area.

There are some issues brought forward to you in three bills that correct some pretty serious problems that I think were identified, not only by the subcommittee but also by the Advisory Commission. I want to emphasize to you that all three of these measures come to you with the unanimous approval of the subcommittee that reviewed these subjects and the Commission that also reviewed these subjects.

The first is embodied in Assembly Bill 114, and it accomplishes a couple of important objectives. The first objective extends the time to appeal the denial of a claim from 15 days to 60 days; a worthwhile provision that enables a victim of crime to appeal a determination on an adverse ruling of his compensation request. But, interestingly, under section 2, paragraph 4, this provision has a significant impact on the victims of crime funds themselves. You will recall in my presentation to you about ten days ago that it was astounding to me, and surprising to the Commission, that the Fund for the Compensation of Victims of Crime (Fund), which is primarily funded through a portion of administrative assessments and not through the State General Fund, has a double insult in my view. That is, there is a budget established at the end of each fiscal year, or each legislative session, for the amount that might be received from administrative assessments to fund the Fund. However, to the extent that administrative assessments would exceed that budgeted amount, those sums revert to the State General Fund. We estimated, in the Administrative Office of the Courts, that accounted for about \$400,000 for fiscal year ending June 30, 2008 alone. Some of you, particularly those legislators from Clark County, are familiar with the recent amnesty efforts. I just received a recent report from the administrative office in Clark County. These amnesty efforts will generate close to \$10 million in a combination of cash payments and work-out plans. Not all of that money is administrative

assessments; most of it is fines. A lot of that will go to the State Permanent School Fund, but a significant amount of money is administrative assessments. A portion of that goes to the Fund. I had suggested to the Attorney General that this should be approved upon passage and approval, and it should apply to this fiscal year, right now, so that there is not a reversion of administrative assessment funds that goes back to the State General Fund in this fiscal year, so the Fund can retain these funds this fiscal year. I would hope, from a policy standpoint, that this Committee would endorse the compensation of victims of crime and allow all administrative assessments, whether those are budgeted or carry-over money to be added to the Fund. You will learn that victims of crime funds are substantially underfunded, and you cannot compensate victims of crime to the degree, and to the extent, that is appropriate in this state, notwithstanding a stated policy that it is a fundamental intent of the Legislature to compensate victims of crime. I know this is not a money committee, but it would certainly be worthwhile for the State General Fund to commit money to this important effort as well.

Assembly Bill 120 is another bill that was approved by the subcommittee and the Commission unanimously. It has, as a general purpose, the separation of victims of sexual assault from their attackers by a temporary protection order (TPO). It essentially addresses a timing issue. Many times, TPOs are reviewed in the context of a current incident. This would allow the separation of victims of sexual assault from their attackers, and it would not matter how long a lapse of time had occurred from the incident. The victims would be able to secure protection from that contact. It is a little bit surprising that someone who has been a victim of crime would not be afforded this protection, and that is the underlying purpose of this statute.

Finally, Assembly Bill 116 addresses the issue of law enforcement or juvenile court not being able to redact any information from an investigative report or a police report.

This bill was intended to address the concerns raised by Mr. Nix and the administrators of the victims of crime bill, that they be able to promptly secure the necessary reports in order to process victims of crime compensation requests. There is currently no legislation that compels these reports to be supplied to the Fund administrator and his staff in order to effectuate the processing of these claims. Those are the three bills, each of which we believe would be a major improvement to the victims of crime process.

Chairman Anderson:

Let us turn our attention to the bills. It is the Chair's intention to hear A.B. 114, and I think we will hear A.B. 120, and then we will close with A.B. 116. Assembly Bill 116 is probably the most controversial bill, so we will start with A.B. 114 first.

Assembly Bill 114: Makes various changes concerning compensation to victims of crime. (BDR 16-624)

Bryan Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada:

On Friday, I submitted a statement ([Exhibit C](#)) on A.B. 114, a statement in support of this legislation. Justice Hardesty's testimony was very good and very descriptive of the bill on this matter.

Chairman Anderson:

Let us look at the letter, dated February 20, 2009.

Bryan Nix:

I submitted a proposed amendment ([Exhibit D](#)) to A.B. 116 so you could see what my concerns are. In Assembly Bill 114, the second section of that bill provides that any money remaining in the Fund will not revert to the General Fund. I would like to echo some of Justice Hardesty's testimony. He is really the one who was able to identify, and point out, some of the discrepancies in how these funds are moved around from the program to the General Fund. In this particular case, you can see from page 2 ([Exhibit C](#)) that about \$895,000 is reverted from the Victims of Crime Program into the General Fund. These are funds that are set aside, by law, for the Victims of Crime Program. I set forth all of those various funding mechanisms in my statement. This bill would provide that any of those funds, rather than reverting, would be held in reserve for future spending for victims of crime in the next fiscal year. The real problem here, with these funds reverting, is that the Victims of Crime Program has historically had to cap and limit victims' claims in fairly significant ways over the years. I think that when Justice Hardesty made a comment about "a double insult," these funds are not only dedicated to the Victims of Crime Program by various other laws; they end up reverting to the General Fund because of spending authority in our budget, and we have to cap these victims' claims because of inadequate funding. This little bit of funding would go a long way to help us fund victim-of-crime claims in a more meaningful manner. Also, if we had the \$895,000 that reverted in the last three years to spend on victims' claims, it would have generated another half a million dollars in federal matching funds, which we did not get because those monies were reverted. That is my basic position on this bill.

Assemblyman Carpenter:

Mr. Nix, in your handout, it said that the Board of Examiners now has a limit at \$35,000. If this bill passed, would you be able to raise it back up to the \$50,000 limit?

Bryan Nix:

I do not think so. What we are proposing, in a separate issue with the board, is that we allow certain claims to be increased between the \$35,000 board-imposed cap and the \$50,000 legislative cap. We have presented another bill draft that would eliminate the cap entirely and invest the authority for setting the cap in the Board of Examiners. We are thinking about a program that would allow us to pay certain types of claims above the \$35,000 cap and maybe even above the \$50,000 cap, if that is removed by the Legislature. We have a particular victim now, who is a victim of a driving under the influence (DUI) driver, who had both of her legs amputated. We are looking at programs that would allow us to pay additional funding to those types of claims. The large majority of victim of crime claims fall within the \$35,000 cap that has been imposed by the Board of Examiners, so it is not something we want to remove unilaterally, but, maybe the Board of Examiners might allow more money than is currently allowed for certain types of catastrophic victim claims. That is a proposal the Board of Examiners must move on if they want to accept it.

Assemblyman Cobb:

The Chief Justice just testified as to a massive amount of money that had gone uncollected in the victim's compensation fund. Who has the authority to go and collect those funds if they are not voluntarily paid, and what efforts are being made to get those funds at this point?

Bryan Nix:

The Victims of Crime Program, as you can see in the statement I submitted, is primarily funded by those items listed in my memorandum. We also received matching funds, a 60 percent match for every dollar we spend on victims' claims, from the federal Justice Department. We received some money from restitution and other minor amounts of funding. We do not put a lot of energy into forcing or trying to track down restitution payments. They are not uncollected funds per se. When we submit our budget every fiscal year, we submit our budget and enhancements. The victims' payments are predicated on previous fiscal year spending. Unless we get enhancements improved to increase the amount of that spending on victims, the money that is generated for the Victims of Crime Program goes into the program. But, around May or June, usually around May, we have already been capped by the spending limits in our budget so we cannot accept that additional funding. It is that money that

ends up reverting to the General Fund even though it was dedicated to the Victims of Crime Program. I am not an expert on the way the state budget works, but those unspent monies in our budget end up reverting to the General Fund from these court assessments that are provided pursuant to *Nevada Revised Statutes* (NRS) 176.059. The money that we are not collecting is the money set aside by that statute that reverts to the General Fund.

Nancy Hart, representing the Nevada Network Against Domestic Violence, Reno, Nevada:

I would like to point out that in addition to section 1, there is a section 2 of the bill that provides another important change to the Victims of Crime Program. That change is an extension of the appeal period that currently is 15 days for an appeal from a denial of a claim for compensation. The subcommittee that Chief Justice Hardesty referred to decided that a better time period to appeal the denial of a claim would be 60 days. We wholeheartedly support both of the provisions in this bill and urge you to pass it today.

Chairman Anderson:

We will have Ms. Hart's letter to me, dated February 23, 2009, ([Exhibit E](#)) submitted as part of the record. I have writing from Kareen Prentice from the Attorney General's Office in support of A.B. 114 ([Exhibit F](#)).

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
ASSEMBLY BILL 114.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I close the hearing on Assembly Bill 114. Let us turn our attention to Assembly Bill 120.

Assembly Bill 120: Makes changes concerning orders for protection of victims of sexual assault. (BDR 15-625)

Bryan Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada:

I would like to say that we support this bill. Otherwise, we are neutral; we do not have any prepared testimony.

Andrea Sundberg, Executive Director, Nevada Coalition Against Sexual Violence, Las Vegas, Nevada:

I am pleased to come before the Committee today in support of A.B. 120. This bill would address an important gap that exists for victims of sexual assault

within our communities. Under current law, a victim of sexual assault, which is perpetrated upon by a family or household member, would qualify for a protection order under the domestic violence statute. They would also qualify if the behavior of the perpetrator rose to a level of stalking and harassment. Unfortunately, for about 50 percent of the victims who are sexually assaulted in our community, a gap exists where they are not afforded protection. Assembly Bill 120 would fill that gap by allowing victims of sexual assault, who are often assaulted by an acquaintance, to apply for a protection order in justice court to insure the perpetrator would be sent a very clear message: they are not to have contact with the victim. Further, if they did have contact with the victim, that contact could be subject to jail time, fines, and further sanctions. We stand in support of this bill and feel it would fill an important gap that exists for many victims within our community.

Chairman Anderson:

Ms. Sundberg, are you trying to explain the mechanics of the bill itself?

Andrea Sundberg:

No. I am not aware of anybody who is going to do that. I could try to fill in that gap. It is my understanding, under A.B. 120, that the victims of sexual assault who would be applying for a protection order, would not go through family court, which is normally where the temporary protection orders for domestic violence victims come from. They would apply for those orders through the justice court along similar lines as they would for stalking and harassment orders. I do not have a copy of the bill in front of me right now.

Chairman Anderson:

In section 1 of the bill, we see that all this does is allow for the victims of sexual assault to have the same rights that are authorized for victims of harassment. This bill extends those same protections to victims of sexual assault. This is merely an extension of the existing language. This makes it a felony sentence, enhancing the sentence for persons who commit a felony, other than a felony in violation of a protective order, which is a violation of a temporary protection order from sexual assault. As further explained in section 3, it is directly modeled after the current law which authorizes a victim of stalking and harassment or aggravated stalking to seek a temporary order. It similarly authorizes the victims of sexual assault, in subsection 5 of the bill, to obtain a protection order. Section 4 is directed at the defendant and concerns costs and fees associated with the order. This authorizes the same protection for the victims of sexual assault. Mostly, it copies other sections of different Chapters of NRS to reflect that change.

Assemblyman Cobb:

In section 3, page 3, line 22, it says, "any person who reasonably believes that a crime has been committed against them." That does not have any other legal effect in terms of a finding by the court whether a person has committed a sexual act? It is just a part of the process for requesting a temporary order, correct?

Nick Anthony, Committee Counsel:

That is correct. That language is directly modeled after stalking laws, which provide the exact same protection for someone who believes he may have been a victim of that particular crime.

Assemblyman Cobb:

But it does not create any type of finding by the court that the individual, against whom the temporary protection order (TPO) is being requested, has in fact committed a sexual assault.

Nick Anthony:

That is correct.

Assemblyman Horne:

Referring to section 3, subsection 7, where it speaks on getting temporary and extended orders, and particularly paragraph (c), where it says, "at the time of the violation or within two hours after a violation a person has a concentration of alcohol of 0.08 or more in his blood or breath, or an amount of a prohibited substance in his blood or urine..." I am curious. Does a person have to submit to these tests? For example, let us say someone makes a complaint against another person, such as a boyfriend or a girlfriend, and they find that person at the local pub or something. Does that person have to submit to a breath test or any other test to determine whether or not he has any illegal substance in his blood stream? I do not know if that is true or not.

Andrea Sundberg:

It is my understanding that this section pertains only to those who are arrested for violation of a protection order. Once a person is arrested for violation of a protection order, he cannot be admitted to bail for 12 hours after the arrest if he has an alcohol level that is higher than 0.08. Generally, when they are taken into custody or charged with a violation, they would be given an alcohol test. That is my understanding.

Assemblyman Horne:

Are we creating a new class of people who, if they are arrested for the violation of a protection order, must submit to a breathalyzer or a blood test?

Andrea Sundberg:

Yes. It is my understanding that this is also done under the stalking and harassment orders.

Chairman Anderson:

Mr. Anthony, are we currently doing this under existing law?

Nick Anthony:

Yes, this language was directly modeled after our stalking laws.

Assemblyman Horne:

In section 3, subsection 7, it basically requires someone who is arrested for violating a temporary or extended order to submit to a breathalyzer or any other blood test to determine alcohol content or any other illegal drug in the blood system. I was curious to know if we currently have that in other statutes.

Chairman Anderson:

The answer from Mr. Anthony is yes; this would be page 5, section 3, subsection 7, paragraph (c), lines 3 through 4, and subparagraph (1): "the concentration of alcohol at 0.08" and at line 7, subparagraph (2) "prohibited substance." I think that is the essence of his question.

**Kristin Erickson, representing the Nevada District Attorneys Association,
Reno, Nevada:**

It is my understanding that there is already a law in existence with regards to an alcohol level for certain crimes. I believe the arrestee must have a blood alcohol content of 0.04 or less before he can be released. As to the current status of the law regarding violations of the protection orders, I am not certain. I do not deal a lot with that area, so I do not have an answer for you.

Chairman Anderson:

I think we are all curious as to whether, in cases of domestic violence, they are doing these things.

**Nancy Hart, representing the Nevada Network Against Domestic Violence,
Reno, Nevada:**

Yes, these laws already exist and are applied to people who are arrested for violation of a temporary protection order against domestic violence, for violation of a protection order against stalking and harassment, and for the other protection orders that already exist. This is nothing new; the only thing new is that there would be some new offenders who would be subject to the new sexual assault protection order and who would be brought to jail upon violation and subject to those same provisions. The provisions in the bill about the

concentration of alcohol are the same as other statutes. I believe Assemblywoman Parnell had this bill last session.

Chairman Anderson:

Let us make it very clear. I think the nature of Mr. Horne's question is whether or not it is being enforced?

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

There are 17 jails out there plus a city jail in North Las Vegas and Henderson. I cannot tell you if every one of those jails is enforcing the law as they should be. I am going to find out. It would be a practice that if a person comes in and is arrested under these circumstances, and the officer believes he is under the influence of alcohol, that the officer would give that person a breath test or a blood test. Also, if the officer believes that person is under the influence of some type of controlled substance, some type of Drug Recognition Evaluation (DRE) test would be administered and followed-up on. I know that we worked last year on a similar bill, and this one has the same language. I would hope that all of my agencies are doing that, but I will find out for you, sir.

Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

I will also get those figures as to how we deal with the alcohol portion of this statute. That would be a problem: I do not know how we could mandate an alcohol or drug test; I do not know whether or not we are currently doing that.

Chairman Anderson:

The theory is that you are doing that, but the reality may be something different. I guess that was the question, or am I misinterpreting Mr. Horne?

Assemblywoman Parnell:

The legislation of Assembly Bill No. 377 of the 71st Session left the determination of whether or not you were going to hold a violator for 12 hours completely up to the arresting officer. A number of people felt that we needed to add something to that so there was no discretion. It was decided that they must be held for 12 hours if they posed a threat, were under the influence of alcohol or drugs, or had a prior violation. The issue is if anyone who is arrested for violating a TPO, who fits one of those three categories, must now be held for 12 hours. Hopefully, that is happening.

Assemblyman Carpenter:

On page 4, line 14, it says, "A temporary order may be granted with or without notice to the adverse party." On page 4, line 31, it says, "Any court order

issued, pursuant to this section, must be in writing and be personally served upon the person to whom it is directed." Is there a conflict there, or am I reading it incorrectly?

Nick Anthony:

We can certainly take a look at that. I can tell you that this language was modeled after an existing statute. Those provisions are exactly what are in existing laws. I can double check to make sure there is not an overlap there, or if a word needs to be inserted to clarify the statute. I believe subsection 6 is referring to an extended court order versus subsection 3, which is just a temporary order.

Assemblyman Carpenter:

Mr. Chairman, if that is what is intended, then it probably needs to say that instead of "any court order."

My other question concerns page 6, line 11, "Any law enforcement agency in this state may enforce a court order issued pursuant to section 3 of this act." "Any law enforcement agency" casts a wide net. I do not know if that phrase would apply to federal agencies, such as the Forest Service or the Bureau of Land Management, which do have some enforcement powers.

Chairman Anderson:

Mr. Anthony, are the enforcement powers referenced in section 6, subsection 3 of the bill extended to a broader range of individuals?

Nick Anthony:

I am searching for a definition of "law enforcement agency," and we will make sure that matches. If I could go back to Mr. Carpenter's prior question and clarify that, after further review, I believe subsection 3 is saying that the court can grant that temporary order whether or not the defendant has notice. The court is not going to send out notice and wait for notice to be served before they grant the order. They will go ahead and grant it. Once the order is granted, they will send it out in writing and personally serve it.

Chairman Anderson:

It is done that way as compared with the usual practice of notifying you that I am going to serve you and then actually serving you?

Assemblyman Carpenter:

I think there is a discrepancy here, but I may be wrong. Perhaps Mr. Anthony explained it, although I did not quite understand his explanation.

Chairman Anderson:

Mr. Anthony, do you want to take another shot at explaining that?

Nick Anthony:

I will try my best to explain it again. I believe page 4, subsection 3 gives the court the power to grant a temporary order without notice to the adverse party. This means that if a victim comes in and says, "I would like to get a temporary order for protection issued," the court can issue that order without letting the defendant know. Once the order is granted, in writing, they will serve it upon the person. This is done in an existing law. I am assuming it is done in an effort to protect the victim as quickly as possible without having to wait for notice upon the defendant. Maybe Ms. Hart, who is an expert in this area, can further clarify that.

Nancy Hart:

Mr. Anthony is correct. This not only exists in the other protection order laws that we already have, but it is a procedure for getting an ex parte motion. Ex parte is a legal term, which means that you are in an emergency circumstance, and you need to get something without advance notice to the other party. Those are how all protection orders are entered at the outset. However, they are enforceable only when the defendant, or offender, has been served. It exists, but he cannot be found in violation of that order until he has been served with a copy of it. Thereafter, the extended order would be issued only after notice, and an opportunity to be heard had been served in person or in the mail.

Assemblyman Carpenter:

I think I understand that now.

Chairman Anderson:

Mr. Anthony is going to be looking at the question of law enforcement for us.

Nancy Hart:

I have a response for Assemblyman Carpenter on the law enforcement question on page 6. The provisions you see throughout this bill, for someone who is not familiar with other protection order statutes, may look like a lot of provisions and complicated procedure. As you have heard, this all mirrors other existing law for stalking and harassment, and it looks very similar to protection orders for domestic violence victims as well. There are some differences, but they are very similar in regard to the 12-hour hold, the deferred fees, and the probable cause arrest. All of those provisions are things that we have worked on through many sessions. This protection order is within a package of many things that have happened over the years, one of which is the provision about law enforcement throughout the state being authorized to enforce those orders.

That provision was added a few sessions ago in order to clarify that any officer throughout the State of Nevada can enforce the order. If the order is issued in Clark County, it does not have to be enforced by a Clark County Sheriff.

Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General, Reno, Nevada:

The Attorney General supports this bill and believes it will provide relief for victims of sexual assault in the State of Nevada.

Chairman Anderson:

We have your letter ([Exhibit F](#)) in support, and we will make sure it is submitted for the record.

Miranda Smith, Private Citizen, Las Vegas, Nevada:

Thirteen years ago, here in Las Vegas, I was raped. The person who sexually assaulted me was someone I had known for over a year; someone I trusted; someone I considered a friend. All of that changed on the morning of December 1st as he raped me repeatedly and threatened to kill me and my family if I said a word or later reported him to the police. I had no reason not to believe him. He knew where I lived, where I worked, and the places I frequented during my spare time. Under the current statute, I did not qualify for an order of protection because there existed no relationship between us, nor were we related by blood or by marriage. Although I feared for my safety and that of my family, I was denied any opportunity to obtain protection for myself because of this serious oversight. Once again, the person who raped me was successful in silencing me. I am here today, silent no longer, requesting that victims of sexual assault be allowed to obtain orders of protection. No victim should be excluded or exempt from the basic right to safety.

Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada:

We do not oppose the purpose of this bill. Certainly, victims of sexual assault absolutely ought to be able to get a protection order against their attackers, but we do have some concerns. I related some of them to Justice Hardesty, and I told him that I had proposed some language that could achieve the intent of this bill and address some of our concerns. One of the problems we had with this is that we were not yet entirely clear on what problems were being addressed.

One of our concerns is that we see a lot of abuse with extended and temporary protection orders, both in the criminal sense and in the family law context. A lot of times, people will get a protective order and then invite the other person over with the intent of getting him in trouble. This sounds absurd, but we see that happen a lot; it is very frustrating. People use them as weapons in custody battles, and it is something that is fairly easy to get, which is a good thing, but,

unfortunately, it makes it fairly easy to abuse as well. One of the problems where someone invites the other person over, even when they change their mind, or if they are a legitimate victim and they are having a hard time staying away from the other person, is that there is nothing that prevents the person who got the order in the first place from having the order changed before seeking out contact, which often gets our clients in trouble.

Another problem we have is that we are unclear as to the purpose of the bill. We now understand that it is mostly a timing issue, that often times judges will not grant orders when the sexual assault happened in the past. We certainly do not disagree that those should be granted in those circumstances, but perhaps more explicit language should be put in the bill that says to the judges that timing shall not be a bar to granting these protective orders. I think for a lot of judges, protective orders are a time-essential thing. That is a purpose that we think should be made clearer. We could not understand why, under current Nevada law, someone who could legitimately make a case to the judge that she had been raped could not be given a protective order. Now we are clear on that.

The other problem is that the current language, as it is, could be read to force judges into issuing an order that they may not otherwise feel is appropriate. Assemblyman Cobb noted the language in the bill is based on what the victim reasonably believed happened, not what actually happened. Is the language meant to say that a reasonable person believes something happened, or is it meant to say that a person reasonably believes something happened? That is an interesting distinction. Rather, we would certainly feel it is appropriate to have a lower burden of proof in a criminal case, that some kind of sexual assault was found to have reasonably occurred instead of it all being based on the perception of one person.

Finally, the burden of proof is somewhat unclear. It should certainly not be a criminal burden of proof. Once someone is accused and once a protective order is granted citing sexual assault, the realistic consequence is that now there is a court order saying that someone has a protection order against him because he is accused of having committed a sexual assault. That is a very difficult bell to unring. That is something we must be cautious about, and due process demands that the moving party explicitly be required to show some standard of evidence. I think one of the problems, and something I also did not know, is that it was modeled exactly after the stalking laws. Stalking and harassment are much squishier things to demonstrate. Are phone calls considered stalking and harassment? Where does that bar rise? It is a fact-specific determination, much more so, perhaps, than a cut-and-dried case of sexual assault where you can point to an actual event that happened. Perhaps different language is

appropriate there. Those are our concerns. We will be working with the sponsors of the bill in an attempt to address those concerns. I think we can work together to meet our concerns and still protect the victims as this bill is designed to protect them.

Assemblyman Mortenson:

Is there no provision in the law that mitigates the punishment for a perpetrator, who violates a protective order, if the victim invites the perpetrator to her house or his house?

Orrin Johnson:

If the order is against only the one person, he is violating it. One of the reasons behind it is that sometimes victims do legitimately have a hard time protecting themselves and want to reach back out to their attackers. One of the suggestions that might make this bill better is to make those orders mutual when they are issued, so that both parties are ordered to stay away from each other. That would also protect the victim, because she would have a court order telling her to stay away. That would make it easier for her to say, "I am not going to call him up because I do not want to violate the court order."

Assemblyman Mortenson:

That sounds like a good idea.

Assemblyman Horne:

Mr. Johnson, I am having trouble with the first premise on the alleged victim calling the alleged perpetrator and enticing him. I have had clients to whom I have seen that happen. I am not saying that it does not happen, but I have also defended against that by showing call records. If a person is calling my client and this person has requested a TPO, what picture does that paint? I have successfully defended a client for that. I think that scenario is wanting in stating that it is a problem. I have also had my clients request a temporary restraining order so we can show that we have one as well, and that we are concerned about the victim coming back and enticing or harassing my client. There are mechanisms out there to protect against what you are concerned about. Is that not correct, or is it more difficult in Washoe County for someone accused of that to obtain a temporary restraining order?

Orrin Johnson:

I do not have statistics to back it up, but I can tell you from my experience and the experience of my colleagues, that as public defenders, our clients are not sophisticated. They do not have a lot of money. They do not usually have divorce attorneys, or if they did, it was a long time ago. One of the scenarios that I see play out over and over again is that the victim, who got the order in

the first place, will call to reconcile with the adverse party without ever actually changing the order. The situation will then turn into a shouting match or something else. The original victim will remember that she had an order and then will call the police, even though she has invited the adverse party to the house. That is a defense that we also mount, but, under the letter of the law, it does not matter; he is still guilty of that crime. The burden is on him to know that, even if someone else calls him up. I also advise my clients to get protective orders of their own. Sometimes they do, and sometimes they do not. A lot of times, the dynamic is not always one-sided: there are power and control issues and abuse going on from both sides. When you couple that with unsophisticated people who are not absolutely clear where the legal lines are until they actually get arrested, or when one person has had experience and knows where the lines are and the other person does not, then it becomes a real issue. What I can tell you, from the experience in my office, where there are custody issues at stake, as well as the criminal side, the violation of protective orders has been a continual and substantial problem.

Assemblyman Horne:

You have a concern that the standard for seeking a protective order is based on the perception of the alleged victim. If a person believes he is danger, and we are talking about an initial restraining order, I do not understand what other standard would be appropriate in helping to protect that person. Are you suggesting that we have an evidentiary hearing before a person is even entitled to have protection? This standard already exists. We are just adding sexual assault to it. I understand your concern in reference to the "bell being rung," but as a defense attorney, you get to outline what the standard is on being able to get one. If it gets that far, you should be able to tell a jury, "Well, the standard to obtain a protective order is just to ask for one." Is that not true? Yes, that is the standard. That is not an element of proof of the crime in the first place. I do not think you could even get past that at a preliminary hearing. I do not understand what different standard you have in mind for an alleged sexual assault victim than you would have for someone claiming they are being stalked or harassed.

Orrin Johnson:

One of the things that you noticed, that the person is claiming that he is in danger, is not what the bill says. The bill says that she has a reasonable belief that she was the victim of a sexual assault in the past, which is a different thing, not that she is necessarily in danger. We do not advocate a higher burden of proof, and we are not opposed to the general purpose of this bill. We just want to make it clear that there is some pause, something that explicitly notes that the judge has to make some kind of finding, with a low burden of proof, that a sexual assault has actually occurred, even if that involves taking

the testimony from the person at an ex parte hearing for a temporary order. Also, recall on section 3, page 3 that it is not just for a temporary order, it is also for an extended protective order. I too understand that the lower burden of proof is there, especially when it comes to the criminal side. When it comes to the family side in the dependency cases and the custody issues that we also deal with, it becomes much more fluid. With that piece of paper already in existence, even though it should not constitute proof all by itself, it still has the potential to be damaging.

Chairman Anderson:

I have the feeling that the two of you could have a long, extended dialogue on this particular issue relative to the bill and its interpretation. I appreciate that, but I want to make sure that we get to a question and an answer.

Assemblyman Cobb:

Mr. Horne covered a lot of what I was going to discuss, but I wanted to make it clear that my concern, which was assuaged, was about any type of permanent finding in the law having to do with someone committing a sexual assault. We need to keep in mind here that this is just a temporary restraining order for up to 30 days. All it does is keep two people apart. It does not have any type of permanent effect, and it does not take away someone's rights for an extended period of time. It can be less than 30 days upon 2 days notice. I just want to make it clear, if you were misunderstanding my earlier question. I think we could agree that this is just a temporary issue, and it is not the end of the world to use the same threshold standards that we use for domestic violence for someone who truly believes that a sexual assault has been committed against her.

Orrin Johnson:

We do not necessarily disagree with that, and that is why we are neutral on that issue instead of opposed. We are worried that some of the language could be stretched a little too far, and too wide of a net could be cast, and the protection orders become too easy to get with too little oversight. Although that is not the intent of this bill, we understand and agree with that. We are just hoping that maybe we can tweak some of the language and tighten it up to ensure those issues are addressed without accidentally sweeping up some other people, to minimize its ability to be used as a weapon by people who would apply for these unscrupulously, which unfortunately happens all too often.

Chairman Anderson:

I do not think we are of a mind to lose ground in other areas of domestic violence that have already been gained in previous sessions with Ms. Parnell's bill. We are merely recognizing the fact that rape may fall into a similar set of

circumstances. It sounds to me that you are trying to go back and replot the ground from last session's bill. I think that raises a different set of concerns for all of us; so you can understand where we are all coming from.

Kathy Jacobs, Executive Director, Crisis Call Center, Reno, Nevada:

I just want to remind the Committee that this particular bill is not about victims who are in a relationship by blood or marriage. This is about sexual assault; it is something totally separate.

Chairman Anderson:

Let me bring A.B. 120 back to the Committee. It appears that we are going to be waiting, although I believe Mr. Anthony has, in part, a response to how we generally use the term "law enforcement."

Nick Anthony:

It appears we generally use "law enforcement" throughout the statutes. We use "law enforcement agency" in some places. We further define it as primary or local, but under *Nevada Revised Statutes* (NRS) 202.873 there is a specific definition of law enforcement agency which includes the Office of the Attorney General, Office of the District Attorney, investigator, local law enforcement peace officer, et cetera. It does not mention the Department of Wildlife or any of those types of folks.

Assemblywoman Parnell:

If we are going to have further discussion, I have a concern as well. I believe Assemblyman Cobb had a concern on page 3, line 22. I would like Mr. Anthony to provide us with the existing definition or standard for "reasonably believes."

Chairman Anderson:

We will have Ms. Chisel and Mr. Anthony cooperate in putting together a memo for us on "reasonably believe," on section 3, page 3, line 22 of A.B. 120.

[The Chair called a five minute break. The Chair resumed the meeting.]

Let us turn our attention to Assembly Bill 116.

Assembly Bill 116: Revises provisions concerning compensation for victims of crime. (BDR 16-1)

Assemblyman John Carpenter, Assembly District No. 33:

I am here today to give an introduction to A.B. 116. Assembly Bill 116 addresses two different situations. It says that if a police agency has information, and Mr. Nix's office asks for that information, that they send it

within ten days. I believe that in regard to this section, there will be an amendment offered by the peace officer's association. I believe the Attorney General's office drew this amendment up, and they are in agreement with it. I certainly agree with it also. I think that Mr. Adams will be here to present that amendment.

The other part of the bill regards the situation of contributory conduct. Contributory conduct cannot be considered in determining a victim's claim of compensation in cases of sexual assault and domestic violence.

**Nancy Hart, representing the Nevada Network Against Domestic Violence,
Reno, Nevada:**

I am here today to testify in full support of A.B. 116. This legislation makes two important changes to the Victims of Crime Program. Section 1 provides for the transmission of law enforcement reports directly to the Program when the Program requests it. Bryan Nix will be providing more information on this part of the bill and the need for it. The Network supports the direct transmission of police reports to the Program because it relieves the victims of the burden of having to obtain and submit those reports which are required in order to receive compensation. I am aware of law enforcement's concern about the language in section 1 with respect to the police reports, and I am completely supportive of the proposed language for that section.

More importantly, section 2 of the bill proposes to delete both domestic violence and sexual assault victims from being subject to current law, which requires you to consider the provocation, consent, or any other behavior of the victim that directly or indirectly contributed to the victim's injury or death. Basically, this section would exempt domestic violence and sexual assault from contributory conduct considerations that are currently utilized by the Program. As you will hear from other testimony, this exemption is extremely important because its application to domestic violence and sexual assault victims is inappropriate and unreasonable. For example, the Program has denied compensation to victims of domestic violence because they have stayed in a violent relationship and have been battered more than once by the same offender. This unfairly blames the victim for the violence. It penalizes the, usually female, victim for a decision that is caused by many factors, including household economics, fear of losing custody of her children, and the very real probability of greater danger if she flees.

Another example is sexual assault victims who have been denied compensation because of the contributory conduct of their underage drinking or the use of methamphetamines in the time periods prior to their rapes. I believe you have a copy of a Las Vegas Sun article ([Exhibit G](#)) from last August featuring a case in

which contributory conduct led to the denial of this rape victim's claim for compensation. Again, this unfairly blames the victim for the violence perpetrated against her. The changes proposed in A.B. 116 and A.B. 114, as you have heard from Chief Justice Hardesty, all arose from the victims of crime subcommittee of the Advisory Commission on the Administration of Justice. By decision of that subcommittee's chair, all recommendations to the full Commission needed to be unanimous, and they were. The full Commission also voted in unanimous support of putting those proposals before the Legislature, including the proposal to remove domestic violence victims and sexual assault victims from contributory conduct considerations. Nonetheless, I learned on Friday afternoon that Mr. Nix, a member of that subcommittee, now opposes exempting domestic violence from contributory conduct consideration and proposes to remove domestic violence victims from section 2 of the bill. As you listen to Mr. Nix's objection to exempting domestic violence victims, I would urge you to keep two important thoughts in mind: One, the program has a tremendous amount of discretion in deciding victims' claims, and the elimination of contributory conduct is not going to prevent the Program from making appropriate denials, and two, the policies that Mr. Nix refers to as pending before the Board of Examiners failed to adequately address the inappropriate and unreasonable application of contributory conduct considerations in domestic violence cases. The Network strongly supports both sections of this bill and strongly supports the elimination of the contributory conduct provisions. We urge you to reject Mr. Nix's suggestion that the bill needs to be amended. With the single exception of the amendment from law enforcement, we urge you to pass the bill as it is worded.

Chairman Anderson:

The problem that you perceive this bill is going to take care of is that some victims of crime are not even able to make applications while others, who are the perpetrators of the crime, are being compensated. Is that it?

Nancy Hart:

No.

Chairman Anderson:

Is that not what Mr. Carpenter is concerned about, that some people who are making applications, even though they may not be compensated, were the perpetrators?

Assemblyman Carpenter:

If I stated that, I did not mean to. I think the reason that I agreed to carry this bill is that I felt that people who have been victims of sexual assault or domestic violence are most often the ones who are in the most need of compensation. I

think it is wrong to have a contributory conduct provision that excludes people from compensation. That is the reason I feel very strongly that this bill is needed.

Nancy Hart:

Although I was not a member of the victims subcommittee, I attended several meetings, and I followed the progress of the committee. I know there were a number of discussions in which the Program felt that the statute, as it is worded right now, required that contributory conduct considerations be applied across the board. The statutory fix that we are proposing today is to clarify, in statute, that contributory conduct considerations will not apply in those two situations.

Bryan Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada:

I support two provisions of this bill. I oppose the provision with regard to exempting domestic violence cases from contributory conduct considerations. I appreciate Ms. Hart's support of section 1 of this bill. I have not seen the law enforcement amendment ([Exhibit H](#)), so I am not sure what their issues are, but I would certainly be happy to consider it. I am not married to any particular provision in section 1.

Chairman Anderson:

Mr. Nix, I would remind you that we members of the Committee are the men and women who get to consider this, and we will amend it based upon the information that is put in front of us. I appreciate the fact that you perceive that this is your bill, but I believe it is Mr. Carpenter's bill. Ms. Hart had brought up your name, and I wanted to know whether or not you are in support of the concept of the bill.

Bryan Nix:

I am strongly in support of section 1, which concerns making police reports available. The only comment I wanted to make on that section is that this is not because we have a lack of cooperation or a problem with law enforcement. I submitted a bill draft separately on this issue. I think this issue has come before the Committee because of my bill draft request. Our goal was to provide a mechanism that provided support to police officers for releasing their reports. There is confusion because of some of the confidentiality laws, and we merely wanted a statute that would let law enforcement know that they have statutory authority to release unredacted reports to the Victims of Crime Program. That was our primary support for this provision of the bill. I do support part of section 2, and I oppose part of section 2.

Chairman Anderson:

Have you had an opportunity to share your amendments with the primary sponsor of the bill, Mr. Carpenter?

Assemblyman Carpenter:

I received an email that had gone to the Attorney General, in which Mr. Nix said he was opposed to adding domestic violence to the contributory conduct exemption; he wanted to eliminate that. I think that is his amendment.

Chairman Anderson:

Mr. Nix, did you share that with Mr. Carpenter and the Attorney General?

Bryan Nix:

Yes, sir. Last week, I forwarded a copy of some email exchange I had with the Attorney General about my concerns with including domestic violence in this bill. I also provided your Committee manager, Katherine Malzahn-Bass, with copies of my testimony and asked her to forward it to Assemblyman Carpenter. She indicated that she would forward my testimony that I submitted to the Committee on Friday.

Assemblyman Horne:

I have a question on section 1, subsection 4, concerning redaction. What information are we talking about redacting? I have a slight concern with not redacting anything because some of the redaction, I assume, in these types of reports, may have a person's address. This is particularly important in cases where juveniles are involved. Maybe other family members with whom this alleged offender lives do not want their personal information out there as well.

Nancy Hart:

Maybe it would be an appropriate time to have law enforcement personnel come forward. I can give you my opinion, but both Mr. Nix and Mr. Adams probably have a more personal and direct answer to that. The proposed amendment is about that confidentiality.

Assemblyman Horne:

I have not seen that amendment on the redaction.

Nancy Hart:

It has apparently been distributed over there. It is very brief.

Chairman Anderson:

Although it is not signed, and that causes a little bit of concern, I presume that this is the section 1, subsection 4, amendment: "A law enforcement agency or

a juvenile court may redact confidential information from an investigative report or police report before providing a copy of the requested report to a compensation officer pursuant to subsection 3." That is the suggested language, I think, from Mr. Adams on behalf of the Nevada Sheriffs' and Chiefs' Association. Is that correct?

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

This amendment was brought on behalf of law enforcement and the Attorney General's Office ([Exhibit H](#)). Mr. Munro presented this to me this morning. I can tell you that I had the intention of coming before you this morning to bring issues concerning this bill, especially in section 1. I did not have a specific amendment, although when I arrived, Mr. Munro had provided this to me. We are in support of it. It works for the issues that we have, but I do need to speak towards our concerns about section 1 of the bill.

Chairman Anderson:

Mr. Munro, is this from you?

Keith G. Munro, First Assistant Attorney General, Office of the Attorney General, Carson City, Nevada:

I prepared that on behalf of Mr. Adams. Our office works very collegially with Mr. Adams, and he had expressed some concern about providing unredacted information, similar to Assemblyman Horne's concern. I told him, "Let me help you and make sure that we can go ahead and get an amendment before the Committee that you could consider." Mr. Nix has informed this Committee that law enforcement works well with them. The question is whether or not there is information out there that maybe should not be provided. It is a question of who should look at the information that is confidential and who should make the decision. We think it is best to let law enforcement make that decision because they are the ones who gather the information and are best able to make a decision about what should be redacted and what information is necessary for Mr. Nix to make an adequate determination on what compensation should be provided to these victims.

Chairman Anderson:

As you all know, I am always concerned with victims of rape having to fill out certain kinds of forms that, by federal law, they are not required to fill out. It is not necessary for them to file a police report, as I understand it, in order to receive certain medical treatments.

Keith Munro:

I think that is correct, Mr. Chair.

Chairman Anderson:

Does that immediately preclude them from also getting help from the Attorney General's Office through Mr. Nix's responsibilities?

Keith Munro:

Mr. Nix is not a member of our office. I think that question might be more appropriately directed toward Mr. Nix.

Chairman Anderson:

Mr. Nix, I am a little confused here. Obviously, you have been trained on the subject of victim's rights. Do you perceive this as a sort of insurance process? Are you processing claims, or have you been trained in victim's advocacy and the nature of victim's rights?

Bryan Nix:

The Victims of Crime Program is statutorily required to provide assistance to victims of violent crime in Nevada by paying a variety of "benefits" related to their injuries. We pay their medical bills, their counseling bills, and a variety of other expenses. The purpose of the police report and the importance of it is that, under Nevada law, we are required to take into consideration certain factors that are available only by reviewing a police report. Our intent with this legislation was merely to provide an enabling mechanism for law enforcement to be able to release their reports without fear of violating some other provision. We are not interested in having the police departments provide us with secret or confidential information. In fact, we have provided a form that is available on our website that is a substitution for a police report. Our main concern was that sometimes a police agency, or a police officer, or a detective may be concerned that he might be violating another confidentiality law, so he heavily redacts the reports to the point where we cannot read them and determine what he is trying to tell us. When that happens, we will deny the claim because we cannot understand if there was a crime committed involving the victim who has applied for benefits. That is a hardship to the victim. We merely want to be able to determine if the police report meets the requirements of law and that the victim is qualified so that we can approve the claim and pay the benefits. I would be happy to consider any modifications to this bill.

Chairman Anderson:

Just for my own frame of reference, am I to understand that you perceive that you are really processing paperwork, and the need for sensitivity, particularly in this group of claimants, is not part of the training either you or members of your staff go through in terms of being aware of the victim's concerns? You are only concerned about processing the claim and obtaining as much information as you

can so that you can profile the claim as narrowly as possible. Is that a fair statement?

Bryan Nix:

No, I do not think that is a fair statement at all, Mr. Chairman. We are very concerned about victim's rights.

Chairman Anderson:

Have you had training in victim's rights?

Bryan Nix:

Of course I have had training. I attend conferences, I go to classes, and I have been running this program for 20 years. I have a fairly good idea of what the issues are. Our concern is for the victim. Of course, we would like to be able to approve the victim's claim rapidly so that we can get the services to her she needs when they are most effective, which is very close to the time of the crime. The biggest delay that we, and virtually every victim of crime program in the nation, suffer from is in getting police reports from police agencies. Like was said before and in my submitted testimony, we have excellent cooperation from police agencies. This is intended to give them some protection so they feel as though they can release the reports that we need to make our decisions. If you look at our statistics, we have worked very hard to make an approval decision immediately when we receive an application. We have cut 80 to 90 days off our approval time by being able to act quickly when we receive an application. If there are considerations in this bill, I am wide open to them. The ten days is not a big deal. Our main concern, Mr. Chairman, is that sometimes when you redact a report, particularly when there are multiple parties involved, you simply cannot read the report; you cannot understand what is being said. In those cases, it creates a hardship for the victim by having to appeal a denial because we could not understand that the victim was a victim of crime because of an overly redacted police report. We certainly do not object to the police redacting information.

Chairman Anderson:

Mr. Nix, this is my tenth regular session. I have been on this Committee for 20 years, 18 completed so far. I have spent 33 years as a classroom teacher, and I think that I am somewhat sensitive to the issue. Having heard this testimony on domestic violence, I have advocated for this issue for some time, and I have never been through training. I think that if I were the person who was specifically in charge of running this agency, I would want my employees to go through a specific program to hopefully make sure that the people we are dealing with, people who are victims of this kind of domestic violence, would interact with state workers who have some level of sensitivity training. To me,

it is a yes or no issue. I have been around it for a long time, and I would imagine that if we change it enough from time to time, it would not hurt to go through it again.

Mr. Munro, do you want to move along with your suggested amendment to the bill in section 1, subsection 4, and change "shall not" to "may". Mr. Anthony, does this create a problem?

Nick Anthony:

No, I believe it is fairly clear in that language.

Frank Adams:

That amendment would work for us. We are concerned about the release of certain information in cases where there are multiple victims, sensitive victim information, witness information, and undercover informants. The only other thing I would say is that the ten-day limit is sometimes not a practical thing for us to do. Sometimes, it takes us longer than ten days to complete the reports, but we would sure try to comply with that. I would hate to be held accountable if I could not comply with the ten-day limit.

Chairman Anderson:

Mr. Adams, we are talking about the ten days after the receipt from the administrative compensation office. Would victims not know that, or do you think they are going to file the report simultaneously?

Frank Adams:

I believe there are circumstances, particularly in very complicated situations such as homicides and major accident investigations, where those reports cannot be completed on time. Even if the victim waits for a period of time to file a complaint, it is my understanding that victims can file as soon as they become a victim of crime; there is no time limit. Conceivably, they could file a complaint right after they were victimized and then we would not be able to meet their needs within the ten days, upon the request of Mr. Nix.

Chairman Anderson:

Of course, they have the medical bills that may be facing them, and trying to change their living situations so that they can get away from their abuser. I can think of several different scenarios, and I can understand your point as well.

Bryan Nix:

I would like to respond with regard to that ten-day provision. I would be happy to see that changed to "within a reasonable period of time" or whatever law enforcement is comfortable with. That is how the bill was drafted. We are not

married to a deadline like that. We just want to provide a mechanism for law enforcement so they feel comfortable releasing police reports that are substantially redacted. We just need to be able to understand what the report says. We are not looking for confidential information; we do not need to see the names of any offenders or suspects. We just need to be able to comprehend the crime. To the extent that law enforcement is interested in modifying the ten days to "within a reasonable period of time," that gives them plenty of flexibility. Whatever language you might want to amend with regard to how matters are redacted, we are very flexible. We feel we have a great relationship with law enforcement throughout Nevada, so we are more than willing to consider any modifications they might have to this particular language and what mechanism works for them.

Assemblyman Segerblom:

Mr. Adams, I guess I am concerned that by changing the language from "shall not redact" to "may redact," it seems to encompass the purpose of what Mr. Nix is talking about. I wonder if you would be willing to limit that redaction in some way or put some type of qualifiers in there.

Frank Adams:

I think that the language of "redact confidential information" talks about identifiers for witnesses, victims, suspects, and confidential informants. I think the term "confidential information" is the limiter there. He is looking for the substance of the report and not where a person lives or his social security number or whether or not we had a confidential informant working in the case. I understand what he is trying to get to, but we are also concerned about what we release. My intent was to bring these issues to you for discussion. I was not able to get a hold of Mr. Nix in time after my discussion with Mr. Carpenter on Thursday morning. This is the first time we have seen this issue. Mr. Nix has never brought it before our body or any of the law enforcement administrators. This took us by surprise. If he had a problem, I would have liked to have talked to him about it. I think the confidential information issue is one that we could live with.

Chairman Anderson:

We will take a look at the question, Mr. Adams, as to the possibility that unless it is already precluded by a specific statute, that would make certain kinds of information confidential. We will take that into consideration.

Bryan Nix:

I think Mr. Adams clearly understands what our issue is, he expressed it very well. We are not interested in the confidentiality of certain issues or locations and such. It is truly just an understanding of the police report. This bill was

submitted through the Attorney General's committee, like all of this other legislation. I did not submit this separately. I have posted this bill draft request on our Internet site for the last couple of months, and I tried to get word out to people. In fact, this bill originally came from some folks in law enforcement who wanted to help us get access to reports that were a little clearer. We certainly did not mean to take them by surprise.

Assemblyman Carpenter:

Because Mr. Nix has a problem with the other part of the bill, we need to address that because it is most important.

Lori L. Fralick, Supervisor, Victim Services Unit, Reno Police Department, Reno, Nevada:

Good morning Mr. Chairman and members of the Committee. In the interest of time, I will not read through the whole statement. There is a section giving two specific examples, one of domestic violence and one of sexual assault, that I think is very relevant to section 2 of A.B. 116 and that I would like to read.

[Read in part from prepared testimony. See ([Exhibit I](#)), paragraphs 3 through 7. Made reference to an example letter ([Exhibit J](#)).]

Assemblyman Hambrick:

This may be a rhetorical question. Do you believe that the decision makers on these matters lack either the understanding or knowledge of the situations that these victims are going through? To me there is a difference.

Lori Fralick:

That is a good question, and I believe there is maybe a lack of understanding in the conversations we have had with the Victims of Crime Program administrator throughout this Victims of Crime subcommittee. The discussions seemed to demonstrate, to me, a lack of understanding of the dynamics of domestic and sexual violence. There was a lack of understanding as to why victims stay, why victims of these two crime categories do not often submit reports, or why they may return to an abuser. These are all reasons that we, who work in the field, understand and do not blame victims for. I feel those are the issues that are really impacting the decisions made on their applications.

Chairman Anderson:

Ms. Fralick, I presume you have gone through special training for being an advocate for victims in general.

Lori Fralick:

Yes, I have.

Chairman Anderson:

You probably have to put on training for domestic violence, but have you gone through training to be more sensitive to this particular issue? Not all of the victims of crime are female.

Lori Fralick:

Absolutely.

Assemblyman Horne:

I am supportive of this and that provision. One thing that I am curious about is instances where there is mutual combat. I have had cases where I have defended men and women accused of domestic battery, and I have seen records where both spouses have extensive records of harming each other. They are obviously dysfunctional relationships. In circumstances such as that, is there no room to look to see whether or not you would make a determination that someone is contributing to the abuse? Do you see what I am saying?

Lori Fralick:

I do. That is a good question. I have been a victim advocate for almost 17 years now in northern Nevada, and I have never submitted an application for compensation for someone who was also arrested or charged in an instance of mutual combat. I do not know if that is even a problem. I could not speak on behalf of Mr. Nix, but I can tell you the reason I have never assisted a victim that has been charged with a crime, arrested on scene, or listed as a perpetrator is because that clearly makes the victim ineligible for compensation. I do not see a need to keep contributory conduct applied to domestic violence cases.

Bryan Nix:

Mr. Chairman, I submitted my statement in writing to the Committee and provided it to Ms. Fralick and everybody else that I could prior to this hearing today. It is very awkward for to me to try to address isolated examples of cases where allegations are made about how claims were denied or not. Quite frankly, Mr. Chairman, I would not argue that cases have been denied in the past for the reasons that were testified to earlier. If a victim was highly intoxicated and did a bunch of things, they may very well have had their cases denied. We have submitted comprehensive policies and procedures, that are soon to be adopted by the board and that we have been following for some time, with regard to these issues and the application standards for acceptance in domestic violence and sexual assault cases. The testimony you have just heard completely ignores a year's worth of work that has been put in to try to accommodate these very issues into our policies. If you look at our policies, which are posted on our website and that I referenced to the Committee, you

will see that sexual assault and domestic violence claims are largely exempted from all consideration of contributory conduct.

I would like to use my brief time to correct the record regarding some previous testimony. Testimony that there are a large number of denials is completely false. If you look at the statistics we have provided you ([Exhibit K](#)), and can continue to provide to you, there have been virtually no denials in domestic violence and sexual assault cases based on contributory conduct factors of the nature described to you in this testimony. It is not true. We do not deny these cases. It is not a societal issue. It is not a big problem. If you look at our statistics and my testimony, you will find that this is really not an area where the Legislature needs to act. We support removing sexual assault victims from contributory conduct standards; you can see that in my testimony. That includes domestic violence, particularly because of the application of NRS 33.018. We are covering a broad range of relationships that should not be included. At first, I thought that maybe the Nevada League of Cities sponsored this bill because some of these relationships described in NRS 33.018 include relations, in-laws, brothers, cousins, sisters, past and present roommates, and dating relationships. This would cause havoc on the Victims of Crime Program.

Chairman Anderson:

We will have the Victims of Crime Program statistics ([Exhibit K](#)), as submitted to the Chair by Mr. Nix, be part of the record for this day.

Julianna Ormsby, representing the Nevada Women's Lobby and the Attorney General's Victims of Crimes Subcommittee, Reno, Nevada:

We support A.B. 116. We support the amendment to section 1. We do not support the amendment to section 2. The only other point I want to make is regarding training. Thank you for bringing that up. Thank you, Mr. Hambrick, for speaking on that issue. I would like to quickly mention that the National Association of Crime Victim Compensation Boards recommends, as a basic strategy for program standards, victimization-sensitivity training.

Chairman Anderson:

I do not think that is part of this bill, but I understand your advocacy for that.

Julianna Ormsby:

I am not proposing an amendment; I want to thank you for bringing that up.

**Margaret McLetchie, representing the American Civil Liberties Union of Nevada,
Las Vegas, Nevada;**

I want to get on the record that the American Civil Liberties Union (ACLU) is in support of section 2 of this bill, but it does not support the amendment. Even one instance of denying someone compensation for the reasons Mr. Nix mentioned is problematic.

Chairman Anderson:

We will close the hearing on the bill.

We are adjourned [at 11:05 a.m.].

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: February 23, 2009

Time of Meeting: 8:40 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign in Sheet
A.B. 114	C	Brian Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada	Letter in support of A.B. 114.
A.B. 116	D	Brian Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada	Proposed amendment to A.B. 116.
A.B. 114	E	Nancy Hart, representing the Nevada Network Against Domestic Violence, Reno, Nevada	Letter in support of A.B. 114.
A.B. 114	F	Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General, State of Nevada	Letter in support of A.B. 114.
A.B. 116	G	Nancy Hart, representing the Nevada Network Against Domestic Violence, Reno, Nevada	Las Vegas Sun article.
A.B. 116	H	Prepared by: Keith G. Munro, Assistant Attorney General, Office of the Attorney General, Carson City, Nevada/Submitted by: Frank Adams, Executive Director, Sheriffs' and Chiefs' Association, Mesquite, Nevada	Proposed amendment to A.B. 116.
A.B. 116	I	Lori L. Fralick, Supervisor, Victim Services Unit, Reno Police Department, Reno, Nevada	Letter in support of A.B. 116.
A.B. 116	J	Lori L. Fralick, Supervisor, Victim Services Unit, Reno Police Department, Reno, Nevada	Example letter of a denial for victim's compensation.
A.B. 116	K	Brian Nix, Coordinator, Victims of Crime Program, Las Vegas, Nevada	Statistical information on the Victims of Crime Program.