MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 15, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Wednesday, April 15, 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 Joseph M. Hogan, Assembly District No. 10
Assemblyman William Horne, Assembly District No. 34
Assemblyman John Oceguera, Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney
David W. Clifton, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney

Ellen G. I. Clark, M.D., Chief Medical Examiner, Washoe County Medical Examiner and Coroner's Office
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Nancy E. Hart, Nevada Network Against Domestic Violence
Vincent Cannito, Captain, Las Vegas Metropolitan Police Department
Michael C. Sprinkle, Vice-Chairman, Nevada Council for the Prevention of Domestic Violence
Jason Frierson, Office of the Public Defender, Clark County
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Robert Lawson, Detective, Las Vegas Metropolitan Police Department
John R. McGlamery, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General

CHAIR CARE:
Let us open the hearing on Assembly Bill (A.B.) 164.

ASSEMBLY BILL 164 (1st Reprint): Revises certain provisions concerning the crime of battery. (BDR 15-251)

KRISTIN ERICKSON (Chief Deputy District Attorney, Washoe County District Attorney:
I am here on behalf of the Nevada District Attorneys Association. With me today is Dave Clifton, a 24-year prosecutor with the Office of the Washoe County District Attorney. He is the chief of our domestic violence unit and will explain the technicalities of the bill. Dr. Ellen Clark, Chief Medical Examiner for the Washoe County Medical Examiner and Coroner's Office, will explain the medical aspects of this bill.

DAVID W. CLIFTON (Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney):
Assembly Bill 164 proposes to include strangulation as part of our battery statutes, making it a felony. The seriousness and risk of strangulation to victims in our community is extreme. Currently, there is no way to prosecute strangulation other than as a misdemeanor. We request that strangulation not be a separate crime but an enhancement to the battery statute, making batteries involving strangulation a felony, similar to deadly weapons and substantial bodily harm. Strangulation causes serious injury or even death to a victim. It is

not an injury. Because of the substantial risk of death or harm by strangulation, it is our proposal to make battery include strangulation as a Category C felony.

Strangulation causes the risk of death, not secondary injury. We are against the amendment the Assembly made to this bill. This amendment requires a prosecutor to prove the suspect intended to cause bodily injury to a victim. This is problematic for two reasons. A suspect does not strangle somebody with intent to cause bodily injury. A suspect strangles to gain control over a victim, to knock the victim unconscious or to kill. If the suspect is intending to kill a victim, we could charge attempted murder. We would have to prove the suspect intended to kill the victim. If the person strangled with no intent to kill or strangled to gain control in a domestic violence situation, this proposed amendment forces the prosecutor to prove the intent in that person's mind to cause bodily harm. This is inconsistent with the facts as we know them in most strangulation cases. The person is not strangling with intent to bruise or cause harm. They are strangling with intent to kill or to incapacitate or control that person, not to injure or leave a mark. This amendment makes little sense in the complete context of strangulation as we know it and within the context of the entire bill.

CHAIR CARE:
You are talking about the definition of strangulation where it means intentionally impeding?

MR. CLIFTON:
Yes. Where strangulation is included in the definition as intentional, we still have to prove intentional impeding. The added part of the amendment is in section 3, subsection 1, paragraph (h) which reads, "... with the intent to cause bodily harm." That part was not in our original bill. We discussed this with the members of the Assembly Judiciary, but the original vote was taken with the amendment and passed with the amendment.

This amendment makes no sense to a prosecutor. Many times I have had serious strangulation cases where the victim did not die, and I struggled with proving the case as attempted murder. In cases where the suspect said, "I am going to kill you," we can charge attempted murder. The problem occurs when the suspect strangles without making any comments exemplifying his intent to kill and the victim fortunately lives. This is a misdemeanor because the suspect did not utter the words of intent to kill, and we do not have substantial bodily

harm. The definition of substantial bodily harm states the act causes an injury which creates a serious risk of death. Strangling causes risk of harm, but it does not cause a secondary injury. You are not strangling to cause an injury, and this amendment forces us to prove that this person had a specific intent to injure. The act of strangulation is serious because it can cause death which makes it murder. If it does not cause death, sometimes it can be proven as attempted murder.

The loophole in our law is if the suspect does not kill or utter words proving the specific intent to kill, the crime jumps from a serious felony of attempted murder to a misdemeanor. The act of shooting someone with a deadly weapon, battery causing substantial bodily harm and now battery including strangulation are felonies because of the seriousness of the acts. This will not include horseplay. In *Nevada Revised Statutes* (NRS) 193.190, the definition of battery requires an intentional act. All batteries include a willful, unlawful intentional act. The definition of battery in NRS 200.481 and NRS 200.485 state all batteries must be willful, unlawful and have that intentional act under NRS 193.190. This is where Nevada is different than most states. In Nevada, battery is not simply a harmful or offensive touching. The definition of battery says it must be forceful or violent. You do not have that requirement in most states. In Nevada, battery must be intentional, willful and unlawful and also forceful or violent, even misdemeanor battery. We are not going to include acts of horseplay or headlocks. Prosecutors have plenty of discretion. We weed those out, but here it has to be forceful, violent and intentional.

The definition of strangulation in A.B. 164 includes an intent requirement to intentionally impede the normal breathing or circulation of the blood. The amendment adds another critical intent, the specific intent to cause bodily injury, which is inconsistent in fact and logic. People do not strangle to cause a bruise or injury. They strangle to control or cause death. In those cases where there is strangulation to control, it could cause a serious risk of death, making it a felony.

CHAIR CARE:
We need to begin by walking through the bill as it came out of the Assembly.

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):
I appreciate the passionate objection to the amendment. The bill as introduced put the legislation in jeopardy in our House. There were concerns about it being

too broad of a net, encompassing certain acts we do not intend to be felonious in nature. I have had discussions about my concerns on its scope.

As teenagers, my sister and I would often tussle. As I got bigger, the matches became uneven. One day, in order to subdue my sister, I swung her around and put her in a hold to calm her. Inadvertently, I was choking her. It was not until she started to panic that I realized I was obstructing her airway. Under the bill as written, I would have been charged with a Category C felony.

This is a tightrope I found difficult as a Legislator. I believe in the efforts being made to protect our citizens from crime, particularly domestic battery. All citizens should feel safe in their homes. I am a proponent of smart laws. I am a criminal defense attorney, and I have seen various types of domestic violence charges. Many are deserving of the charges filed, but some are overreaching. As initially introduced, the bill would be problematic at times in the jurisdiction where I practice. While there are those who believe the amendment goes too far and puts a greater burden on the prosecution, it still allows the bill to work and narrows that field.

SENATOR WIENER:
I am comparing and contrasting the prosecutorial side and the defense side. The situation is the prosecution must decide between "to subdue" or "to threaten," but the subdue part could be based on the anecdote you shared—you were doing it to subdue your sister—and will not work. What would be an exchange language? I understand it is too broad as originally written, but this is now a double intent, which may be tough to prove.

ASSEMBLYMAN HORNE:
Yes, I was subduing my sister, but some people forget that sometimes in these domestic violence situations, there is mutual combat. I had a successful case where witnesses testified the woman was the primary aggressor. If you looked at the surface facts of this case, you saw a woman who had been beaten up by a much larger man, but from witness testimony, she was always the primary aggressor and oftentimes he was defending himself. I do not think subduing somebody in your defense should put you in jeopardy of a Category C felony.

SENATOR WIENER:
With the amendment, it is almost impossible to try a case, but without it, we are not going to get support for any measure. Was other language offered that

would address both your concerns for your House support as well as building a case in the appropriate circumstance?

ASSEMBLYMAN HORNE:
There were two amendments proposed, but this was the better of the two. I do not have a problem with trying to find something better. My concern is removing it in its entirety and moving back to the original bill. I think that puts the bill in jeopardy.

CHAIR CARE:
Domestic violence can include a dating relationship; it does not have to include just a married couple. I am looking at the fine not to exceed $15,000. More often than not, domestic violence will involve a married couple, and Nevada is a community property state. There may be joblessness, alcohol or drug abuse behind the violence. If somebody gets hit with a $15,000 fine, this may lead to a divorce or separation. Part of me says you are really penalizing the community. If there is a divorce, this is $15,000 less than what the victim can have half of down the road. Do you have any thoughts on that subject?

ASSEMBLYMAN HORNE:
I am not wedded to the $15,000 fine. I wanted a stiff penalty in addition to the potential prison time because strangulation is a serious crime of lethality. If you believe it is too large a fine, we can explore that issue. There are instances where someone is convicted of this crime, and the victim can petition to partition property and have findings address the fine that she should not have to pay out of the property for him to satisfy his crime. It is almost like him profiting from a crime. I have never had that scenario happen.

ELLEN G. I. CLARK, M.D. (Chief Medical Examiner, Washoe County Medical Examiner and Coroner's Office):
I am in support of A.B. 164 which seeks to increase the penalty for battery committed by strangulation from a misdemeanor to a felony. As a physician specializing in forensic pathology, I am charged with evaluating cases that often involve unusually violent assaults. In the experience of the forensic pathologist, strangulation represents that form of trauma. We see many cases of death resulting from strangulation. Strangulation produces trauma by obstructing or restricting the oxygenation to the brain by either occluding blood flow to the brain or by damaging the muscle and skeletal structures in the throat and neck.

It is an unusual form of trauma because it often leaves little external evidence of physical injury, in spite of the fact that it causes severe internal trauma.

Strangulation represents one of the most potentially lethal forms of trauma that can be inflicted upon its victims. Studies have shown that in survivors of documented cases of strangulation, as many as 40 percent do not have physical, external evidence of injury in the form of bruising, scratching or hemorrhage. Internally, the brain often dies or begins to die as a result of strangulation. This is a violent and potentially lethal act warranting a severe penalty.

CHAIR CARE:
Someone will have to address the fiscal note. Local government increases or newly provides for a term of imprisonment in county or city jail or detention facility. What is this going to do to your caseload, and how will we pay for it?

MS. ERICKSON:
The best person to answer that is Mr. Clifton.

MR. CLIFTON:
There is a lot of prosecutorial discretion. We are not going to take the kind of cases described by Assemblyman Horne to court. I would not even charge it. He is subduing his sister; it is almost self-defense. If you check the statute with our bill, strangulation means intentionally impeding or cutting off the blood or oxygen. As Assemblyman Horne indicated, this was not intentional. He was only trying to subdue his sister with a headlock. It would not even qualify under the definition of strangulation.

We use discretion in prosecuting these kinds of cases. We are not worried about the strangulations that look like a misdemeanor or those not prosecutable at all. We would not touch horseplay cases under this bill or prosecutorial discretion. We are talking about the cases where somebody clearly needs to be punished more than six months in jail and up to a $1,000 fine for a misdemeanor offense. Strangulation needs to be a Category C felony. We are not wed to the $15,000 fine. If you want to make it the same as the $10,000 fine in NRS 193, that would be fine. Rarely do judges give a maximum fine just as they rarely give the maximum sentence for a Category C felony.

The fiscal impact of this bill is not extreme. It is taking the top echelon of people who have major criminal histories or strangle someone so severely that we cannot quite prove attempted murder, but it is severe enough with or without their criminal history that the act should be a felony. A large percentage of the cases that we see will not include strangulation. We will use discretion to prosecute the ones that need to be prosecuted for the felony, but without this bill, we cannot do so.

Prosecutors will take the 3 percent or 4 percent of strangulation cases where the suspects have a serious record and/or the crime was so close to death or so serious and violent that it should be treated as a Category C felony. When we take them up, it does not mean the suspects are automatically going to prison. About 1 percent strangles or commits domestic batteries with strangulation. Those are the people going to prison who will increase the fiscal impact of this bill. Others will get probation, a fine or a slap on the wrist, even for a felony.

If you look at the people in prison for battery with intention to do bodily harm, you are not going to see first-time offenders or second-time offenders. You will see third-time offenders with violent histories. The people who go to prison need to be there. If fiscal impact is our only concern, then we should take batteries with substantial bodily harm and batteries with a deadly weapon and make them misdemeanors. There is a need to make some of the suspects face felonies and time in prison.

CHAIR CARE:
In matters relating to domestic violence, the law states if you have a good-faith basis to believe you can obtain a conviction, you cannot plead down. You have to prosecute, correct?

MR. CLIFTON:
That is correct.

CHAIR CARE:
Let us say some guy with a criminal record is arrested, and he freely confesses to horseplay. Maybe he was playing around, but we do not trust the guy. We have a good-faith basis to believe we can obtain a conviction, so we try him. I am not sure how that would impact your caseload; it may not change anything. Depending on the credibility of the defendant or person arrested, I see how you

might feel you do not have any discretion and will need to prosecute. Am I wrong?

MR. CLIFTON:
This is a great question, but you have two hypothetical situations in one. We would not prosecute at all if we believed the act was horseplay. The defendant may think it is horseplay, but if we believe facts suggest otherwise, the prosecutor would then go to the definition of strangulation in the bill. I have to reemphasize strangulation means intentionally impeding the normal breathing or circulation. Victims who have gone through this type of trauma or terror when being strangled know they may be taking their last breath. Many victims have told me this feeling goes through their minds. It is as close to attempted murder as you can get.

The definition would keep most prosecutors from even prosecuting a case that has a chance of a jury or one juror finding it to be horseplay. If it is not horseplay, like all domestic violence cases, we would charge and prosecute. We do not have to charge it as strangulation. If the suspect does not have much of a criminal history, we may charge it as domestic violence battery misdemeanor. Nothing in the provision says we have to charge strangulation, but if we can prove the strangulation and it is warranted because of history and violence that occurred, we will charge it and not plea bargain down once we charge it as felony strangling domestic battery.

BRETT KANDT (Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General):
I am here on behalf of the Office of the Attorney General and Nevada Prosecution Advisory Council. We do support A.B. 164 provided the additional language added by the Assembly in section 3, subsection 1, paragraph (h) reading, "... with the intent to cause bodily harm," is stricken. To answer Senator Wiener's question about alternate language, the bill draft request language, which made its way into the original bill, was drafted by Mr. Clifton and me after consulting experts on the subject with national organizations, such as the Battered Women's Justice Project.

They gave us information on other states that statutorily codify strangulation as a battery. They gave us the definition appearing in lines 41 to 43 of section 3, subsection 1, paragraph (h) as originally submitted in the bill. This definition is the most prevalent definition of strangulation used in other state statutes that

codify battery by strangulation. This definition is accepted in the medical community. I cannot tell you how many states use this exact definition, but I can get that information for you if it would give you a comfort level. This is the most prevalent definition of strangulation utilized nationwide. As communicated to me by the national organizations, the other states that use this definition and codify battery by strangulation have not had problems with overbreadth or charging in instances where there was not the risk posed by the act of strangulation, which is the intent of the bill. It is a definition that would not include the additional language, "with the intent to cause bodily harm," that appears on line 44 of page 4 in the first reprint.

CHAIR CARE:
We will need that information in a hurry because I intend to put this on work session for Monday.

NANCY E. HART (Nevada Network Against Domestic Violence):
I signed in as supporting but also neutral on this bill. The Nevada Network Against Domestic Violence strongly supported this bill as originally written, but we are concerned about the addition of the phrase, "with the intent to cause bodily harm." It removes the effectiveness of this important legislation that would otherwise prosecute domestic violence strangulation cases which are at a heightened level of severity. Domestic violence is an escalating crime. When it reaches the point that strangulation has been used, it is reaching a level of lethality.

We have supported this bill, but we do not support the bill with the amendment. With the exception of that single phrase in line 44 of section 3, the bill is as was originally worded. I want to echo Mr. Kandt's words about the definition in this bill originally being adopted in the state of Minnesota. Minnesota has been at the forefront of fighting and addressing strangulation crimes. This definition has been used by the 15 states that have codified strangulation as a crime in some form or another.

I support the bill without the amendment. It is hard to legislate based on anecdotes, and yet that often is the case. We hear stories about things that have happened, and we want to address those problems. One of the gaps we have in the criminal justice system, specifically in domestic violence prosecutions, is we do not know numbers. We have a serious dearth of information about how many cases charged involve strangulation. If the bill

passes as amended, we would like to know how many cases are successfully charged or prosecuted because that would give you a window to see if this law was too tightly wrapped so that nobody could be charged or prosecuted successfully. We do not have that information right now. We do not know how many cases out there involve strangulation or how many could be brought if this law passes. If there was a way to monitor the numbers, it would be helpful for future legislators looking to see if the law needs to be changed. I would welcome the opportunity to look at other language to accommodate the concerns of both sides.

CHAIR CARE:
Let me go to Las Vegas.

VINCENT CANNITO (Captain, Las Vegas Metropolitan Police Department):
Two studies in the Las Vegas area within our jurisdiction have been directed at domestic violence-related homicides. The studies ran from 2003 to 2005 and 2006 to 2008. Our 2003 to 2005 study shows over 40 percent of domestic violence cases involved spouses, 29 percent involved boyfriends, 19 percent involved ex-boyfriends, 8 percent involved ex-spouses and 2 percent involved children of domestic violence.

On a yearly basis, the Las Vegas Metropolitan Police Department responds to nearly one million calls for service. From 2006 to 2008, 8 percent of those calls were solely related to domestic violence. From 2006 to 2008, we had 113 homicides related to domestic violence. Of that number, 59 were committed by intimate partners. From 2003 to 2005, we had 74 homicides related to domestic violence with 41 committed by an intimate partner. As we break down the methodology used in these homicides, 12 percent in each study involves strangulation. As we look at the homicide studies in our different area commands, year to date, we have seven homicides related to domestic violence. Last year at this time, we had 12, and the year before that we had 10.

We are supporting A.B. 164, as one of the main steps to address these statistics. As stated earlier, 14 other states have elevated the crime of domestic violence from a misdemeanor to a felony. Texas, Arizona and Arkansas are going through the same process as Nevada.

We have instituted the Lethality Assessment Program for First Responders from Maryland in the Northwest Area Command and our Enterprise Area Command.

The Enterprise Area Command was selected because it had the highest rate of domestic violence homicides over the past several years.

We do not know the magnitude of strangulation within our communities throughout Nevada. We began this pilot program of lethality assessment on February 23. When police officers respond to a house, they interview both parties involved in the domestic violence dispute by asking a series of 11 questions of the victim if threats of death were made, did the victim feel that he or she was in danger of being killed and was a weapon used. If the victim answers yes to any of those questions, he or she is placed in a high-danger situation. We are trying to identify those most likely to be murdered.

The study conducted in Maryland used 25 years' worth of data. There was an extensive three-year period toward the end of that time where they identified these 11 critical factors of all homicides related to domestic violence. In this two-month time of our pilot program, we have responded to 367 cases, 174 in the Enterprise Area Command and 175 in the Northwest Area Command. Out of the 367 cases, we have identified 178 people who said they were strangled in the event we responded to on that evening. Before this pilot program began, we most likely would not have found that number or realized the magnitude of the act of strangulation in this violent situation. Out of the 178 identified, 101 victims were placed in that high-danger category. Based on the facts and circumstances, these victims felt they were in danger of being murdered.

How will this bill help us reduce the domestic violence within our communities? Offenders will be held accountable in these situations. No act of domestic violence should be minimized when 8 pounds of pressure maintained for 30 seconds can take a life. It needs to be elevated to a more serious category. We are hoping to see this happen with A.B. 164. We are working with our local prosecutors to identify the different reasons why cases of domestic violence may or may not be prosecuted. We are taking this to a real level with our police officers and public education. The passing of this bill protects the women and children in our communities, but passing laws is not enough. We need to have a comprehensive effort in saving lives. The strangulation law is only one aspect.

CHAIR CARE:
Do you have any data in any jurisdiction for a domestic violence call involving the use of strangulation with a subsequent murder?

MR. CANNITO:
That is what we are looking at right now with the Lethality Assessment Program. I do not know if that data exists. I will review that question and see if we can get that data to you. When we began this lethality assessment in these two area commands, we did not know what to expect with regard to strangulation. Since asking these questions and running this program, we are consistent with the numbers found in Maryland. There are 69 counties in Maryland running the Lethality Assessment Program. The material is possibly available from Maryland; we will take a look at that for you.

CHAIR CARE:
Please get that to us for our work session on Monday.

MICHAEL C. SPRINKLE (Vice-Chairman, Nevada Council for the Prevention of Domestic Violence):
The Council has been and will continue to be in support of this bill; however, our support does not include the amendment from the Assembly. Today, I take off my hat as Vice-Chairman of the Council and represent myself. I have been a licensed paramedic in Nevada for 16 years. I have been in these houses, and I have seen these people after domestic violence situations have occurred. It is important to remember the science the medical examiner presented today. Strangulation is brief and quick and can move from a momentary act to a dangerous act causing death. The victims are real. I have dealt with them in the house moments after the crime, long before the case ever reaches the judicial system. This serious situation is why we chose to present this legislation. The amendment degrades from the legislation we initially tried to present.

CHAIR CARE:
Jason Frierson, I received an e-mail from you weeks ago on the subject of what became the amendment to the bill.

JASON FRIERSON (Office of the Public Defender, Clark County):
As we testified to the Assembly side, we understand the interest in addressing dangerous conduct. Our goal is not to get in law enforcement's way in addressing dangerous conduct. It gets my attention when the examples are the most horrendous. We would charge those cases described earlier that happen every day. I get hundreds of complaints in my office. For example, an 80-year old man got into an argument with his 83-year old wife, grabbed a switch off

the tree and hit her. We now have a battery domestic violence charge. I can think of many situations where law enforcement is not allowed to avoid an arrest. By law, when law enforcement shows up, they have to make an arrest in most instances.

When officers make an arrest and refer it, by law, the prosecutors have to proceed with that case, unless they cannot. This includes cases where victims come forward and say they do not want to proceed because the situation was blown out of proportion. Prosecutors are still required to proceed with that case. We have recanting victims where the prosecution says the victim has had a change of heart and the couple has made up, but we still have to go forward. In a misdemeanor case, it is up to the justice of the peace to decide whether they go forward, bind that case up or find that person guilty.

Most recently, I had a client who had two prior battery domestic violence convictions from a six-year relationship that had ended. He was with his new spouse in a casino, flirting with other women. His wife told him to stop, and he said he was only joking. The wife called hotel security. Security called law enforcement who felt they had to make an arrest. The wife showed up in court and said it was silliness. She had only called security because she did not want to wring his neck because he was acting like a clown. The prosecutor did not feel he could dismiss the case since the defendant had two priors within that six-year period, so the offer was a felony. These are the cases we see most often. We have no interest in getting in the way of law enforcement doing their job of addressing the serious conduct, but we do not want to cast a net so broad that it encompasses those types of situations.

On the Assembly side, I did propose language I found in my research in North Carolina, Montana, Kentucky, Oregon, New York and Missouri. In Oregon, strangulation is treated as a misdemeanor. The other states have an additional requirement beyond the placing of a hand on somebody's neck or the impeding of normal breathing. Technically, if I have an argument with my wife and I put my hand on her lips telling her to be quiet, this broad definition will cover that conduct. That is not the intent of the language, but we want to make sure we do not have those situations fall within that area. Montana adds the language that the person has to attempt to cause or knowingly cause physical injury to a victim. Kentucky defines physical injury as substantial physical pain or impairment of a physical condition. The example where someone passes out but there is no physical injury is an impairment of a physical condition. Those cases

where injury is not visible unless you go beneath the skin would be covered in those circumstances.

Our battery domestic violence statutes cover not only spouses but siblings and roommates. If you get in a fight with your roommate years later, it would technically be covered. If brothers get into a tussle and one holds the other in a headlock, this would be covered under the statute.

CHAIR CARE:
I do not have the original bill in front of me, but as I understand the original language, is it possible to intentionally impede the normal breathing or circulation of the blood by applying pressure on the throat or neck but not with the intent to cause bodily harm?

MR. FRIERSON:
There is not an example where someone would engage in that conduct without the intent to cause bodily harm. It is important that it be an element because we want to avoid the situations where people are joking and a third party sees one person carry the other out in a headlock, not knowing they are joking and calls the police. Now it is up to the law enforcement officer and the prosecutor, both of whom have limited discretion, in determining if they need to proceed. Most crimes have an intent element, but it is up to the fact finder to determine the intent. We do not know what goes on in people's minds. If a third party perceives a situation to be without intent, it may get perceived in that way. I have carried friends out of situations to prevent them from more trouble. This could be perceived as something less than what this bill would cover.

It was testified to earlier that there is no way to prosecute some situations as other than a misdemeanor. I do not imagine many situations where strangulation is not an attempt to murder or involve substantial bodily harm. But coercion is covered under Nevada Revised Statute 207.190. This is the control situation described earlier where you are compelling a person to do something or abstain from doing something using violence or inflicting injury, which is already a Category B felony. We understand the sponsor's goal in covering an area that is not expressly dealt with in statute. We want to make sure it is narrow enough to apply the situations they are targeting and not others. The language from Montana and the other states would address that concern better than the original bill. The language also addresses some of the sponsor's concerns expressed today regarding the amendment as originally adopted.

CHAIR CARE:
Please forward that information to the Committee.

SENATOR WASHINGTON:
Can you explain to me the definition of strangulation in NRS 200.481? I have not read that particular statute, but it is listed throughout this bill. I need to know what the definition of strangulation is in that statute.

MR. FRIERSON:
This bill is proposing to add a definition we do not currently have.

SENATOR WASHINGTON:
As a public defender, what would you say constitutes strangulation?

MR. FRIERSON:
This bill attempts to define strangulation and is consistent with other states except for the additional element. There does not need to be bruising, scarring or an independent witness who sees it happen, but something needs to show it is more than horseplay. With all due respect to the prosecutor here today who might not proceed, there are prosecutors who would proceed on cases where that is not there. We want to make sure we do not include those types of cases.

SENATOR WASHINGTON:
Are you asking for additional identification?

MR. FRIERSON:
We are asking for additional elements with respect to the intent of the suspect, and that is in the bill. That was amended out of the Assembly Judiciary and the House. I proposed language on the Assembly side slightly different than I obtained from other states. I am not trying to require that the State show an actual physical injury.

SENATOR WASHINGTON:
Section 3, subsection 1, paragraph (h) states, "'Strangulation' means intentionally impeding the normal breathing or circulation of the blood ... ." Is that consistent?

MR. FRIERSON:
That portion is consistent. By itself, no, but that portion is part of what I found in at least four or five other states.

SENATOR WASHINGTON:
In our battery statutes, if one is accused or convicted of battery, would strangulation be part of that battery charge if those conditions of impeding breathing or circulation or pressure against the throat or neck prevailed without defining strangulation in this bill?

MR. FRIERSON:
It could be charged as a misdemeanor battery as it is right now, or attempted murder, which would be a felony or battery with substantial bodily harm if there were visible injuries. If there were no visible injuries, it would either be a misdemeanor battery or attempted murder if the prosecutor believed the person was attempting to murder but was interrupted.

SENATOR WASHINGTON:
It could be either inside or outside the scope of domestic violence?

MR. FRIERSON:
That is correct.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
I will second Mr. Frierson for the record. We have the same concerns for the same scenarios.

MR. CANNITO:
You heard testimony that law enforcement officers have no investigatory discretion when they respond on these calls. That statement is inaccurate. We respond to over 60,000 domestic violence calls each year. Roughly 24,000 of those cases make it to the investigative stage. That is processed and part of the investigation with regard to the officer's discretion on the scene. That has an aspect of the prosecution.

CHAIR CARE:
We will close the hearing on A.B. 164. Mr. Wilkinson, if you could get back to the Committee on whether it makes any difference if we strike the word

intentionally from page 4 in line 41 so that strangulation means, " ... impeding the normal ... with the intent to cause bodily harm." We can bring that up at another time.

Let us go to A.B. 182.

ASSEMBLY BILL 182: Makes various changes concerning crimes involving explosives. (BDR 15-195)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
Assembly Bill 182 is a simple bill which does two things. Section 1, subsection 2 is a new section that adds the Federal Register, which is revised every year. Throughout the year, the federal government collects data on explosive devices and what has been used to create explosive devices and puts those materials in this Register. The addition of this Register to our statute allows Nevada to know what materials are being used to create explosive devices.

Secondly, we are adding State buildings to section 2, subsection 2. Prior to this time, you could walk into a State building with an explosive and be charged the same as bringing an explosive into any other type of building.

SENATOR WIENER:
The new language in section 2, subsection 2 which reads, "... knowing or having reason to believe that a human being is therein ... ." How is that treated now if there were persons in there when the explosive is used? What do we do now? "A person who maliciously damages or destroys, attempts to damage or destroy ... ," in section 2, subsection 2 covers the human being part. How do we handle that now?

ASSEMBLYMAN OCEGUERA:
I am missing what you are looking at.

SENATOR WIENER:
It is section 2, line 35 on page 2.

ASSEMBLYMAN OCEGUERA:
It is the discretion of the officer to take it to the prosecutor, and it then becomes the discretion of the prosecution.

ROBERT LAWSON (Detective, Las Vegas Metropolitan Police Department):
The Assemblyman basically covered all our concerns. We found some repeated laws and misdemeanors also covered under felonies. Some of these we were looking to strike. We expanded the NRS 202.830 in the portion the Legislators were talking about under section 1, subsection 2. By merging statutes, we reduced various provisions in the books.

CHAIR CARE:
I follow this.

SENATOR WIENER MOVED TO DO PASS A.B. 182.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
Let us open the hearing on A.B. 322.

ASSEMBLYMAN JOSEPH M. HOGAN (Assembly District No. 10):
I am pleased to bring you A.B. 322.

ASSEMBLY BILL 322: Makes various changes concerning conduct related to racketeering. (BDR 15-1000)

This bill has been designed by the Office of the Attorney General to be a new and powerful crime-fighting tool to prosecute and punish those who take advantage of Nevada consumers. Assembly Bill 322 expresses the Attorney General's commitment to protect consumers from exploitation by offenders posing as legitimate businesses. Without this bill, Nevada's fraud fighters had to pursue each small fraudulent transaction, prove intent, and convict perpetrators of relatively minor and sometimes low-dollar value individual crimes. With this bill, we can punish the overall fraudulent scheme, capturing the multiple transactions which, when tallied up, constitute a felonious pattern of criminal behavior sufficient to take the perpetrator off the streets and stop the cruel and costly deception practiced on unsuspecting consumers.

We should support the effort of the Attorney General to distill the lessons they have learned over years of consumer protection into a more efficient and effective enforcement technique.

JOHN R. MCGLAMERY (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
Last Session, this bill was passed by both Houses as is but did not make it through enactment. We are bringing it back to pass through both Houses and give us the tools needed to prosecute these kinds of cases.

Under Nevada law, the Office of the Attorney General is limited to prosecuting organized deceptive trade rings with misdemeanor for the first offense. This bill intends to remedy the situation. Section 1 describes the conduct which would be made criminal by the statute. It will criminalize fraudulent, deceptive trade activities where the scheme steals a little money from a great number of people. This proposal incorporates the standard definitions of fraud and attaches minimum amounts of money needed to prosecute the scheme. These types of schemes involve small amounts of money; a small combined amount is stated in order to allow the Attorney General to take action before the scheme involves hundreds of victims.

The requirement for patterns of conduct with similar characteristics that are not isolated incidences means the law will only apply in cases of clear, fraudulent schemes and not near mistakes. Current law is weak and scammers know they will make a lot of money in the scam despite losing money through any misdemeanor prosecution. Making the crime a felony takes away the cost-of-doing-business factor. This statute combines deceptive trade aspects to keep defense attorneys from claiming the Attorney General's Bureau of Consumer Protection has no jurisdiction to prosecute these matters.

Section 2 adds the crimes described in section 1 under the definition of racketeering so remedies available for racketeering are available for these crimes. This includes the fines, the amounts of gross profits made by the scheme and possible forfeiture of the proceeds of the criminal enterprise.

Section 3 adds the transport of property as part of the scheme to allow the prosecution of those who aid the criminal scheme, such as the transfer of paper checks, electronic checks and other money and funds by automated

clearinghouses, credit card transactions and companies that knowingly assist in such schemes.

Section 4 sets the statute of limitations for these new criminal acts. As a closing note, I want to state the intent here is not to involve labor relations activities and union management activities. These only deal with arms-length, buy-sell transactions covered in NRS 598. I have been informed that during the last legislature, the Nevada Attorneys for Criminal Justice helped draft the language.

CHAIR CARE:
Civil litigators can be so creative. Let us say I have a client who enters into a contract with somebody. He gets sued not only for breach of contract but fraud in the inducement, but there are two contracts. I do not want to do something in civil litigation, but we are now creating a cause of action for the Racketeer Influenced and Corrupt Organizations Act using this bill—if it becomes law—as the excuse. This is confined to NRS 598.

MR. MCGLAMERY:
Right. This is a buying and selling of goods and services and our arms-length transactions. This is more of a business-consumer type of thing or even business-to-business. The whole purpose of NRS 598 is to create an honest marketplace in Nevada, which is needed to encourage businesses to come here because they know they are going to get a fair shake. They know they are not going to be run out of business by fraudsters and scammers. That is exactly what we are here to protect as well as the consumers. We see the scammers coming here and taking advantage of people in another state. We do not want to wait until we have hundreds of victims before we take an action. Once they start hitting Nevada and we have four or five complaints, we can go ahead and charge this rather than waiting until we have hundreds of victims.

We also have to deal with the courts, and the courts hate business crimes. The courts think if there is no blood on the floor, there is no crime. We have to come in with significant evidence before we get the chance to prosecute these cases. These have to be significant schemes we can prove by evidence are part of a major scheme and that scammers are coming in to take advantage of Nevada consumers. I call it “death by a thousand nicks.” Each little crime is not much, but add them together and you are talking about millions of dollars.

CHAIR CARE:
It was A.B. No. 521 of the 74th Session which was voted out of each House unanimously but died in conference committee.

SENATOR PARKS:
There have been three reprints on A.B. No. 521 of the 74th Session. Was the version of the bill you requested from the third reprint? I see it went through several conference committees and then ran out of time.

ASSEMBLYMAN HOGAN:
My understanding is it is from the third reprint. The idea was to take advantage of the fact that it had successfully navigated both Houses. I was not involved with it in the prior Session, but that is my recollection.

CHAIR CARE:
My recollection is two versions of the retail crime theft ring bill. One of them was actually not a conspiracy, but for some reason, a theft ring was comprised of three or more persons as opposed to two or more. It had quite a checkered history. Assembly Bill 322 passed out this Session 41 to 0 with one excused. We will take another look at it and get it to a work session soon. We want to reconstruct what happened last Session. We will close the hearing on A.B. 322.

The two bills we entertained yesterday, A.B. 250 and A.B. 187, were passed unanimously out of the Assembly.

ASSEMBLY BILL 250: Revises provisions relating to certain affidavits or declarations of experts. (BDR 4-1018)

ASSEMBLY BILL 187: 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)

We held onto the Speaker's bill. There was the one amendment proposed. Assemblyman Mark A. Manendo's bill came out yesterday. Of the three we heard today, A.B. 164 passed 42 to 0. Assembly Bill 182 and A.B. 322 passed 41 in favor, none opposed and one excused in both cases.

Members of the Senate Committee on Judiciary, there being no further business, we are adjourned at 10 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: