MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
February 13, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:19 a.m. on Friday, February 13, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced 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

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Kristin Erickson, representing Nevada District Attorneys Association, Reno, Nevada
Julie Butler, Manager, Records Bureau, Department of Public Safety
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
Jason Frierson, Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada
Judge Chuck Weller, Second Judicial District Court, Reno, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State
Lee Rowland, Northern Coordinator, American Civil Liberties Union, Reno, Nevada
Judge John Tatro, Justice and Municipal Court, Carson City, Nevada
Jesse A. Wadhams, representing Black Jack Bonding, Reno, Nevada

Chairman Anderson:
[Roll taken] I have a bill that was requested by the Chairman of the Judiciary Committee on behalf of the Advisory Commission on the Administration of Justice, BDR 40-653.

BDR 40-653—Revises sentencing provisions relating to certain convicted persons who provide substantial assistance in the investigation or prosecution of other persons involved in trafficking in controlled substances. (Later introduced as Assembly Bill 168.)

A commitment to vote for the introduction of a piece of legislation is not a commitment to support the legislation when it comes to the final vote on the floor. It is only for the purpose of discussion and proper introduction of the bill.

ASSEMBLYMAN MANENDO MOVED TO INTRODUCE BDR 40-653.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will take the bills in order. We will now open the hearing on Assembly Bill 93.

Assembly Bill 93: Revises the definition of the crime of assault. (BDR 15-313)

This is from the Department of Public Safety, and Captain P.K. O'Neill is with us.

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety:
Captain O'Neill read from a prepared written statement (Exhibit C) and proposed an amendment (Exhibit D).

Chairman Anderson:
Before we proceed, I want to call on our Legal Counsel relative to another potential problem that we may have identified in the legislation that has just come to our attention.

Nicolas Anthony, Committee Counsel:
We need to point this out for the Committee's understanding. During the research for drafting this bill, we discovered an issue which you will also note in the pamphlet that was provided by the Department of Public Safety. We used the word "or," which is a disjunctive use meaning that a person could be convicted of assault either under subparagraph 1 or subparagraph 2. This may cause a delay in the Brady checks when they go through. On the backside of that, what will happen is the district attorneys, when they are charging this crime, will need to be very specific as to which portion of assault somebody was charged under. In the alternative, the Committee may wish to remove the "or" language and see if we can combine it somehow into one fluid paragraph.

Chairman Anderson:
Members of the Committee, in looking at the handout from Captain O'Neill, you will see "The Challenge of Misdemeanors with Disjunctive Elements" (Exhibit E) on the third section. If you come down a little way, you will see in the second sentence, "For example, if the National Instant Criminal Background Check System (NICS) identifies a misdemeanor ...." You may want to read through that material down through the second sentence. Some of our concerns are on

the back side of the pamphlet in the section under the bulleted part of "What Can You Do To Assist…." In processing this bill, we may want to take up some of those issues so we do not create an undo delay in the opportunity to purchase a firearm. That is what I believe Mr. Anthony is saying that the disjunctive question does.

P.K. O'Neill:
We consulted with the District Attorneys Association, and this is what they wanted. They brought several other issues to our attention that had unintended consequences, but that was not one of them.

Kristin Erickson, representing Nevada District Attorneys Association, Reno, Nevada:
We appreciate Captain O'Neill taking our concerns into consideration in the amended language of A.B. 93. We would prefer the "or." It is my understanding that we would have to give notice to the defendant of which theory we are using, so it would be charged with the appropriate language of subpart one or two. We would definitely prefer the "or."

Chairman Anderson:
We may need to have further discussions relative to the question. In talking with the people who did the bill drafting, I found they were concerned about the question of the disjunctive use here in terms of delay. Am I hearing that the intent of the District Attorneys Association is to cause such a delay in obtaining a firearm?

Kristin Erickson:
No, that is not our intent at all. It is our understanding that, if a misdemeanor comes up—and perhaps Ms. Butler is a better person to answer this—they have to research it anyway to make sure there is no component of domestic violence. I do not believe it would cause delay.

Julie Butler, Manager, Records Bureau, Department of Public Safety:
When an individual wishes to purchase or redeem a firearm, our staff in the Brady Unit runs his or her name through State of Nevada and federal background checks to determine if the crime of assault comes up. If they were convicted before October 1, 2001, when the definition was changed to what it is currently, we can use that conviction as a disqualifier. If it comes up today, we cannot use it because it is worded as a crime of fear, and it does not have an element of domestic violence or use of force against another person. I do not know that the disjunctive element would be a detriment to us, per se, or to the background check that we do, or to the potential firearm purchaser. I think the disjunctive element may be more of an issue for the district attorney's office

and for our researchers who would have to know which element they were convicted under. I do not know that it would necessarily cause a lot of delay on our end.

P.K. O'Neill:
When anyone shows up with a conviction that is on our list of disqualifiers, misdemeanor or felony, researchers have to determine if it is a crime of domestic violence. It is really an issue of what was charged, whether it will delay the purchase or not.

Assemblyman Mortensen:
I understand what you are trying to accomplish, and I sympathize with it. I would like to keep guns away from people who should not have them, but I think this is terribly overbroad. We have all heard the expression, "Boy, I would not want to meet this guy in a dark alley." There are some people who just have imposing looks that would almost frighten a person just by looking at them. I know you have the word "intentionally" in there, but who is going to determine if it is intentional or not? It is just too broad for me. I would be very hesitant to vote for this. I think it will have bad unintended consequences.

Assemblyman Gustavson:
The first word on section 1, subsection 1, is "unlawfully." Why do we need that word in there? Is not "attempting to cause bodily harm to another person through the use of force" already unlawful?

Nicolas Anthony:
That was just a bill drafting decision when we were looking at this definition. We looked at a number of other states and the federal law and included it.

P.K. O'Neill:
It could also be self defense, which is legal, when you threaten physical force against the individual.

Assemblyman Carpenter:
I was reading what the district attorney said about assault with a deadly weapon. He thought it could be pleaded down. Is there somewhere else in the statute that assault with a deadly weapon is a felony?

Kristin Erickson:
Yes, Mr. Carpenter, later in the statute it refers to assault with a deadly weapon as a felony. However, the original language in the bill of the definition of assault does reference a deadly weapon, which would open it up for discussion or litigation, basically because a misdemeanor assault that includes a deadly

weapon is now a misdemeanor. We are trying to avoid any confusion and litigation by taking "deadly weapon" out of the definition of assault.

Assemblyman Ohrenschall:
I have a question for Mr. Anthony. Could this still work if the word "intentionally" were left on line 3 instead of being deleted, where it states "assault means intentionally," so it would cover both subparagraphs 1 and 2? The reason I ask that is I would feel more comfortable if "intent" covered both, if it is workable.

Nicolas Anthony:
I will defer to Ms. Erickson.

Kristin Erickson:
That was a very good question. "Attempting" is what we call a "specific intent crime." By including the word "attempting," we are including "intentionally" because we would have to prove specific intent to cause bodily harm.

Assemblyman Segerblom:
My question is for Ms. Butler. If a background check comes to you, and you run it, and there is a conviction, do you look at what the statute was at the time of the conviction?

Julie Butler:
Yes, we do. That is why, before the statute was changed in 2001, we could use it because it said "the attempt coupled with the ability to commit bodily harm" or "to use force against an individual." That was the previous wording of the statute. When it was changed to a crime of fear, it lost that domestic violence element, which was attempting to harm someone. We cannot use an assault conviction after 2001 in denying a weapon to someone.

Assemblyman Segerblom:
If this bill is passed, it would be applicable to convictions after the bill was passed, so there will still be a window between 2001 and whenever this bill goes into effect?

Julie Butler:
Correct.

Assemblywoman Parnell:
In 2001, I sponsored Assembly Bill No. 344 of the 71st Session, and that was what changed the definition of the word "assault" to "intentionally placing another person in reasonable apprehension of immediate bodily harm." I want

to know for my own benefit and peace of mind, if this bill were to pass as amended, does that change anything from that original intent of the 2001 piece of legislation?

Nicolas Anthony:
No, I do not believe it would change any of the intent from the 2001 legislation.

Chairman Anderson:
This will potentially close a loophole and bring us into federal compliance with the Brady bill. If drafted as suggested, the amendments may create some other questions, so we may want to make sure we have the Legal Division look at this again. We want to bring to your attention our concerns about the "or" question and make sure it is fully discussed by everybody before we proceed with the bill.

Is there anyone in opposition to the bill?

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
I marked myself down on the sign-in sheet as against this. After I saw the amended language and heard more fully some of the intention behind it, I would like to change my position to "neutral." As a practical matter, every domestic crime that I have seen has been charged as domestic battery, bringing it fully within the language of the Brady bill, such that if they are convicted their gun rights are taken. It seems to be solid there, as long as it is clear that a simple assault that does not include the domestic relationship will not implicate the Brady language. I think the concerns brought by Legal are legitimate and present a potential problem in application if somebody is not diligent in making sure they do the background check to ensure that the assault theory that was actually charged was the correct assault theory.

Jason Frierson, Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
In light of the amended version and the intent, we have no position.

Assemblyman Carpenter:
It says here "assault" means the "unlawful attempting." What happens if you really do beat someone up? What is that?

Nicolas Anthony:
I believe it would then fall under "battery."

Kristin Erickson:
That would be a battery. It could be a battery with a deadly weapon; or a battery causing substantial bodily harm, which is a felony; or a simple battery, which is a misdemeanor.

Chairman Anderson:
We will close the hearing on A.B. 93.

We will now open the hearing on Assembly Bill 99.

Assembly Bill 99: Makes various changes relating to the security and safety of participants in the legal process. (BDR 15-410)

This is a bill requested by the Supreme Court on behalf of the officers of the court.

Judge Weller, we will need to do one procedural item first.

Assemblywoman Dondero Loop:
I would like to disclose that my husband is a lobbyist for the Eighth Judicial District Court, the Nevada Association of Juvenile Justice Administrators, and the Nevada District Judges' Association. Because my husband is a registered lobbyist and may be testifying on A.B. 99, I am hereby making a disclosure for the purposes of Assembly Standing Rule No. 23 and will abstain from voting on this bill. Out of an abundance of caution to avoid any appearance of impropriety, I am taking these actions even though *Nevada Revised Statutes* (NRS) 218.942 makes it unlawful for a lobbyist's compensation or reimbursement to be contingent upon the outcome of a lobbyist's efforts, and I do not believe that I have any economic interest in the passage or defeat of this matter.

Chairman Anderson:
In recognition of Standing Rule 23 of the Assembly, that changes the makeup of the quorum of this body when it comes to voting.

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada:
I would like to offer a withdrawal of an item that the American Civil Liberties Union (ACLU) has opposed and we really feel is not essential to the effectiveness of this legislation. There is an aggravator for the death penalty included in this legislation, which we feel could be removed and not adversely affect the legislation.

There is an additional highlight that I would like to comment on. We are going to see this from time to time. The Administrative Office of the Courts (AOC) has offered this legislation as part of a legislative authority to sponsor or to have bills brought before this Legislative body. It is a vehicle that is used, and it is not necessarily, we feel, a conflict of interest or inappropriate item for the court to bring to this independent body. Over the years, we have heard about security problems in the court facilities from Ely to a lot of other places, and more recently, closer to home. It was that specific thing that happened to Judge Weller that caused him to offer to carry this bill. With that, I would like to turn it over to Judge Weller from the Second Judicial District.

Judge Chuck Weller, Second Judicial District Court, Reno, Nevada:
I am a family court judge in Reno, Nevada. What has been alluded to here a couple of times is the fact that, as I stood in my chambers about 2-1/2 years ago, a sniper shot me through a window. It focused my attention on court security matters. As I looked around at court security matters in the United States, I found out that one place where there was a real weakness in court security is in legislation. The deterrent effect of the law has not been incorporated into court security needs, and we have significant court security needs here in Nevada. We had a defense attorney stabbed in the courtroom in Reno last week. It is not an uncommon experience for judges to receive death threats.

The bill, A.B. 99, asks the Legislators to consider six specific changes in legislation regarding court security. I will take them in the order as they are described in a letter (Exhibit F) that I submitted to you, which I believe all of you have. Starting on the second page of that letter, I go through the provisions of the bill. The first issue is confidentiality of information. There is a subsection (a) and subsection (b) under that topic. Section 8 of the bill makes it a crime to reveal the social security number, home address, personal email, or phone number of a person who is involved in the judicial process, with the intent of causing violence to occur to that person. The statutory language is more specific than that, but that is the idea. This reflects *United States Code*, Title 18, Section 119. The federal government passed a very comprehensive statute in 2008 to protect the federal judiciary. Some of the portions in this bill are directly lifted from that federal legislation. This is an example of that.

Chairman Anderson:
So, this is really a new area rather than some long-standing law as it relates to the federal judiciary?

Judge Weller:
That is correct. This is a new statute that was enacted when the President signed it on January 9, 2008. It is a new law. It also extends protection, not just to judges, but to anyone who uses the judicial system. That includes prosecutors, public defenders, defense counsel, jurors, witnesses, justices, and everybody in the court system. That broadening of the protections offered is consistent with the trend in all of the states.

Chairman Anderson:
Are there other states that have done this?

Judge Weller:
There are no other states that have enacted subsection (a). That is only a federal statute. But offering the protections of the state to everyone in the judicial process is happening all across the United States.

Assemblyman Manendo:
Does that mean that somebody who has been a juror or witness gets protection forever? How many people have been on juries and how many witnesses are there? This is going to be far-reaching.

Judge Weller:
It is far-reaching in the sense that, if the person's address is publicized with the intent of causing them injury as a result of their participation in the judicial process, protection does extend to them. The idea is that we are trying to protect the judicial process, and if a perpetrator acts because of a victim's involvement in the judicial process, this legislation is applicable.

Chairman Anderson:
I guess it is the question of intent that is the most important part of this scenario.

Assemblyman Horne:
Yesterday we heard from Chief Justice Hardesty on various things, including enhancements to deter crime not having any effect on deterrence. He cautioned Legislators to carefully consider passing such legislation because of the prison time and cost, et cetera. It seems that the broadness of this bill, basically encompassing anyone who walks into a courthouse for particular business, is not going to have the effect that we seek. It seems most of the incidents that happen in courtrooms are impassioned acts that people do not think about. It is different than my deciding to rob a 7-Eleven with a gun; there is an enhancement there. I think when we are talking, in particular, about family court, these are impassioned instances where I do not think anyone

thinks about deterrence. We already have laws to adequately punish them should they act in such an inappropriate manner. I am troubled by that, and if you can give me some comfort to get me past that, I would appreciate it. Those are my concerns.

Judge Weller:
The scholarly literature in this area talks about two types of violence within the judicial setting: targeted violence and nontargeted violence. Nontargeted violence is the kind of violence that you are discussing. A family member erupts in the courtroom because they are not satisfied with a penalty that has been given to someone, or a mother or father erupts spontaneously. Those types of violence are addressed very well by bailiffs in the courtroom and metal detectors.

There is another type of judicial violence that is called "targeted judicial violence." It is a firebomb thrown at the Supreme Court building. It is a sniper shooting through a window. It is someone who has planned to attack the judicial system. Those types of crimes should be responsive to the deterrent effect of all criminal statutes, so I draw that distinction for you, sir. These statutes are directed at targeted, planned violence and not those spontaneous eruptions in the courtroom that are best deterred by security measures that can be in place in the courtroom.

Assemblyman Horne:
I can appreciate that distinction, but in your situation, what is absent from the statutes today or the penalties that will be imposed upon the perpetrator that this bill would fill? What is missing? Are our laws so lacking that there is a risk of a perpetrator coming out and doing it again, or is that penalty already there? Are we piling on?

Judge Weller:
As we go through the bill, there are some omissions in our statutes that I will point out to you, but I think the answer is a philosophical one. If somebody hurts a person, that is a battery. If their intent is to interfere with the judicial system, it is then appropriate that the judicial system has the protection of the law, as well. So, there is an enhancement provision in this statute that goes to the crime being committed against two entities, an individual and also a judicial process. This bill argues that the judicial process itself is entitled to some protection.

Assemblyman Horne:
Then, in your opinion, because of the importance of the judicial system, would we philosophically and with policy extend protection to the legislative process?

If one of us was threatened or attacked because we voted for a tax or a cut to higher education or Medicaid, logic would extend the bill to that situation since the legislative process is very important and should be protected.

Judge Weller:
I think that the logic does exactly go there. The government has a right to protect itself. I do not know if the Legislature has the same problem as the judiciary. In the State of Nevada, we keep no records on threats to or attacks on judges. The only available records that exist are the U.S. Marshal Service records kept about the federal judiciary. I think an analogy can be drawn between their experience and ours. The number of threats against judges in this country has sextupled since 1997.

Chairman Anderson:
In numbers, what does that mean?

Judge Weller:
They have increased by 600 percent.

Chairman Anderson:
What is the numerical number?

Judge Weller:
The number in 1997 was roughly 200, and the number in 2008 was about 1,400.

Chairman Anderson:
Judge Weller, let me allow you to go through your full testimony, and then, maybe, we will come back to this section. I think this is probably one of the critical elements of the full discussion, and I believe there are some other elements in the bill that we are also concerned about. I would remind you that, here in Nevada, for a long time we have provided public employees with protection when someone has threatened them as a result of their working for the government, whether in the executive branch or the judicial branch. This is not a new area of law that we are approaching; it has long been a concern. I want to make sure we fully hear the bill, so let us continue.

Judge Weller:
The second part of the bill picks up on a statute that already exists in Nevada. Under NRS 250.140, a judge is allowed to ask the county assessor to redact public records that the county assessor maintains to conceal identifying information relating to a judge. Other states have similar statutes regarding judges, and other states have similar statutes involving multiple agencies.

Arkansas, for example, has such a statute for voter registration, county assessors, and county recorders. There is a problem with those laws, in my opinion. One problem with those laws is that they are inefficient. If you decide that such protection is appropriate in multiple agencies, multiple agencies have to produce similar bureaucracies. There is also a problem with those laws because they cover a limited number of documents. If you believe that sort of protection is appropriate, then I think a more efficient means of providing that protection should exist.

The Secretary of State's Office currently operates a confidentiality program for victims of domestic abuse. This bill proposes that this program be opened up for use by district court judges and Supreme Court justices if they choose to voluntarily participate. There is a total of 75 such officers in the state. The bill as drafted also mentions municipal court judges and justices of the peace. That was an error in the drafting. There are 90 of them, and I am not proposing that they be included in this program. The program operates as a mail drop. The Secretary of State's Office authorizes a person to use a fictitious address, which is the Secretary of State's address, and then mail goes there and is forwarded to the program participant. It is my understanding that there are about 700 current participants in the program. It is also my understanding that, if it were opened to judges, it would not cause any additional cost to the program other than the cost of postage. And I believe that could be absorbed within the program.

In future years somebody may want to look at whether this should be expanded. Right now, I am only proposing district court judges and Supreme Court justices for two reasons. First, their number is so small that it will not distort the operation of the program. Second, district court judges and Supreme Court justices are not required to live in any particular location in the state; they must merely be residents of the state. I think the program would be easier to administer in relation to the Registrar of Voters for people who do not have to live in specific districts. This would apply to keeping confidential only the resident addresses of the participants. In my own example, the fellow who shot me had MapQuest maps in his home on how to get from his home to mine and from his home to the attorney representing his wife in the litigation.

The next aspect of the bill has to do with what is called "paper terrorism." That is the filing of false liens against people in order to intimidate or harass. Again, this protection would extend to anybody involved in the judicial process if the motivation is to strike at that person because of their involvement in the judicial system. Currently, under NRS 281.405, there is a procedure for removing a falsely filed lien. I assume you are all familiar with this practice. It started with Posse Comitatus a couple of decades ago. Some people file false liens in an

attempt to injure others. I know of one judge on my bench who has had these liens filed against him. When the federal government was preparing to file the Court Security Improvement Act of 2007, they studied state statutes such as ours that provide a civil remedy for the removal of these liens. They found that it was insufficient protection for the federal judiciary because there was no criminal penalty involved, so they enacted a criminal penalty that protects the federal judiciary. This section of the bill, which is section 9, gives to the judiciary in the State of Nevada the same protection that was afforded the federal judiciary by the federal legislation. It provides not only the civil remedy that exists but also a criminal remedy if someone knowingly files a false lien with the intent to harass.

The next provision in the bill has to do with threats of violence against any participant in the judicial process. This is section 10 of the bill. Currently, it is a crime in Nevada under NRS 199.300 to make a threat against a judge if your intent is "to induce him, contrary to his duty to do, make, omit or delay any act, decision, or determination...." It is a crime to try to influence future action.

An examination of the laws of the various states and the scholarly literature shows that the types of attacks that happen against the judiciary have three possible motivations or intents. One of them is reflected in the Nevada statute: to influence future actions. Another kind of threat that is criminalized in most places is a threat made in retaliation. The last is a threat made because of the status of the person: because of their role in the judicial process. I view this as an omission in the Nevada statute that it does not talk about threats motivated by retaliations or because of the person's role in the judicial process.

The next provision of the law talks about the enhancement of criminal penalties. Many states in the United States enhance penalties for any crime against a judge. I cite Florida statute and New Hampshire statute in the letter that you have before you (Exhibit F). Nevada enhances a penalty for the crime of battery against a judge and for no other crime against a judge. This proposal goes back again to the scholarly literature and the experience of other states. It does not seek to protect only judges; that would be subject to an argument that the bill is elitist. This says that if a person is motivated by the intent to interfere with the future operation of the judicial process, or to retaliate because of the past operation, or because of the status of somebody in the judicial process, it enhances the penalty whether the person injured is the pizza delivery person or the judge.

The last part of it is the capital punishment portion, which we have decided we can live without. That is the bill.

Chairman Anderson:
I have a little difficulty with some of the concepts that put the judiciary into an elite group. I know that in your closing statement you alluded to that, but let us go back. Is there a letter of support from the Secretary of State's Office? Is there someone here from the Secretary of State's Office? You have included district court judges, but not justices of the peace or local municipal judges. Nor does it give the same level of protection to the district attorney or the district attorney's office, the prosecutors or the public defenders, or those other people who are directly involved, knowingly, in the legal process on a day-to-day basis. I want to make sure that I understand this. It takes only this exclusive group of individuals and district court judges because of your concern of overburdening the Secretary of State's Office.

Judge Weller:
The entire bill applies to everyone in the judicial process with the single exception of the Confidentiality Address Program (CAP).

Matt Griffin, Deputy for Elections, Office of the Secretary of State:
I can offer the Committee a short background of CAP, established in 1997 by the Legislature. There are currently about 730 participants in the program, and, as Judge Weller stated, we create a fictitious address for people to receive their mail, and we forward it on to participants in the group. The way the bill is drafted, it includes former and current municipal judges and justices of the peace, so we did attach a fiscal note to it. Based upon our estimations, we would need additional staffing to accommodate the increase. I talked with Judge Weller, and he said that he is primarily concerned with district court judges and Supreme Court justices. We have not gotten final confirmation since the final language is not out, so we cannot know what the fiscal note would be, but the program costs consist primarily of mailings and forwarding information to the participants in the program.

In Nevada, there are essentially three manners in which someone can address their confidentiality through the voter rolls. The first is called the "please do not call list." It is voluntary, and you are flagged on the voter rolls as "this person does not want to be contacted."

The second form, which is called the "confidential voter program," is under NRS 293.558. At the county clerk's office, you can complete a form stating that you want your address and/or your telephone number withheld from dissemination to the general public for any purposes outside of a court order.

The third, and the one that has the most restrictive access to personal information, is the CAP program. Those are the three ways you can protect

your identity with the Secretary of State's Office. The intent for which these programs were designed is consistent with Judge Weller's intention with this bill, that is, to prevent someone from going to the county clerk's office or the Secretary of State's Office to find out where a judge lives or where the members of the judge's family live.

Chairman Anderson:
For the members of the Committee, I have the fiscal note attached to this particular bill, which indicates a potential cost of $273,496 on the biennium.

Judge Weller, it would not only protect current sitting judges, but also former judges according to the bill as it was originally written. But, this morning you have decided to restrict it to the narrower group?

Judge Weller:
No, when I proposed this bill to the Supreme Court, I described it as only covering district court judges and Supreme Court justices. I am not sure how the language of the other two categories got into the bill. That was an error.

Chairman Anderson:
An error from your particular point of view.

Judge Weller:
An error from my particular point of view, and I was the principal author of the bill. The bill was not intended to cover justices of the peace.

Chairman Anderson:
Mr. Griffin, I appreciate the fact that the Secretary of State still remains neutral and is still concerned about the fiscal impact to your office.

Matt Griffin:
That is correct.

Chairman Anderson:
So, it is not something that you are rejecting, but you are concerned that if you extend the program, the potential mailing expense is great and it creates a fiscal note for your agency.

Matt Griffin:
Yes, that is correct. It is the mailing cost and, depending on the number of participants, it can have an affect because it is not just a simple system that is set up. We have to have the ability to track any address changes, additions,

and family member moves, so it is a comprehensive task from the information technology (IT) perspective.

Chairman Anderson:
Mr. Graham, was the addition of justices of the peace and municipal judges part of the discussion of the AOC in order to make sure that all judges are included and taken care of, too? Is that what we are concerned about here?

Ben Graham:
That was the initial approach from the AOC. Keep in mind that there are an awful lot of former justices of the peace and district court judges. I think the fiscal impact, maybe as a total optimum might be included, but as you are aware, there are some judges, legislators, and district attorneys whose phone numbers are in the phonebook. I certainly think that reducing this down to the Supreme Court and district court judges would be an appropriate place to start and would significantly reduce the fiscal cost.

Chairman Anderson:
Judge Weller, although in your particular case this individual utilized a Global Positioning System in order to track routes, there are only so many methods of driving from the courthouse to your residence. If someone had the intent, what would prevent him determining the neighborhood and house in which you live, even if you did send this information in to be confidential?

Judge Weller:
I do not think that anything can be done to eliminate the possibility of a perpetrator finding out the residence address of any of us in this society. I think that this type of legislation lowers the probability of that happening.

Judge Joan Lefkow testified before Congress in relation to the federal court security act. She lived in Chicago. A litigant in her court went to her home and, when she did not come home promptly, killed her husband and her mother. That was the impetus for the federal legislation that was passed in this area.

Chairman Anderson:
And yet your family members would not be protected under this legislation that we are proposing; only you would be protected.

Judge Weller:
The portion of the bill that we are discussing right now would allow a justice of the Supreme Court or a district court judge to keep confidential his residence address.

Chairman Anderson:
In the example that you have given of the murders in Chicago, neither this legislation nor the federal legislation would be able to add an enhancement of a penalty as a result of that kind of murder.

Judge Weller:
I think they would be applicable.

Assemblyman Carpenter:
It seems to me that the way this is written is too broad and overreaching. It says "a witness in any judicial proceedings." That is going to take in many, many people: court appointed advocates, victim or witness advocates, attorneys, and law clerks. I do not know how many attorneys there are, but we heard the other day that there are 8,000 or 9,000 in Nevada. It is so broad that it is going to take in too many people. When you get to the situation regarding the addresses, the press is always after us to give out our phone numbers. In Elko, addresses and phone numbers of the county commissioners, city council, and everyone else are printed in the papers. I guess they would not be able to put my address in the paper if this bill passes.

I have a question on that, and there is another area I want to ask you about. There is another section on page 6 that addresses any threat or intimidation, but in almost every election people try to intimidate others, they call names and everything else. It seems to me that we are getting into a situation here where people who run for public office have to accept those types of things. The way this is written, a person who says something during an election campaign may be guilty of a crime. That is my concern: it is so overreaching.

Judge Weller:
It is already a crime in Nevada to threaten a judge. There are three motivations that are recognized in the laws of other states and the scholarly literature, but only one of them is covered by Nevada statute that makes it a crime. That motivation is to influence future action. The other two motivations that this bill would add are to retaliate and to threaten because of the judge's status. It does not change the law. It just adds two additional intents that would be criminal. In relation to your observation that this would protect a lot of people, the intent is this: if there is a drive-by shooting of the Chief Justice of the Supreme Court, that is not a crime under this proposed bill. It is a crime to shoot somebody, even the pizza delivery person, but if you think he is the Chief Justice and you are doing it to interfere with the judicial system, that would fall under this bill. It tries to take the focus away from the individual and create penalties for interference with the operation of the judicial process.

Again, the address program would apply to 75 sitting district court judges and justices of the Supreme Court, including former ones, but very few would be expected to participate. I have asked the Supreme Court to conduct a survey, and if you would like that information, I will pursue it.

Assemblyman Carpenter:
It does not just apply to judges; it probably applies to hundreds of thousands of people in Nevada. Most people during their lifetimes are going to be witnesses in some kind of a judicial proceeding or some kind of a court situation.

Chairman Anderson:
I want to come back to the question that Mr. Horne raised initially about intimidation. I have heard people say that they often feel intimidated by the questioning that takes place here in this Committee. How do you not recognize the intimidation in a courtroom? I have noted, the few times that I have been in courtrooms, that it is not unusual that there is a staring contest between different individuals, especially in family courts. People can be intimidating because of physical size, the tone of their voice, or the way they look. How do you determine if they are trying to be intimidating? Would this bill open the window of charging, or is the determination a higher level than that?

Judge Weller:
The bill does not make intimidation a crime. It is already a crime in Nevada to threaten bodily injury in specific circumstances. This adds different motivations, but it could not be anything other than a threat of physical injury.

Chairman Anderson:
Do you want to talk about proving intent, or do you think that is an important element in order to move with the bill?

Judge Weller:
The easiest way to write this bill would be to say that it is a crime to punch a witness, but that is a problem because then you are providing an additional protection to a class of persons. The bill could then properly be attacked as elitist if you were to say I am protecting these individuals. By focusing on the intent, you are protecting the judicial process as opposed to individuals. It is harder to prove an intent crime than a crime that is specifically described. If you punch a judge, you go to jail. That is easy to prove. If you punch a judge, but you have to prove the motivation was to interfere with the judicial process, that is harder. Intent crimes are less likely to be pursued and more likely to be offered away in plea bargains because intent crimes are harder to prove. I thought it appropriate, though, to focus this bill on the intent of the perpetrator rather than the identity of the victim because, if somebody is acting with the

intent to interfere with the judicial process, then it should not matter whether the person injured is a justice or a janitor.

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

We have a lot of the same philosophical concerns that have been voiced by some of the members of the Committee today, and I think Mr. Frierson from Clark County will be voicing more. Our biggest concern, however, is the death penalty. In speaking to Judge Weller prior to the hearing on this bill, we determined that if the death penalty language were taken out by the sponsors, specifically section 11(f) and section 16, as well as some of the other language, we think that would clarify the intent. Our concern is to make a determination between getting mugged on the street and getting stabbed by my client because he is urging for a mistrial. This bill is not intended for the person who does not know me and sticks a gun in my face to steal my wallet. We do not want to see enhancements for that. Our concerns are not creating new classes of victims. We are not more special than a 7-Eleven clerk or liquor store owner. To the extent that those two often drive the economy more so than we do, you could even argue that they are more important. To us, the overriding concern was the death penalty. With that taken out, we can put our support behind the bill.

I have already discussed this specifically with Judge Weller, and he has included our proposed language in the letter (Exhibit F) that he submitted. It has already been provided to the Committee. It was a fairly minor consideration, and the record has been made clear with the intent behind this. Our changed language clarifies it.

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

We are in support of A.B. 99.

Lee Rowland, Northern Coordinator, American Civil Liberties Union, Reno, Nevada:

I am very much heartened both by the Washoe County Public Defender's proffered editorial change to section 4 of this bill that clarifies the intent, as well as the possibility of removing the death penalty aggravator. I will not belabor either of those issues which are set out in the memo (Exhibit G). I will say, however, that I think adding this amendment in section 4(1) of the bill to eliminate the status-of-the-victim issue is critical if you decide to go forward with the bill.

The one thing I do want to add, which may be slightly different from what others have noted, is the separation of powers concern that we at ACLU have when members of the judiciary create criminal statutes. While there is no question that it is at your discretion to pass this law or not, and clearly we believe it is all right for the Supreme Court generally to receive bill draft requests (BDR), we have grave concerns when the judiciary, itself, comes up with language for a first degree murder crime. They will be the ones interpreting and applying that statute when a defendant is in front of them.

Chairman Anderson:
I believe you heard them say that they are going to remove that section. Are you trying to make a statement about the death penalty, or are you dealing with the bill?

Lee Rowland:
I am speaking about the first-degree murder section, section 11(f), which is not being removed, and any part of sections 1 through 12 that refers to the filing of false liens. We have no problem with the substance of that, but again, from our point of view, for the judiciary to create new criminal statutes is a problem under the separation of powers doctrine. This is something we mentioned last session. It is something that a lot of people do not agree with us about. Nonetheless, I think it is important for us to put it on the record simply because we think it is a constitutional issue. In the future, if that were to become an issue, it would be something we would need to consider.

Jason Frierson, Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
It is not very often that I get an opportunity to testify regarding a bill that in its design would provide me with greater protection, but I would also submit that doing so may not be the best thing to do. I believe that Judge Weller testified about this bill with respect to the intent of the defendant, and that intent was a more difficult element to prove. If I am representing a client who has a bad result in court and then I walk outside and he does something to me, it is pretty clear what his intent is. I do not think that the intent element with respect to this bill would be very difficult to prove.

I, as a public servant, sit next to people every day who are charged with crimes. I do that voluntarily because that is my job and I choose to do it. I do not believe that entitles me to any greater protection than an innocent person walking down the street. I have bailiffs around me; I go through metal detectors; I have special parking, entrances, and exits; and I have things that the average citizen does not have when they are walking down the street. If that average citizen is a victim of a crime, I believe that Nevada's laws

adequately protect him and adequately protect us. We have attempted murder, coercion, and harassment statutes. We have various statutes that are already designed to protect citizens who are victims. For those of us who are public servants, we do it knowing the kind of people, situations, and cases that we are going to encounter as a result of our jobs. That is something that we voluntarily take on, knowing what we will be exposed to. I would submit that any legislation that heightens the penalties associated with our participation in that process, while well-intentioned, goes far and above what Nevada's current laws do and should do.

We have no position regarding the confidentiality of addresses and personal information, but it is the position of the Clark County Public Defender's Office that the current laws protect us and focus on what it should focus on, the deterrence of and punishment for crimes, without regard for our participation as public servants in the legal system.

Chairman Anderson:
The Chair has received a letter from the Busick Group, dated February 11, 2009, signed by the Managing Partner, Alecia D. Biddison (Exhibit H).

We will close the hearing on A. B. 99.

[Committee recessed for five minutes.]

We will now open the hearing on Assembly Bill 104.

Assembly Bill 104: Revises the provisions governing the failure to appear in court for the commission of certain misdemeanor traffic offenses. (BDR 14-95)

Assemblywoman Bonnie Parnell, Assembly District No. 40:
Today I am here to bring A.B. 104 to you on behalf of the Carson City justice and municipal court judges, and they are in my Assembly District 40. The two judges in that court are Judge Robey Willis, who is not able to be here this morning, and Judge John Tatro, who is here with us. They came to me with this issue, but I must admit that I am not an expert on bail forfeiture. That is why the judge has come here to explain this bill.

I want you to remember the court overview that we saw earlier this week. I was really shocked at the high number of cases in the municipal court. After seeing the numbers and reading this bill, I recognized the need for congestion relief in the municipal courts. With that, it is my pleasure to introduce to you Judge John Tatro.

Judge John Tatro, Justice and Municipal Court, Carson City, Nevada:
I am a Carson City justice of the peace and municipal court judge. Last night, the State Judicial Council Legislative Committee, chaired by Chief Justice Hardesty, met and discussed all of our legislative issues. One issue was this bill, and we came up with the amendment that has been handed out to the members (Exhibit I).

The current law, *Nevada Revised Statutes* (NRS) 178.508, allows for the forfeiture of cash bails posted of $500 and under. When someone gets arrested and they post a cash bail, they get a court date when they get out of jail. If they fail to appear, we take the bail money and it is forfeited. Per NRS 178.508, we must also issue a warrant of arrest for the defendant for all misdemeanors, criminal and traffic. The purpose of this bill is to carve out the traffic offenses only and be able to forfeit the amount of the ticket. In the initial bill, we proposed to allow the court to issue a warrant and seize the cash bail. The new proposal is to take out the issuance of a warrant if we seize the cash bail. This is for traffic only, not criminal cases. We would then seize the cash bail just like when you get a traffic ticket and you mail in a check with the ticket. It is paid and closed.

Typically what happens with people who have a citation is they are ordered to appear, they may fail to appear, a warrant would be issued, they would be arrested, they would post a cash bail, they would fail to appear again, and they would get arrested again, say in Tonopah. They would not be able to post the bail in Tonopah. They would be transported from Tonopah to the jurisdiction where the citation was issued. This all takes a week or so, and that is probably the minimum time. It expends a lot of money, and it causes the police to transport people and the jails to house people. With this proposal, the second arrest would not occur. The case would be closed.

Chairman Anderson:
There is something in our scenario that I want to make sure is correct. We have administrative assessments that are placed against all types of court filings, particularly traffic violations. They are utilized by the courts for a wide variety of issues which may not generate from the court that is collecting the fee. That nexus causes a certain level of dilemma, but that is not what I am curious about. If there is a fine for a particular event, which is not in your jurisdiction but in a regular justice court, that fine is divided according to a very strict formula to the state Distributive School Fund and to the county in which the offense took place. If bail is set and somebody fails to appear, that becomes the forfeiture and both the fine and the bail must be paid.

Judge Tatro:
It is true; however, the administrative assessments would still be distributed just as though the defendant were in court and fined or it was forfeited.

Chairman Anderson:
So, the administrative assessments, even in this scenario, will continue to be collected. In the case of domestic violence, drug courts, et cetera, what happens to the fine? Is it still going to be divided between the state Distributive School Fund and the county, or will it be subject to the general fund of the county of origin?

Judge Tatro:
It is my understanding that it will be just the same.

Chairman Anderson:
So, it does not affect the fine in any way?

Judge Tatro:
No. When a ticket or citation is written, the local jurisdictions all have a bail schedule. We try to be fairly similar.

Chairman Anderson:
So, we are not changing the way the fees are divided to support the various court functions?

Judge Tatro:
That is correct.

Assemblyman Horne:
The language states "failure to appear", not "excused." Just recently, before session began, I had to fly to Arizona where my oldest daughter is going to school. In your scenario, I would have forfeited my bail because the court is not aware of my "excused" absence. I would return a week later and say "I know you took my $1,000 because I failed to appear, but I am still contesting this ticket. I would like my $1,000 back." This is basically a motion for reconsideration. Is there a mechanism in place for this scenario?

Judge Tatro:
Certainly, we can always entertain a motion to reconsider. This does not preclude that. However, in your scenario, there would have been no cash bail posted yet. You would not have been arrested yet.

Assemblyman Horne:
Say I had already been arrested, I posted bail, and I have a date now. I missed it because I had to go to Arizona. You now have my bail, which I have forfeited. Is there a mechanism in there for extenuating circumstances?

Judge Tatro:
Yes, any judge can reconsider. I have done that. I have had similar scenarios take place where somebody has had an accident, or they had been in the hospital, or the like. I have reconsidered and, in fact, even when their bail had already been forfeited, we got it back. In your scenario though, you would have been arrested two times and failed to appear two times.

Assemblyman Horne:
In my scenario, I may not have necessarily been arrested the second time. I may have come back and told the court that I had a court date last week, but I was in Phoenix. I would also tell the court, "I know under this law I forfeited my bail, but I would like to have my bail back." The problem is lay people may not know how to do that.

Judge Tatro:
I misspoke. You would have failed to appear twice, but been arrested once.

Lay people know how to request their money back. One of the biggest parts of my day is sitting at my desk going through a stack of letters requesting money back, and lots of times they are right. They have excusable issues or mitigating circumstances that cause us to reverse the forfeiture.

If I might point out one last thing: notice of forfeiture was a bit of an issue for some, initially. In one scenario, the way the law would work is you would have gotten a ticket, failed to appear, gotten arrested, posted bail, and failed to appear again. When someone posts a cash bail at the jail, they are told they can lose their cash bail if they fail to appear. They are given two separate court appearances, and they are given notice, once, that their cash bail could be forfeited.

Chairman Anderson:
If somebody does not pick up the posted bail for some reason, does it eventually become the property of the county?

Judge Tatro:
That is correct.

Chairman Anderson:
Once the posted bail becomes the property of the county, it cannot be claimed later if they come back in four years. This is a good bill.

Jason Frierson, Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
I knew amendments were going to be proposed, so I signed in to speak, if necessary. I remain neutral in respect to this bill.

Jesse A. Wadhams, representing Black Jack Bonding, Reno, Nevada:
We had submitted an amendment earlier, but the secondary amendment from Judge Tatro takes care of our concerns, and we will withdraw it.

Lee Rowland, Northern Coordinator, American Civil Liberties Union, Reno, Nevada:
We originally signed in in opposition to the bill. I have a long written testimony that I retracted from submission after speaking with Judge Tatro. I think the proposed amendment covers many of our concerns in that it makes it clear that you can forfeit the bail.

I do, however, want to put a couple of concerns on the record, if I may. Mr. Chairman, at your pleasure you can decide whether I am neutral or in opposition. With the proposed amendment submitted by Judge Tatro, I think there is some language drafting that needs to be done. In the section where they proposed you can seemingly issue the warrant and forfeit the bail, it just has a period. Then section (c) says you can quash the warrant. It needs to be clear whether that is an "or" or an "and." I think there needs to be some tinkering with that. It is difficult for me to take a position without knowing what that final language is going to look like.

I do have a second concern which addresses Assemblyman Horne's earlier comments. Although my original written testimony was not submitted, I am going to read from it. The proposed amendment suggests that an order of forfeiture should be issued only when a failure to appear is not excused, but the immediate seizure of property fails to give the court or the defendant an opportunity to determine whether the failure to appear was in fact excused or not. I interpreted Assemblyman Horne's question to go directly to that. I had to withdraw my opposition because, as I said, it is now moot based on many of the concerns having been covered by Judge Tatro. I do still have concerns about the ability of someone to notify the court as to whether an appearance was excused. What I propose for the record, and again I am reacting to an amendment that has been submitted this morning, is that I will endeavor to send Judge Tatro and the members of the Committee some language that might

build in a buffer of a couple of days that enables the defendant to contact the court if something like that were to occur. So, in Assemblyman Horne's scenario, you would at least have a couple of days to call the court and notify them of the potential excuse so that you are not fighting to get your money back. We all know that once that happens, it is an uphill battle. We do have some due process concerns. I will suggest some language on the "and" or "or," as well as propose a notice or delay provision so that, hopefully, the kind of situation that Assemblyman Horne described would be greatly minimized, if not eliminated.

Chairman Anderson:
We will now close the hearing on A. B. 104 and bring it back to Committee.

I note that Ms. Chisel has given me a memorandum (Exhibit J) dated February 12, 2009.

Jennifer M. Chisel, Committee Policy Analyst:
That memorandum contains two slides from the judicial branch overview that was presented to this Committee on Wednesday of this week. There were a couple of copies of slides in the presentation that were provided to the Committee members that were a little difficult to read, so I printed them in large form and, hopefully, these will be a little easier to read.

Chairman Anderson:
We are adjourned [at 10:45 p.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 13, 2009 Time of Meeting: 8:19 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 93	C	P.K. O'Neill, Chief, Records and Technology Division, Nevada Department of Public Safety	Prepared Text in explanation of a proposed amendment
A.B. 93	D	P.K. O'Neill, Chief, Records and Technology Division, Nevada Department of Public Safety	Proposed bill amendment
A.B. 93	E	P.K. O'Neill, Chief, Records and Technology Division, Nevada Department of Public Safety	Pamphlet entitled *Misdemeanor Crimes of Domestic Violence*
A.B. 99	F	Judge Chuck Weller, Second Judicial District Court, Reno, Nevada	Letter dated February 13, 2009
A.B. 99	G	Lee Rowland, Northern Coordinator, American Civil Liberties Union, Reno, Nevada	Copy of memorandum dated February 13, 2009
A.B. 99	H	Allecia D. Biddison, Managing Partner, The Busick Group	Letter dated February 11, 2009
A.B. 104	I	Judge John Tatro, Justice and Municipal Court, Carson City, Nevada	Proposed bill amendment
	J	Jennifer M. Chisel, Committee Policy Analyst	Memorandum dated February 12, 2009