MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 30, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:42 a.m. on Thursday, April 30, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33
Assemblyman Mark A. Manendo, Assembly District No. 18
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

David F. Kallas, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Nevada Sheriffs' and Chiefs' Association
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association

Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department; Nevada Sheriff's and Chiefs' Association
Peter I. Breen, Senior District Judge
Ben Graham, Administrative Office of the Courts
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Lee Rowland, American Civil Liberties Union of Nevada
Nancy E. Hart, Nevada Network Against Domestic Violence
Lori L. Fralick, Supervisor, Victim Services Unit, Reno Police Department
Christina Conti, Program Coordinator, Victim-Witness Assistance Center, Washoe County District Attorney's Office
Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General
Michael C. Sprinkle, Vice-Chairman, Nevada Council for the Prevention of Domestic Violence
Keith Munro, Assistant Attorney General, Office of the Attorney General
Andrea Sundberg, Nevada Coalition Against Sexual Violence
Bryan Nix, Coordinator, Victims of Crime Program, Department of Administration
Sandy Heverly, Executive Director, Stop DUI
Elizabeth B. Kolkoski, Municipal Court Judge, Department 2, City of Las Vegas
George Assad, Municipal Court Judge, Department 3, City of Las Vegas
Paul C. Page, Chair, Las Vegas Police Managers & Supervisors Association; Las Vegas Metropolitan Police Department

CHAIR CARE:
We will open the hearing on Assembly Bill (A.B.) 230.

ASSEMBLY BILL 230 (1st Reprint): Revises the provisions governing the carrying of a concealed firearm. (BDR 15-200)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
Assembly Bill 230 is a simple bill. Federal law allows retired police officers to carry concealed weapons, but they must qualify every year. It is sometimes difficult for retired officers to qualify; therefore, we have asked local agencies to provide windows during the year for retired officers to use their ranges to qualify for the concealed weapons permit. It benefits the public to have retired officers with concealed weapons stop crime in our communities. There is no fiscal impact with this bill. The officers can be charged to use the range facilities.

DAVID F. KALLAS (Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Nevada Sheriffs' and Chiefs' Association)
I am here to support A.B. 230. In 2003 and 2004, the United States Congress passed the Law Enforcement Officer Safety Act. One provision allowed active law enforcement officers to carry concealed weapons throughout the entire country, and the other provision allowed qualified retired law enforcement officers to carry concealed weapons nationwide. This bill says the law enforcement agency from which a Nevada law enforcement officer retired must provide two opportunities a year for that officer to qualify under the provisions of House of Representatives Resolution (H.R.) 218 of the 108th Congress, which is under 18 USC section 926C. The officer can be charged for the application and qualification. In order to qualify, the officer must meet the same standards as active officers for those law enforcement agencies.

CHAIR CARE:
How large is this retirement population who wishes to carry concealed weapons in Nevada?

MR. KALLAS:
A majority of the retired officers from the Las Vegas Metropolitan Police Department in the last ten years still live in Nevada. In the Assembly hearing, representatives from the Las Vegas Metropolitan Police Department testified that several officers came to Metro's range and still qualified. As for the amount, the agency could speak to that number.

SENATOR MCGINNESS:
Do some officers have a hard time qualifying because they cannot get time on the range?

ASSEMBLYMAN SEGERBLOM:
Yes. Since Metro uses the range for active officers first, it did not have a window for retired officers to qualify. This bill provides a window for scheduling ahead of time.

SENATOR WIENER:
Will a notice be provided to the officers letting them know when they can access these two windows of opportunity?

MR. KALLAS:
That will be up to the individual agencies. Their first priority is to qualify their active officers and academy recruits. When the agency is contacted by a retired law enforcement officer who meets the requirements of the provisions of the federal statute, they will let the officer know when the opportunity will be available. The agencies must provide two opportunities a year dependent upon their own workload. We did not want to tie the windows to specific days, giving the agencies flexibility in their schedules.

SENATOR WIENER:
They could post it on their Website.

MR. KALLAS:
I will not obligate the agencies, but I assume they could post the notice.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
Mr. Kallas and I worked on the amendment before you on the Assembly side. We are comfortable with the bill. It has been the practice for our agencies to allow their retirees to qualify to get their H.R. 218 card. Through legislation, the association set up a system of applying for and receiving the H.R. 218 card. Our first priority is to qualify active duty officers. If they cannot get on the police range, there are plenty of private sources to qualify the retired officers.

TOM ROBERTS (Lieutenant, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
I signed in neutral, but we support the premise of the bill. This is something we have always provided to our retirees. They can use our facility with no notice, and we will continue this practice. We do not want to be pinned down to identifying two days a year. Flexibility is best for these folks and our range. It is something we currently do and have no opposition to the bill.

SENATOR PARKS:
Does the statute still require a retired officer to qualify?

MR. ADAMS:
A retired officer is not required to qualify if he only wants to carry his concealed weapon in the State of Nevada. If he wants to carry his weapon concealed throughout the United States, he must qualify under 18 USC section 926C. The

retired officer must annually come back and qualify under regulations set forth under federal law and adopted by the Sheriffs' and Chiefs'.

SENATOR PARKS:
Language in subsection 2 says, "... at least twice per year at the same facility ... ." Why at the same facility?

MR. ADAMS:
That came out in the drafting language. Most departments have one range facility. We could ship them to a private range, but we do not do that.

LT. ROBERTS:
The intent of the change was to limit this to the range or the range owned by the department from which the officer retired. "Same facility" may have been old language.

MR. KALLAS:
The federal statute says you have to meet the same qualifications as the active officers. If you are qualifying at the same facility, the practices will be the same. The intent was to have consistency with the federal statute. The facility the retired officer qualifies under will have the same conditions under which active officers qualify.

MR. ADAMS:
Because we have established a program under the Sheriffs' and Chiefs' Association, there are minimum standards all retired officers have to meet statewide. Whether they go to a private or agency qualifier, minimum qualifications set in our requirements must be met.

SENATOR WIENER MOVED TO DO PASS A.B. 230.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open the hearing on A.B. 47.

ASSEMBLY BILL 47 (1st Reprint): Revises provisions relating to specialty courts. (BDR 14-409)

PETER I. BREEN (Senior District Judge):
I preside over the adult specialty courts in northern Nevada. I mentioned this bill in my testimony concerning A.B. 187.

ASSEMBLY BILL 187 (1st Reprint): Authorizes the establishment by district courts of a program for the treatment of certain offenders who are veterans or members of the military. (BDR 14-955)

Assembly Bill 47 deals with drug courts, diversion courts and mental health courts also known as specialty courts. The people we deal with are special, not in terms of their entitlement, but in terms of their need for assistance in stepping back from the abyss of addiction. This movement started over 15 years ago in Clark County. Since then, it has grown tremendously. The specialty courts are the best thing we have in Nevada to help people involved with the criminal justice system fight addiction and prevent recidivism. There is a drug court in every district in this State, and the completion of these programs is not easy. To complete the drug court in Washoe County, offenders can take up to 250 drug tests, attend approximately 400 12-step meetings and attend over 200 counseling sessions in the course of treatment. The offender is required to pay for treatment and must make at least 100 contacts in connection with life skills. This is a more difficult and rigorous program than normal probation.

Assembly Bill 47 comes about as a result of history. In 1975, the Legislature enacted *Nevada Revised Statutes* (NRS) 458, known as the Diversion Act. If a crime committed was directly associated with drugs or alcohol, the offender was diverted into a treatment program. Upon completion of the program, records were sealed because charges were dismissed with prejudice.

Nevada Revised Statute 453, the Uniform Controlled Substances Act, was passed in 1991. Crimes concerning drugs in this State were revamped. Upon completion of the program pursuant to NRS 453, charges were dismissed, but records were not sealed for three years.

Nevada Revised Statute 176A, the Mental Health Court Act, was enacted in 2001. Upon completion of this program, charges were dismissed with prejudice but records were not sealed for three years.

This bill brings those other statutes in line so records can be immediately sealed upon completion of a program as done under NRS 458 for over 25 years. When offenders enter a program like drug court, they are motivated not by a desire to stop using or drinking but because they want to avoid a felony charge and the stigma of a felony conviction. When applying for a job, they want to say they were not charged with a felony.

This bill only seals the record for the crime for which they are being treated. That is the essence of the motivation to enter this rigorous program. It is a wonderful tool to ask these people to submit themselves for this schedule.

CHAIR CARE:
I recall the language in A.B. 187 which passed out of the Senate with a vote of 20 to 0. Assembly Bill 47 is consistent with A.B. 187. Section 7, subsection 4 reads, "Upon satisfactory completion of the treatment program ... The court shall order those records sealed without a hearing unless the prosecution petitions the court, for good cause shown, not to seal the records and requests a hearing thereon." Might circumstances arise where the prosecution may want to do that?

SENIOR DISTRICT JUDGE BREEN:
I cannot think of one. The prosecution may have information revealing a person has used drugs and been unfaithful to our program, providing a reason and opportunity for the prosecution to bring something forward.

CHAIR CARE:
Section 7.5 states there will not be revocation of a license.

SENIOR DISTRICT JUDGE BREEN:
This deals with the felony driving under the influence (DUI) statute. As it stands now, you can go through the felony DUI program for three years. It is not a cheap program, costing $3,000 a year. Upon completion, your charge is reduced to a second-time DUI. Following the interpretation of NRS 483.460, you may be required to have your license revoked for an additional year. During the three years where you cannot drive, there may be progressive possibilities

where you can drive. If you complete the felony DUI program now, it is possible you could be required to not drive for another year. It is not fair. A person goes through this program for a felony and is then subjected to the limitations of the second-time DUI. The purpose of that statute is to eliminate that requirement if you complete your obligations under the felony DUI statute.

SENATOR WIENER:
I presume the reprint was because of the deletion of what you were attempting to do in section 1. I notice the original version of the bill dealt with the threatened use or use of violence. In the original bill, you removed language about force or threatened use of force. What was the conversation about that in the other House?

SENIOR DISTRICT JUDGE BREEN:
When this bill was drafted, there was an effort to deal with many aspects of the specialty courts. This was one of them. Through the process of negotiation, this was eliminated.

BEN GRAHAM (Administrative Office of the Courts):
This is a bold step to continue the specialty courts. You have seen programs to generate resources for the continued programs the Judiciary is being asked to handle. We urge a do pass.

SENATOR PARKS:
Section 7, subsection 4 states that, "... without a hearing unless the prosecution petitions the court ... ." When the records are sealed, is a formal process used where the office of the district attorney signs off, indicating no reason the records should not be sealed?

SENIOR DISTRICT JUDGE BREEN:
In our court, the district attorney is apprised of everybody there. We have a Tuesday morning section dealing with many issues involving the formality of a criminal court. They are aware, but there is no specific process for telling them who will graduate and have charges dismissed.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
From a practical standpoint as a public defender, these programs work. They help people; they save money in the long run and give me a tool to go beyond

working out a plea arrangement. It is hard work for these people and us, but like many investments, it pays off down the road. We appreciate your support of the specialty courts in Nevada.

SENATOR WIENER MOVED TO DO PASS A.B. 47.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open the meeting on A.B. 168.

ASSEMBLY BILL 168 (1st Reprint): Revises sentencing provisions relating to certain convicted persons who provide substantial assistance in the investigation or prosecution of other offenses. (BDR 40-653)

MR. GRAHAM:
Years ago, legislation was passed severely mandating significant punishment for those involved in heavy-duty controlled substance crimes. We have heard the story about the "mule" driving from San Francisco to Salt Lake City who is stopped in Elko and goes to prison because the mule could not offer substantial assistance on that crime.

The law enforcement community has utilized this provision to move higher up on the food chain with controlled substances. We frequently have young offenders possessing information about criminal activity in the community who are willing to help as best they can. The way this was constructed, their help would or could not be taken into consideration to reduce the mandatory penalty. The Committee agreed on a compromise opening it up if somebody could provide substantial assistance for any offense. This could allow the reduction of that mandatory sentence. It was a consensus amendment to help reduce crime in our community and not mandatorily sentence a player around the edges to prison for a long time.

CHAIR CARE:
In section 1, subsection 2, the language for the court remains discretionary by using "may reduce." "Identification, arrest or conviction," has been deleted and replaced with "investigation or prosecution." Is identification a subset of investigation or prosecution? Does someone have to do more than simply identify, and does this require additional effort? Am I reading this incorrectly?

MR. GRAHAM:
It was interpreted to deal with the substantive crime for which these folks were stopped. This leaves a broad discretion as to the type of assistance. If substantial, the prosecution can argue it is not and the defense attorney can argue it is, allowing the reduction from this mandatory heavy penalty for crimes above that.

SENATOR PARKS:
I served on the Advisory Commission on the Administration of Justice, and we heard considerable discussion relative to this issue. This came about as a strong consensus that was unanimously supported by the members of the Advisory Commission.

MR. GRAHAM:
All of us are trying to reach out and put those people away who deserve to be in prison. This ties into A.B. 47. These specialty courts and this type of measure substantially contribute to the potential reduction and need for prison bed space.

MR. JOHNSON:
This bill gives us tools to work with our clients so we are not just processing them through; we can go beyond helping their legal case. We can make the community better by helping people get back on the straight and narrow so they do not come back to prison. We urge passage of this bill.

LEE ROWLAND (American Civil Liberties Union of Nevada):
I support A.B. 168.

CHAIR CARE:
It still leaves it up to the discretion of the court. We have deleted "identification" and replaced it with "investigation or prosecution." The reality is

you are going to persist in an investigation that probably includes revealing an identity. Maybe my concerns are for naught.

MS. ROWLAND:
Yes, Chair Care, but the change is important because it relates to the kind of behavior we are trying to reward. This addresses the cooperation aspect as opposed to the random aspects of fate. What if a jury does not convict someone even though the person has been totally helpful? The language is better this way because the prosecutor still has a voice to say whether or not the person has acted in good faith, but it is not subject to the whims of the process. If the person cooperates, they are doing everything they should, they are willing to give the information they have to help out the prosecutor and the prosecutor is willing to say this person helped. The new language is better because it does not unnecessarily limit it to arbitrary conviction. It is more about the behavior we seek which is good faith in the system.

SENATOR WIENER MOVED TO DO PASS A.B. 168.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open the hearing on A.B. 116.

ASSEMBLY BILL 116 (1st Reprint): Revises provisions concerning compensation for victims of crime. (BDR 16-1)

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):
Assembly Bill 116 prohibits a compensation officer with the fund for the compensation of victims of crime from considering the provocation, consent or any other behavior of the victim in cases involving domestic violence or sexual assault when determining whether to award compensation to the victim. The measure requires the law enforcement agency or a juvenile court to provide the compensation officer with a copy of the requested investigative and police reports within ten days after the receipt of the request or within ten days after the report is completed, whichever is later. They may delete any information they deem confidential.

Domestic violence is usually a crime having a long history where the victim is subject to ongoing abuse. Our Committee and the Assembly felt they should not use other behavior in order to disqualify the victims from receiving compensation.

NANCY E. HART (Nevada Network Against Domestic Violence):
I do have prepared testimony to which I will refer (Exhibit C). 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 requested. Bryan Nix, Coordinator of the Victims of Crime Program, will provide more information on this part of the bill. The Nevada Network Against Domestic Violence supports the direct transmission of police reports to the Program because it relieves crime victims of the burden of obtaining and submitting reports required for them to receive compensation.

Two important amendments made in the police report section in section 1 add that the copy would be within ten days of the request or completion of the report and that law enforcement may redact confidential information.

CHAIR CARE:
What would be confidential information in the police report?

MS. HART:
If more than one investigation is under way, there may be reference to another case in the report. It would be improper and inappropriate for that information to be released to the Victims of Crime Program because it would not be relevant to that individual's claim.

More importantly, section 2 of the bill proposes to delete domestic violence victims and sexual assault victims from being subject to the NRS 217.180 requirement to, "consider the provocation, consent or any other behavior of the victim that directly or indirectly contributed to his injury or death." This section would exempt domestic violence and sexual assault victims from contributory conduct considerations utilized by the Program. As you will hear from other testimony, this exemption is important because its application to domestic violence and sexual assault victims is inappropriate and unreasonable, Exhibit C.

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 is considered contributory conduct and unfairly blames the victim for the violence. It penalized the usually female victim for a decision caused by many factors, including household economics, fear of losing custody of her children and the 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 use of methamphetamine in the time period prior to their rape. This unfairly blames the victim for the violence perpetrated against them.

An article appearing in the *Las Vegas Sun* in August 2008 has been distributed (Exhibit D). It is on point with this bill and the effort to remove such considerations from these cases. You received testimony via e-mail from Kathy Jacobs of the Crisis Call Center in Reno (Exhibit E).

CHAIR CARE:
We will make Ms. Jacobs' e-mail part of the record.

MS. HART:
The changes proposed in A.B. 116 were thoroughly discussed in the Victims of Crime subcommittee of the Advisory Commission on the Administration of Justice. The full Commission voted unanimously to put before the Legislature this proposal removing domestic violence and sexual assault from contributory conduct considerations. We are aware that Mr. Nix, the Victims of Crime Program coordinator and a member of the subcommittee, opposes exempting domestic violence victims from contributory conduct considerations 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 from the contributory conduct barriers to compensation, I urge you to keep two important thoughts in mind: (1) the Victims of Crime Program has and uses a tremendous amount of discretion in deciding victims' claims, and the elimination of contributory conduct will not prevent the Program from making appropriate denials; and (2) the policies Mr. Nix refers to as addressing contributory conduct are wholly inadequate. Statute requires the Program to apply contributory conduct considerations, and Mr. Nix's policies simply cannot change that fact. Furthermore, the Program's policies have been changed numerous times in the past year—including the policy on contributory conduct in domestic violence cases—and there is no way to ensure any given policy will be followed, Exhibit C.

CHAIR CARE:
I do not want to get into rebuttal before Mr. Nix has had an opportunity to testify unless you are referring to a letter dated April 27, that may have gone way beyond ...

MS. HART:
I do not recall the date.

CHAIR CARE:
You have seen that letter?

MS. HART:
Yes, I have seen it. Assemblyman Carpenter shared it with me.

I urge you to bear these things in mind as you hear Mr. Nix's testimony. The most appropriate and effective way to address this issue is to remove the statutory requirement that contributory conduct be considered in domestic violence and sexual assault cases.

The Network strongly supports the elimination of contributory conduct obstacles for domestic violence and sexual assault victims as an important public policy decision. We recommend you reject Mr. Nix's suggestion to amend the bill, and we urge you to pass this bill today as written.

SENATOR WASHINGTON:
My question is for Brad Wilkinson. Existing language in section 2 of the bill deals with NRS 217.180. Except for the new language, the existing language says they shall consider the provocations consistent with other behaviors. Currently, when the compensation officer hears the order, he has to consider all these other ancillary provisions or provocations. Is this correct? Once we add the new language, it exempts those victims involved in domestic violence or sexual assault. Subsection 2 of section 2 says, "... shall not consider ... ." There is no discretion here. If we change the existing language to "may" and reword this, would it give the officer some discretion in determining if these provocations have any merit?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Yes, you could. Right now those things are required to be considered, and new subsection 2 prohibits their consideration. It could be altered to allow it to be considered rather than required.

SENATOR WASHINGTON:
Based on facts and finding, this way the officer could have discretion in determining if these provocations have any relevance to the victim's case for domestic violence or sexual assault.

MR. WILKINSON:
It is a possibility if the Committee so desires.

CHAIR CARE:
Ms. Hart, let me ask you about section 2, subsection 2. Setting aside sexual assault and focusing on domestic violence, if officers arrive at a scene of domestic violence, they have to take somebody in if they have a good-faith reason to believe there has been an incidence of domestic violence. The prosecutors have to prosecute the case; they cannot plea bargain down if they have a good-faith reason to believe they can obtain a conviction. When officers arrive at a scene, do they ever find that both parties have engaged in domestic violence?

MS. HART:
The officers are trained to identify the primary aggressor, but there can be situations where both people are involved in a physical altercation.

CHAIR CARE:
Could there be a situation where you have a victim of domestic violence who also committed domestic violence?

MS. HART:
If a person has been arrested for any crime, they are automatically ineligible for victim's assistance. If a victim has been charged, this would be a basis for denying their claim. The Victims of Crime Program relies on the fact that an officer has made an arrest, and the arrest is evidence of whether or not the person is a victim. The program is based on those arrest reports and determines the status of a victim.

LORI L. FRALICK (Supervisor, Victim Services Unit, Reno Police Department):
I will read from my prepared testimony (Exhibit F). I neglected to attach the letter mentioned in my prepared testimony. I will e-mail it to members of the Committee. I urge you to pass this bill today.

CHAIR CARE:
What information are we going to redact from the police report?

MR. ADAMS:
Personal identifiers of witnesses or other individuals involved in the investigation should not be released and are not required for the purpose of the individual's review of that report. Certain investigative techniques are not required on the part of the person reviewing the report to make a determination. Those are the things we would redact. We adjusted the time limits and are comfortable with them. I told Mr. Nix that if his agency has a problem with an agency redacting too much information, we would be happy to work with that agency to resolve the issue. Law enforcement is comfortable with the amendments to section 1; therefore, we are comfortable with the bill.

CHRISTINA CONTI (Program Coordinator, Victim-Witness Assistance Center, Washoe County District Attorney's Office):
I will read my prepared testimony (Exhibit G).

KAREEN PRENTICE (Domestic Violence Ombudsman, Office of the Attorney General):
I will read my prepared testimony (Exhibit H).

MICHAEL C. SPRINKLE (Vice-Chairman, Nevada Council for the Prevention of Domestic Violence):
I am here in support of A.B. 116. We take pride in the work we did in the Assembly alleviating the fears and concerns we heard about this bill. We support the bill as written. We are concerned that any amendments you hear today may take away from the bill. We ask you to support this bill as written.

SENATOR WIENER:
Was the amendment challenging section 2 of the measure (Exhibit I) considered in the Assembly?

MR. SPRINKLE:
The amendment you may be hearing today?

SENATOR WIENER:
Yes.

MR. SPRINKLE:
No, that was not brought up in the Assembly.

SENATOR WIENER:
Ms. Hart, do you remember if it was? Could you come forward?

MR. SPRINKLE:
It was brought up? I apologize.

SENATOR WIENER:
That is okay. I want to get it on the record. Was the amendment introduced in the Assembly?

MS. HART:
Yes, Senator Wiener, that amendment was proposed in the Assembly and was rejected.

CHAIR CARE:
I have a few people wanting to testify if an amendment was offered.

KEITH MUNRO (Assistant Attorney General, Office of the Attorney General):
The amendment being offered is in regard to section 2, subsection 2. The purpose was to make those victims whole as quickly as possible. One in four murders in Clark County is related to domestic violence. We have a strong public policy basis for quickly making domestic violence victims whole. They are victims and the animus levied against them is intensely personal in nature. On one side you have a seasoned Assembly, the Advisory Commission on the Administration of Justice, law enforcement, the domestic violence community and the Office of the Attorney General recognizing the efficacy of that policy. On the other side, you have one administrator wishing to get into personal issues. That does not provide much weight on the other side of the scale. It is not a good use of a public employee's time to get into those personal issues considering the strong public policy we have in making those victims whole and

making sure the situation does not arise again. If an amendment is proposed, I urge the rejection of that amendment, Exhibit I. This bill should remain as passed by the Assembly.

ANDREA SUNDBERG (Nevada Coalition Against Sexual Violence):
I also serve on the Victims of Crime Subcommittee and the Domestic Violence Prevention Council. We are in support of this bill as written and encourage the Committee to pass it as presented.

BRYAN NIX (Coordinator, Victims of Crime Program, Department of Administration):
I submitted testimony to you addressing my concern with the breadth of this statute with regard to domestic violence victims. In their zeal to support this bill, you heard testimony from persons who misrepresented what is truly going on with the Victims of Crime Program. To support this bill, they dragged out cases from years ago under old policies that would not be denied today. Our concern is not with the application of these standards to your typical domestic violence crime as discussed this morning. We support the same concepts. We do not blame victims for becoming victims of domestic violence.

The Victims of Crime Program has been painted as the enemy of victims. For years, we have paid millions of dollars to victims of domestic violence and sexual assault. Our concern is that NRS 33.018 applies to a broad range of relationships which are not your typical, standard domestic violence relationships. Prior dating relationships, prior roommate relationships or any relationship by blood or marriage would now not be subject to any consideration of their bad behavior and contribution to their own criminal injuries. We are not talking about problems between the husband and wife. We are talking about the breadth of the scope of this statute saying that we have to automatically approve every claim regardless of the bad behavior of the person seeking compensation. These cases are not clear-cut like they have been described.

I am willing to withdraw my amendment, Exhibit I, right now in support of Senator Washington's recommendation by changing the word "shall" to "may" in NRS 217.180 to allow—in those few extraordinarily different cases—the compensation officers to consider the bad conduct of the parties. We support every other aspect of this bill. A victim of sexual assault in any situation should never have their conduct used to evaluate receipt of benefits. We support that.

Under the rules of the Attorney General's Committee, a member of the Committee can veto any recommendation of the Committee. I did not veto this bill because I support it except to the extent where you have a broad application to any definition of domestic violence. If you look at the provisions of NRS 33.018, you will understand my concerns about application to people who are not in a domestic relationship as we all think of it.

CHAIR CARE:
I understand your testimony. Ms. Hart, you are a strong, eloquent proponent of the bill. Mr. Nix's point is that these situations are not always the same. You make the case that it does not matter, and it is still domestic violence if one of those relationships recognized in statute is present.

MS. HART:
The definition may have challenges, but it is what we use for the judiciary, the prosecution and law enforcement. All those entities follow this definition, and we see no reason why the Victims of Crime Program should not use the statutory definition of domestic violence used by the criminal justice system.

If you have two former college roommates who get in a fight, both would be perpetrators. As I stated earlier, once you are arrested, you cannot receive benefits as a victim. There is broad discretion in the Program and other ways in which claims get denied. There is every reason to make a blanket exception in the statute and exclude sexual assault and domestic violence victims from contributory conduct.

SENATOR WASHINGTON:
I read the bill prior to Mr. Nix's testimony. I was concerned the brush was too broad and considered some of the things before hearing Mr. Nix's testimony. With the exception of domestic violence and sexual assault, could we remove that portion of discretion from the hearing or compensation officer's ability to determine legitimacy to the conduct that may be predisposed? I do not want to use a broad brush to eliminate all those considerations but leave some discretion to the compensation officer to make a determination if legitimate conduct needs to be taken under consideration.

MS. HART:
We ask that the victim compensation hearing officer rely on the expertise of the law enforcement officer who designated this person as a victim in the first

place. This is how the victim becomes eligible for the program. Someone is arrested, and there is a victim of a crime. Since everybody else uses this definition, there is no reason why the Victims of Crime hearing officer should have discretion to decide whether the law enforcement officer made the correct decision. Let the law enforcement decision stand for the Program.

MR. NIX:
That is completely not true. It is not a cut-and-dried decision. We do not get a police report where the police officers say who is a victim. Since it is not usually clear who did what, we need discretion. I will withdraw my amendment if you change "shall" to "may" which allows discretion in cases that are not standard domestic violence situations.

CHAIR CARE:
We will close the hearing on A.B. 116. We have the proposed amendment from Mr. Nix, Exhibit I. Senator Washington, are you suggesting an amendment in section 2, subsection 1 current law to grant discretion?

SENATOR WASHINGTON:
I am. Mr. Nix makes a compelling case that not everything should be covered with a broad brush. The compensation officer needs discretion to determine what contributory conduct and cases are real or not real.

SENATOR WIENER:
How would inserting the discretionary word "may" change current practice?

MR. WILKINSON:
Right now, it is mandatory consideration.

SENATOR WIENER:
If we use the discretionary word "may," how would that change current practices? They already have the discretion, correct?

MR. WILKINSON:
It is actually a requirement. It is now mandatory that contributory conduct be considered. How you interpret and what constitutes that is certainly up to the compensation officer. It is mandatory those things be considered. If it were discretionary, the compensation officer could—but would not be required to—consider it. The current drafting prohibits consideration of that entirely.

CHAIR CARE:
Senator Washington, your amendment to subsection 1 of section 2 might mean the deletion of subsection 2 or maybe it would be discretionary language in subsection 2 as well.

SENATOR WASHINGTON:
I am not sure how the language would work. That is why I asked a preface question prior to the testimony. There has to be a way to provide some discretion to the compensation officer.

CHAIR CARE:
We will have that discussion when we put it on work session. The proponents and opponents of the amendment may want to make themselves available for additional questions.

We will close the hearing on A.B. 116 and open the hearing on A.B. 209.

ASSEMBLY BILL 209 (1st Reprint): Revises provisions governing the attendance of certain offenders at meetings of panels of victims of crimes relating to driving under the influence. (BDR 43-872)

ASSEMBLYMAN MARK A. MANENDO (Assembly District No. 18):
Assembly Bill 209 requires a convicted DUI offender to attend a live victim panel presentation. We did remove that it would apply to everybody. Current language applies to anybody within a 60-mile radius. I have attended these presentations over the years and see how they affect people. Unfortunately, we have many offenders, but our success rate is about 92 percent. Assembly Bill 209 is an important piece of legislation. Sandy Heverly is the founder and creator of the Victim Impact Panel. The panel is recognized over the country at local, state and national levels of jurisdiction.

SANDY HEVERLY (Executive Director, Stop DUI):
I will read my prepared testimony (Exhibit J). The recidivism study was done by the Las Vegas Municipal Court which is included in your packet (Exhibit K, original is on file in the Research Library).

CHAIR CARE:
Are there any circumstances where a third-time offender who has killed three people is put in a room with a family and lets them know he does not care?

MS. HEVERLY:
This program is designed to only address first and second misdemeanor offenders. No one who has killed or injured is in this program.

SENATOR WIENER:
What do we do with those offenders outside the 60-mile provision?

MS. HEVERLY:
That will be left up to the courts in those rural areas. When this bill was first passed in 1993, we provided a 60-mile radius. Your packet, Exhibit K, shows the areas not serviced by a Victim Impact Panel. We provide over 95 percent of the State with a Victim Impact Panel, but we would accept a similar live program.

CHAIR CARE:
Let us now go to Las Vegas.

ELIZABETH B. KOLKOSKI (Municipal Court Judge, Department 2, City of Las Vegas):
I will read my prepared testimony (Exhibit L).

GEORGE ASSAD (Municipal Court Judge, Department 3, City of Las Vegas):
I am here in support of A.B. 209. Our court has handled approximately 4,000 cases per year for the last 7 years, and I support this bill based upon that experience. The Victim Impact Panel provides a therapeutic benefit for the victims and family members of those injured by drunk drivers. It provides a rehabilitative avenue and benefit to the DUI offenders. This can only be accomplished through a live exchange. Can you imagine having an Alcoholics Anonymous 12-step program, psychoanalysis or drug counseling sessions online? You must have a live, personal exchange in order to have that dynamic occur in an effective, productive and beneficial manner.

The concern raised by rural judges has been addressed in the bill with the 60-mile radius rule. Judges will have the discretion to order the offender to take the class online or even waive it completely if they are out of state and that

particular jurisdiction does not have a Victim Impact Panel. If I have someone outside the 60-mile radius or out of state and they have the victim panel program in their state, I order them to appear in front of their local court to find out which program is available.

This bill would not create a fiscal expense to the taxpayer. It is a win-win situation. It would save taxpayers thousands of dollars if we can prevent a few DUI accidents from occurring every year. The expense of hospitalization and medical care provided by local county hospitals funded by taxpayers would be spared. When DUI offenders appear before me on a second or third offense, I ask them if they went to the Victim Impact Panel on their first DUI case. Their answer is often no. I wonder what would have happened if they had gone to the Victim Impact Panel the first time and experienced in person that emotional impact that can only be presented by way of a live session.

Ms. Heverly adequately described the Victim Impact Panel. I was not sure what the panel was when ordering people to attend, so I visited a session and was impressed by this extraordinary experience. Hundreds of DUI offenders are present in a large auditorium with a panel comprised of victims of drunken driving accidents and family members on stage. I was impacted from testimony by Nevada Highway Patrol Trooper Robert Kintzel, victim of a DUI accident, who has suffered traumatic brain injuries and is physically impaired. Recently, Lindsay Bennett, an 18-year-old University of Nevada, Las Vegas, student died here two weeks ago from a drunk driver. I wonder what would have happened had that drunk driver gone to a Victim Impact Panel at some prior point in his DUI career. Maybe he would have thought twice about getting behind the wheel of a car after being impaired.

PAUL C. PAGE (Chair, Las Vegas Metro Police Managers & Supervisors Association; Las Vegas Metropolitan Police Department):
I will read my prepared testimony (Exhibit M).

CHAIR CARE:
I handed Assemblyman Manendo an e-mail dated April 27 from James V. Mancuso, Senior Justice of the Peace, expressing some reservations to the bill. We will make this part of the record (Exhibit N). Judge Mancuso wants to leave it to the court's discretion and those objections, quoting from the letter, "are more appropriately handled otherwise—for example, through the

use of video presentations, to address handicapped persons, very rural residents, transportation issues that arise, etc."

I do not know if you have spoken to Judge Mancuso, Assemblyman Manendo.

ASSEMBLYMAN MANENDO:
No, I have not heard from this judge. We had some concerns in the Assembly side, and we addressed them with the amendment. Since then, I have not heard of any opposition.

CHAIR CARE:
I will entertain a motion on A.B. 209.

SENATOR WIENER MOVED TO DO PASS A.B. 209.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
Members of the Committee, the Saturday work session will begin at 8 a.m. This meeting is adjourned at 10:30 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: