

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND
MINING

Seventy-Sixth Session
May 10, 2011

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Maggie Carlton at 2:29 p.m. on Tuesday, May 10, 2011, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Maggie Carlton, Chair
Assemblyman Joseph M. Hogan, Vice Chair
Assemblyman Paul Aizley
Assemblyman Elliot T. Anderson
Assemblyman David P. Bobzien
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Shirley A. Breeden, Clark County Senatorial District No. 5
Senator Michael Roberson, Clark County Senatorial District No. 5
Senator Mark A. Manendo, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Amelie Welden, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Judith Coolbaugh, Committee Secretary
Gianna Shirk, Committee Assistant

OTHERS PRESENT:

Gina Greisen, President, Nevada Voters for Animals
Kathleen Denning, Private Citizen, Sparks, Nevada
Holly Natwora, Shelter Manager, Society for the Prevention of Cruelty to
Animals of Northern Nevada
Tony Yarbrough, representing the Nevada's People for Animal Welfare
Barbara Kubichka, Private Citizen, Carson City, Nevada
Chris Vaught, Private Citizen, Carson City, Nevada
Marlene Richter, Executive Director, The Shade Tree Shelter
Susan Somers, Private Citizen, Las Vegas, Nevada
Margo Larson, Private Citizen, Reno, Nevada
Karen Layne, D.V.M., representing the Las Vegas Valley Humane Society
Nathan Sosa, Private Citizen, Las Vegas, Nevada
Chuck Callaway, representing the Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada
Beverlee McGrath, representing the American Society for the Prevention
of Cruelty to Animals; Best Friends Animal Society; Political Animal
Welfare Political Action Committee; Action for Animals;
Nevada Humane Society; and Nevada Political Action for Animals
Holly Michael Haley, representing the Humane Society of the
United States
Mendy Elliott, Member, Board of Directors, Nevada Humane Society

Chair Carlton:

[There was no roll call. The Chair reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.]
Senator Breeden, the bill's sponsor, is in a floor session, so we will ask

Ms. Greisen to introduce the bill. The hearing on Senate Bill 223 (1st Reprint) is now open.

[Senate Bill 223 \(1st Reprint\)](#): Revises provisions relating to cruelty to animals.
(BDR 50-760)

Gina Greisen, President, Nevada Voters for Animals:

Currently under Nevada law, it is only a misdemeanor to torture, maim, mutilate, or maliciously kill an animal until the third time a person is charged for the same offense within seven years. This bill is named "Cooney's Law" to commemorate a dog that was gutted by its owner in October 2010. The intent of this bill is to raise the charge from a misdemeanor to a felony on the first offense for willful and malicious acts of animal cruelty. It would only be used for the most heinous acts of animal cruelty.

Under *Nevada Revised Statutes* (NRS) 574.107, it is already a category D felony offense to tamper with a show dog, and it is a category C felony to kill that animal. Our purpose is to bring NRS 574.100 in line with the existing language used for show dogs. It is also a category D felony to kill the animal of another person.

There was an amendment presented by the Las Vegas Metropolitan Police Department (Metro) that was approved on the Senate side. It limited the scope of the animals which would be covered in this statute by stating in section 4, lines 18 through 20, "An animal kept for companionship or pleasure, whether belonging to the person or to another; or (2) Any cat or dog;" this language includes feral cats and stray dogs. I do not know if you need me to read the entire section as I am not sure how to present the bill.

Chair Carlton:

If you covered the basic concepts of the bill, you are doing fine. There is a proposed amendment from Senator Breeden, which I will address. You do not need to go into any legalities of the bill because our legal staff will comment on them. You just need to cover the policy and walk us through the presentation.

Gina Greisen:

There is a quote I would like to read from a *New York Times* article titled "The Animal Cruelty Syndrome" and dated June 11, 2010. It states, "The subject of animal abuse, especially the abuse of pit bulls in dog-fighting activities, has achieved a higher profile after the 2007 arrest of NFL (National Football League) star Michael Vick . . ." He was not prosecuted for animal cruelty, but for dog fighting and gambling. The electrocution, shooting, drowning, and hanging of the dogs would only be considered

a misdemeanor offense in Nevada because he was killing his own animals. He was actually penalized on federal charges for crossing state lines and gambling; he was not penalized for animal cruelty.

Here is another statement from the article: ". . . animal cruelty has long been recognized as a signature pathology of the most serious violent offenders. As a boy, Jeffrey Dahmer impaled the heads of cats and dogs on sticks. Theodore Bundy, implicated in the murders of some three dozen people, told of watching his grandfather torture animals. David Berkowitz, the 'Son of Sam', poisoned his mother's parakeet" We know there are serious links between animal abuse, domestic violence, child abuse, and other violent crimes.

Raymond Rios's—the man who gutted Cooney with a box cutter—ex-wife submitted a letter ([Exhibit C](#)). It is on the Nevada Electronic Legislative Information System (NELIS), and I will read it into the record. I would like to point out that Mr. Rios fit the pattern and matched all the links of domestic violence, child abuse, and animal cruelty. [Ms. Greisen read the letter.]

We have tried to work with the people who are in opposition to this bill. They kept changing their minds on whether or not the first offense should be raised to the level of a felony. We have worked diligently to overcome the opposition, as we did with Metro in accepting its amendment on the Senate side. I strongly urge you to pass S.B. 223 (R1). It will protect animals, and it will protect people. This is a matter of public safety. I truly believe when these incidents occur the punishment should fit the crime.

Chair Carlton:

On the sign-in sheet, we have more than 20 people who recorded support for this bill, and they would like to testify. We do have three people in opposition who have also signed in. After your presentation, I will call some of the people in support of the bill to testify. In southern Nevada, there are some witnesses who would like to testify. Anyone who does not have an opportunity to testify today because of time constraints can turn in their written comments, and those comments will be included in the official record for this hearing. There are some disturbing photographs in the next presentation that will be shown to the Committee. It is the Chair's decision to not upload them to NELIS. However, they will be in the official record. This is consistent with the action taken on the Senate side to handle the photographs.

Kathleen Denning, Private Citizen, Sparks, Nevada:

I am an off-duty animal control officer. This PowerPoint presentation is called: *Cooney's Law—S.B. 223* ([Exhibit D](#)). [Ms. Denning read from prepared text. Some supplemental information and dialogue have been included where they

were appropriate. A video ([Exhibit E](#)) of a dog named Marilyn was shown as part of the PowerPoint.]

I would like to make one more comment. As animal control officers, we are the ones called to make an animal cruelty investigation in our jurisdiction. The original call may have gone to local law enforcement, but it is referred to us. The police do not handle the call unless it is a domestic violence issue. We go out and do a very thorough investigation. If we thought the acts being investigated rose to the level of a felony crime, we would call in local law enforcement. They would assist us and do their own investigation. If we determined together that the case should be a felony charge, the police would make a felony arrest. If there was a question or doubt, after the two investigations were completed, the case would be referred to our district attorney's office for a case review. People are concerned that neighbors will report each other for animal cruelty without any basis. This bill is reserved for the most serious and egregious acts of animal cruelty.

As Ms. Greisen mentioned, Raymond Rios is the poster child for an egregious act of animal cruelty. He comes full circle with domestic violence against his wife, and two acts of cruelty that we know of. He is a career criminal. These are the kind of people we need on the radar because we do not want them out on our streets. It is a proven fact, through the FBI, that the people who commit these most egregious acts of animal cruelty are the most violent offenders, and they go on to commit crimes against people.

Holly Natwora, Shelter Manager, Society for the Prevention of Cruelty to Animals of Northern Nevada:

[Ms. Natwora read from prepared testimony ([Exhibit F](#)).] On a personal note, I still live in fear that Raymond Rios may show up at my place of work, or find out where I live, and do the same to me.

Chair Carlton:

I would like to go back to the bill. I have received thousands of emails on this bill. We should address the "willfully and maliciously" language in the bill because many people have expressed concern about those terms. I will have our legal counsel address the level of the felony and how high a standard it is. Then, everyone will be on the same page.

Randy Stephenson, Committee Counsel:

If you look at the language on page 5, line 36, it refers to a person who willfully and maliciously engages in certain acts of animal cruelty and torture. From a drafting and a legal perspective, those terms have very distinct

meanings. They are linked to a person's mental state when the acts were committed.

There are negligent acts and accidental acts. Everyone understands those concepts. The next level is intentional or willful acts. The terms "intentional and willful" in the law imply that the act was more than accidental. It was not a negligent act. A willful act is one the person intended to commit, and he knew he was committing a certain act. There should be a certain amount of culpability attached to that act. This is the reason the words "willful and intentional" are generally used in criminal statutes. Malicious acts go up almost another level in the eyes of the law. A person committing a malicious act knew what he was doing; he intended to do it; and it implies an evil purpose or malicious motive. A good example would be common law murder, which is the killing of a human being with "malice aforethought." Arson is another crime of malice in common law. Those examples should help people understand what "malice" means. We have negligent acts, intentional or willful acts, and at a higher level, malicious acts.

Chair Carlton:

Are there any questions?

Assemblyman Goedhart:

The bill sponsors indicated that 41 other states do have a felony provision for this type of animal abuse. In Nevada, the lowest level of felony is a category E offense. It goes up to a category A and B felony. What is the worst level of felony crime?

Chair Carlton:

Category A.

Assemblyman Goedhart:

Do the other states also have a category C, D, or E felony? Are we going in at the exact same level as other states?

Kathleen Denning:

Every state is different in what grade of felony they charge, so I cannot give you an answer. I do not have a list. I believe they are very similar to the category C and D felony we are asking for, but I do not have that information.

Chair Carlton:

Mr. Goedhart, we can follow up on that. If it would make you more comfortable with the bill, I will make the request for information.

Assemblyman Goedhart:

I live in a farming and ranching community, and occasionally a stray dog will come around, or a domestic dog will get out. Sometimes they start harassing or killing livestock, and the animal is shot to protect the livestock. What kind of culpability or what kind of protections are in this bill to cover those types of circumstances since it would be an act of injuring or killing an animal?

Kathleen Denning:

There are provisions in the NRS and in county ordinances which cover an animal injuring or killing livestock. The owner of the livestock has the right to shoot the animal or remove it from his property by whatever means necessary. Protection is provided for the livestock owner.

Assemblyman Anderson:

My questions are technical, and I would like to direct them to legal counsel. What are the different degrees of penalties for category E through C? Also, in section 4, line 20, cats and dogs are listed separately. The definition for animal is any living thing except a human. Can you clarify why cats and dogs are listed twice?

Randy Stephenson:

I will answer the second question first. You are right; the definition of animal in Chapter 574 of NRS is very broad. In section 4 of this bill, the terms—cat and dog—are listed separately because I believe the idea was not to attach the felony charge to all animals. They specifically wanted the animal to be a cat or dog, or pets or companion animals.

Assemblyman Anderson:

That was what I also thought at first, and then I saw the provision on line 19 which says, "or." So I am confused.

Randy Stephenson:

The term "or" should not cause much concern at least in this regard. This amendment was set up so the animal would be either specified in section 4, subsection 1, paragraph (a), subparagraph (1), or in subparagraph (2). The animal kept for companionship or pleasure can belong to that person or another person. There is some overlap, but the two should be easily distinguishable for the purposes of prosecution.

Chair Carlton:

As far as the felony penalties in each category, Mr. Stephenson can address those listed in the bill.

Randy Stephenson:

The felonies referred to in this bill are categories D and C. The general felony provisions are in NRS 193.130. A category D felony is one ". . . for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years." The category D felony is a mandatory one to four years. In addition you are subject to a fine of not more than \$5,000. A category C felony is one ". . . for which a court shall sentence a convicted person to imprisonment . . . for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute."

Chair Carlton:

For time and fairness, we will hear from the witnesses in opposition to the bill, so they can get their concerns on the record. Then, we will go back to those people in support, and we will hear from the witnesses in southern Nevada.

Tony Yarbrough, representing Nevada's People for Animal Welfare:

At the initial Senate hearing on this bill, I made an agreement with the bill's supporters. However, I have withdrawn that support. One of the reasons for my change of position is the bill removes the misdemeanor penalty, which is critical. If this situation with the dog, Cooney, was as severe as stated, then there must be something we are not hearing. Otherwise, why did the Washoe County district attorney and the City of Reno not prosecute the case? The reason the case was not prosecuted was the perpetrator was determined to have a mental state at the time which precluded him from prosecution.

The fiscal note ([Exhibit G](#)) from the Department of Corrections indicated there was a fiscal impact, but there was not enough concrete data available to give it a foundation for its cost projections. Therefore, they had to make fiscal assumptions on the amount of the impact because there have been so few of these cases.

The animal cruelty cases you have listened to and have seen the photographs of are horrific. However, people in support of this bill keep referring to murder. That term is reserved for humans, not animals.

I submitted a recommendation to every member of this Committee asking for a "no" vote on this bill. In section 1, lines 10 through 15, this measure is talking about a report, complaint, or statement to gather facts to assign the legal determination of a violation (or if there was any violation), and which violation took place. The procedure is specified in NRS 171.1223, and until the

facts are gathered and the evidence accumulated, the substance of the report, complaint, or statement is considered to be hearsay. The key word is "report," and it needs to be defined in this part of the bill. It needs to be accepted as a sheriff's report per NRS 171.102, a complaint or citation per NRS 171.106, or a statement per NRS 51.025. The bill, as it is written, is confusing. What type of report is acceptable? Who will receive the report? The district attorney and the State Attorney General are not included in the bill's language. It is not necessary to specify or limit the number of people who can receive the report. This language may actually prohibit communications between intergovernmental agencies for prosecution. I have submitted an annotated copy of a proposed amendment ([Exhibit H](#)) for your consideration.

In my research for section 1, line 10, which deals with confidentiality, I have found that any personal information—volunteered and not demanded—is not confidential. The proof of what information is and is not confidential is specified in the NRS. A report, a complaint, or a statement made under this language is hearsay and is not confidential until the investigation is actually executed. Then, it becomes a legal matter for which the court system prevails. The open-ended language used in this bill is in conflict with existing practices among agencies and counties. I have submitted supporting document extracts on confidentiality ([Exhibit I](#)).

We do not approve of animal cruelty any more than anyone else and believe animal cruelty should be penalized accordingly. With the gross misdemeanor and misdemeanor removed from the law, we have elevated the violation to a felony. In doing so, we take some of the jurisprudence away from the judge in making the assignment of penalties. For example, a gross misdemeanor or a misdemeanor gives the judge flexibility in determining the level of severity, the amount of the penalty, the extent of the penalty, and the duration of the penalty. The judge decides whether or not the penalty requires jail time or community service.

Felony penalties are very clear and specified by law. We remove the penalty determination from the court's hands by elevating the charge to a felony. On page 6 of the bill, line 2, I recommend changing the misdemeanor to a gross misdemeanor. On page 6 of the bill, lines 14 through 15, I recommend the misdemeanor be changed to a category E felony, which will give the courts some leeway in sentencing. If the average citizen cannot figure out what this bill is about, then this bill should not be passed.

Barbara Kubichka, Private Citizen, Carson City, Nevada:

I own and operate Washoe Valley Collies. We are against this bill because it goes too far. I am not for animal cruelty, but I have been harassed by my

neighbors who have thrown rocks at my dogs. They have threatened to shoot my sheep because they claim the sheep are a breeding ground for flies. We kill chickens and eat their eggs, and we slaughter our sheep for food. Do these activities make me a murderer under this bill? I think not. I think the misdemeanor is fine. If someone kills my show dog, Lance, I can go to civil court and seek restitution. I think \$500 or a \$1,000 fine is fair, and it should apply to all dogs across the board whether it is a show dog or companion dog.

I am shocked that this bill will elevate the criminal level for animal cruelty to the same level used for child abuse charges. I have submitted a comparison showing the felony levels of penalties for animal abusers and human abusers ([Exhibit J](#)). I value a human life above an animal life even though I own, breed, and love my dogs. Humans, especially children, take priority. It would be folly to pass this bill because you will be taking money law enforcement has available in the human bucket and putting it in the "critter" bucket. The police do not have the funds to chase after animal criminals. They need to chase down the human criminals, such as the case of a woman in Sparks who burned her infant. That is a far worse crime.

I support law enforcement, and it says it does not have the money. I talked to the Nye County sheriff, and he told me his budget has been cut by \$2.5 million. There is also a "dog dumping" problem in southern Nevada. Fortunately, northern Nevada does not have dog dumping problems. I urge you to vote against this bill. If you need to prosecute dog criminals, make the penalty even. I do not have a problem including pet dogs in the same misdemeanor category as show dogs. If a person wants to get more money for the loss of his property, he can file a suit in civil court.

We also have a problem with giving animal control officers the same authority as law enforcement officers. Animal control officers do not have the training, and they rely on hearsay. In Washoe County, we have had a problem with flimsy evidence collection. It usually is one person's word against another. Ultimately, a lot of court and police time are wasted.

I believe the law should stand the way it is. As a show dog breeder, I suggest you change the current law to cover all dogs. Animal abusers should be prosecuted, but I think a felony charge is too harsh a penalty. A \$500 or a \$1,000 fine will hit people hard. We do not have the cop time, the court time, or the jail time to cover the costs for animal abuse charges. The most innocent human beings, children, should be considered first. I have submitted an annotated proposed amendment to the bill ([Exhibit K](#)) and a statement about a woman in Sparks who says animal control and law enforcement officers

searched her home without a signed search warrant after she applied for a kennel permit ([Exhibit L](#)).

Chris Vaught, Private Citizen, Carson City, Nevada:

[Ms. Vaught read from prepared testimony ([Exhibit M](#)). Some supplemental information and dialogue were included where appropriate.] I have submitted a fact sheet ([Exhibit N](#)) on why you should vote no on this bill.

Chair Carlton:

Mr. Yarbrough, I did look into some background on your comment about eliminating judges' flexibility in sentencing. There is nothing in this bill which prohibits plea bargaining. It is standard practice within the judicial system. Therefore, judicial discretion is not prohibited by this bill. The felony standards set by law are guidelines for judges. Are there any questions? [There were none.] We do have some witnesses in Las Vegas who would like to testify before we lose our simulcast. If Marlene Richter would like to come to the witness table, we will hear her testimony. [An unnamed secretary came to the microphone and said Ms. Richter had stepped out of the room for a moment.] If you will ask her to come to the table along with Susan Somers, we will hear their testimony. [The same unnamed secretary said they were both out of the room.] Have them come to the table when they return.

Senator Shirley A. Breeden, Clark County Senatorial District No. 5:

I have submitted my testimony in writing ([Exhibit O](#)), but in the interest of saving time, I will talk from my heart and not read my notes. One woman identified herself as a Democrat. To me, your political affiliation is not the reason why we are here. We are here to make policy, and that is what we are doing with this bill. The purpose of the bill is to penalize people who willfully and maliciously do harm to animals. We are referring to the most egregious acts. It is sad when you hear comments that an animal is not worth a human life. It may not be to that extent, but animals are important. If people are committing these acts for the fun of it, they need to be penalized. The bill does not affect ranchers and farmers.

I put the confidentiality clause in the bill because if a neighbor wanted to report a case of animal cruelty, he could do so without fear of retaliation. The conceptual amendment ([Exhibit P](#)) we provided today was to further clarify the confidentiality. It specifies that the reports of the acts of animal cruelty may be released not only for the purposes of a criminal prosecution, but also for the purposes of a criminal investigation. If these acts of animal cruelty occur, we did not want to hinder the work of law enforcement.

Chair Carlton:

If you do not mind, we are going to take the testimony from Las Vegas.

Marlene Richter, Executive Director, The Shade Tree Shelter:

In 2007, The Shade Tree Shelter opened Noah's Animal House as an on-site animal sanctuary to house the pets of domestic violence survivors. Since opening, we have helped save lives more than 32,000 times by filling a dog kennel or a cat condo with rescued pets. The rescue is necessary to prevent the victim from going back to the unsafe home, but also to save the life of the pet. Abusers will target every living creature in the house and use violence and physical assault to control them.

I talked about Gizmo, a long-haired Chihuahua, at the Senate hearing. Gizmo was targeted when a 21-year-old girlfriend tried to escape domestic violence. The abuser choked the dog, kicked the dog, and threw it against the wall, fracturing its pelvis. Then, while the dog was yelping in pain, the abuser put the dog in the freezer while it was still alive. This dog is still alive today because people stepped in. All of this animal abuse happened in front of the young cousins of the abuser. We hear these stories at The Shade Tree Shelter daily. For the last three and a half years, since Noah's Animal House has been open, we have heard children talking about watching an abuser harm pets in order to control children. Children do not have a voice.

Women come to the shelters, battered beyond recognition, and tell us of pets that have already been drowned, strangled, or hanged. In order to save the lives of women and children and to stop the violence cycle that goes from woman, to child, to pet, it is necessary to elevate the penalty. This horrific abuse against animals is willful, malicious, and planned in order to control family members. Elevating the crime to a higher level will help stop this violence and the cycle from perpetuating. It will stop children from having to watch this abuse go on. Hopefully, it will also stop the loss of human lives.

Susan Somers, Private Citizen, Las Vegas, Nevada:

[Ms. Somers read from prepared testimony ([Exhibit Q](#)).]

Chair Carlton:

Are there any questions? [There were none.]

Senator Michael Roberson, Clark County Senatorial District No. 5:

I am here in support of this bill. I was in the Senate Committee on Natural Resources when this bill was initially heard, and it was unanimously passed out by the Committee. Even my colleague Senator Rhoads voted for this bill. On the floor, three Republicans out of ten voted for the bill. There was

some confusion in the voting because this bill was mixed up with another one. If that had not happened, we would have had five or six senators, which is the majority of our caucus, voting for this bill.

I am not here pushing the animal rights agenda. I do not agree with every action the People for the Ethical Treatment of Animals (PETA) and a lot of other organizations take. There are extremists on both sides of this argument. I think Mr. Yarbrough and Ms. Kubichka are extremists on the other side of this argument.

Chair Carlton:

We are just here to talk about the bill and the policy. We do not want to make this hearing personal.

Senator Roberson:

It is important to know since one of the witnesses identified herself as a Democrat. They sent an email out against me personally to every Republican in this building calling me a fake Republican and a Republican In Name Only. Those actions on their part should be considered when you listen to their testimony.

Chair Carlton:

There are other legislators who have been called that, so you are in good company.

Senator Roberson:

I looked at this bill as an attorney, and I can refute every one of their arguments from a legal perspective on the technical aspects of this bill. I would be happy to do so if you have any questions. This is a common sense bill. There is a direct correlation between someone who commits extreme acts of cruelty on a pet, and then the same person commits acts of violence against his family. I am a law and order Republican. In a nutshell, section 4, lines 17 through 20, page 4 of this bill says, "(a) Torture or unjustifiably maim, mutilate or kill: (1) An animal kept for companionship or pleasure, whether belonging to the person or to another; or (2) Any cat or dog;" is a felony. If you do that, you should be locked away. This bill does not put animals on the same level as humans. Those arguments are bogus.

Assemblyman Hansen:

Under NRS 200.485, a person who is convicted of battery which constitutes domestic violence, for the first offense in seven years, is guilty of a misdemeanor. We are talking about domestic violence here, and this bill would be placing animals above humans. I am a law and order Republican as

well, but right now under a misdemeanor statute, you can put someone in jail for six months, fine them \$1,000, and order so many hours of community service. The problem in these cases is not to upgrade the act to a felony, but to have the judges actually enforce existing penalties. We should be going after soft on crime judges, which is a traditional Republican perspective. To increase the charge to a felony, when they are not currently enforcing the penalties for misdemeanors, would appear to me that we are missing the boat.

Judges in Nevada are elected. If there is a soft on crime judge who is letting cases like this Cooney situation slip through the cracks, they should answer to the voters. I have some real issues with increasing the penalty to a felony if a dog is cruelly abused, when it remains a misdemeanor if a woman or child is battered.

Senator Roberson:

I agree with a lot of what you said, except for the first part. There is a misconception when people say a simple battery committed on a dog or cat is now going to be subject to a higher level of punishment than battering your spouse. That is not the case. If you kick your dog, the action is not a felony under this bill. It is only a felony if there is, "Torture or unjustifiably maim, mutilate or kill. . . ." If you commit those acts on a human being, it is most certainly a felony, and hopefully, the perpetrator will go to jail for the rest of his life. Although some people believe there is an apples to apples comparison between animals and humans in this bill, that is not the case. They are misunderstanding the language in this bill. Senator Breeden worked with Chuck Callaway of Clark County's Metro, and he proposed an amendment, which is in this bill. Law enforcement is supportive of this measure. I am in support. I do not know if Mr. Callaway has testified yet, but I encourage you to listen to his testimony as well. This is a negotiated bill, and it is in a far different form than how it started out. I cannot emphasize enough battering your dog is not a felony; it is still a misdemeanor, if that. This is cruel, torturous maiming or killing that would result in a felony change.

Assemblyman Hansen:

Can you address why none of the people received six months in jail, which they could have under the existing misdemeanor statutes?

Senator Roberson:

I do not argue that point. I am not a fan of soft on crime judges, but that is not what we are talking about today. I do not disagree with what you say on that issue. I do encourage you to make the law stiffer for heinous crimes.

Chair Carlton:

To put on the record, we do have law enforcement represented in the hearing's audience. They are all marked in as neutral on this bill. We also have the American Civil Liberties Union marked in as neutral on the bill. It is not often that you see those speakers on the same side of an issue.

Senator Roberson:

With the amendment proposed by Clark County Metro, which is now incorporated in this bill, there is no tax or fee, and there is negligible fiscal impact.

Assemblyman Goedhart:

I have had some people express concerns and misgivings about the confidentiality nature of the complaint. When someone makes a complaint against a neighbor or entity for a certain act, is the normal process to have the complainant remain confidential until the investigation goes to a criminal complaint? Is that a common practice in criminal law?

Chair Carlton:

Senator Roberson, we can have someone from law enforcement come up and address the question if you are not comfortable in providing the answer.

Senator Roberson:

The confidentiality provision was added fairly late in the process. I do not feel strongly about it one way or the other. Law enforcement can give you a better answer. To me, that is not an important part of the bill, and from my perspective, if it was removed from the bill, it would not bother me.

Chair Carlton:

The bill's sponsor is sitting next to you.

Senator Roberson:

That is my opinion only.

Assemblyman Goedhart:

I wanted to make sure it was on the record because some people who had no problem with the rest of the bill were concerned about the confidentiality section. They thought it was being handled differently than the process in place to handle other neighbor complaints. Sometimes, this type of complaint can be used by someone who has a grudge or vendetta against someone. They can file a complaint and remain anonymous while creating all kinds of mischief and mayhem for the victim when it could be a spurious complaint. I agree, we need

to come down very seriously on these bad actors, but we do not want to cast the net so wide that the principles of due process are tossed out.

Chair Carlton:

I have been informed the confidentiality language encapsulated within this bill was pulled from the elder abuse statutes. It is done in other places.

Senator Mark A. Manendo, Clark County Senatorial District No. 7:

We worked hard on this bill. It is interesting to look at NRS 206.150 which states, ". . . any person who willfully and maliciously kills, maims or disfigures any animal belonging to another . . ." is guilty of a felony. However, if it is your own animal, the law is silent on penalties for those actions.

We are trying to mirror the two statutes together. The confidentiality portion of the bill, which was an issue I brought to the bill's sponsor, came from elder abuse and neglect laws, which we have worked on for a number of years. Right now in Clark County, and I believe also in Washoe County, if you call code enforcement on your neighbor for a certain reason, you do not have to identify yourself. They will still come out and investigate. The reason for that is retaliation, and it happens all the time. It has happened to neighbors of mine, and it has happened to seniors. There has to be a level of protection in the bill because people who do the most malicious and heinous acts of cruelty to animals will come after anyone. People are fearful, and without that portion of the bill, it is weakened. I understand your concern, but the confidentiality section will enhance the bill. People who want to do the right thing will be more willing to step up to the plate knowing they will not be the victim of retaliation. I ask and plead with this Committee to pass this bill. We feel it is that important.

Chair Carlton:

Are there any questions?

Assemblyman Ellison:

I am looking at the number of citations issued for cruelty in the unincorporated area of Clark County, and I am looking at the number of City of Las Vegas animal control citations ([Exhibit R](#)). Considering the size of Clark County, they amount to almost nothing. From January 2010 to December 2010, the total in the unincorporated area was 203 citations. I am worried about PETA and some of these other organizations and their reports.

Senator Roberson:

I was concerned about many of the same issues you have expressed. I am no fan of PETA and never will be. What I can tell you is with this language in the

bill, you are not going to be put in jail for a felony offense for not giving your dog water. I would never support a bill which said that.

Senator Manendo:

There are statutes which cover not providing shade and water, and for tethering an animal for too long a period.

Assemblyman Hansen:

Right now there is a statute which lists misdemeanor penalties for animal cruelty offenses, and those penalties are not being issued. Why do you assume when you enhance the charge to a felony, we will have a different situation than what is currently happening? The judges and the district attorneys plea bargain the charges down to a watery version of the penalty. If they are not penalizing these offenders under the existing statutes to the maximum penalty, why are the penalties being increased? They are not doing what they could right now.

Senator Manendo:

Judges who are not issuing the stiffest penalties possible for the neglect and abuse of people or for the neglect and abuse of an animal need to answer to the voters. I am with you and Senator Roberson. I have always been a tough on crime person. This law will send a message to everyone out there that this Legislature means business, and I hope the judges would follow this law.

Chair Carlton:

If anyone has any new information to add, you are invited to the witness table. If not, Ms. Greisen, you can come forward and respond. If there is no one else in the audience who wishes to testify, could you raise your hands if you are in support of this bill? [Hands in the audience were raised.]

Gina Greisen:

The misdemeanor provision is still in the bill. Only when acts of animal cruelty are willful and malicious does the charge elevate to a category D felony or category C felony. There is an arrest record, which I previously submitted.

Chair Carlton:

The arrest record will not be allowed in the record. I understand why you would want the arrest record on the record, but it is not appropriate.

Gina Greisen:

Senator Manendo indicated in his testimony that it already is a category C felony to kill someone else's animal. Recently, a man was convicted for shooting another person's dog, and he was given three years probation.

The sentencing is not mandatory; it is up to the judge's discretion. Under mandatory sentencing guidelines listed for a category C felony, the man should have received one year of jail time.

Margo Larson, Private Citizen, Reno, Nevada:

I am also an off-duty animal control officer. I work with Kathleen Denning who testified earlier in this hearing. I would like to clarify a couple of statements made about Raymond Rios, Cooney's killer. Mr. Rios was not on drugs at the time. If that was the case, he would have been arrested and not allowed to drive away. This bill would also help us with shelters. I was friends with Cooney. I had picked him up a few times and taken him to the shelter. By law, Mr. Rios had care, custody, and control of Cooney. It was his dog. At the time his girlfriend was arrested, they were living together. Mr. Rios was homeless and living in tent city, and by law, homeless people cannot own pets. If this law is passed, we would know which owners had a felony conviction for animal cruelty offenses, and they would not be able to adopt animals from the shelter. [Ms. Larson read from prepared testimony ([Exhibit S](#)).]

Chair Carlton:

Are there any questions? [There were none.]

Karen Layne, D.V.M., representing the Las Vegas Valley Humane Society:

[Dr. Layne read from prepared testimony ([Exhibit T](#)). Some supplemental information and dialogue were included where appropriate.] We serve an area with a population of 2 million, and many of those people are transient. Animal cruelty calls are handled by local animal control agencies. There are five agencies in southern Nevada; six if you include the City of Mesquite. We often see people who do not know which agency to call, but they are familiar with the Humane Society. We often get calls and route them to the proper animal control agency.

We support S.B. 223 (R1) for a number of reasons, and one of them has to do with the confidentiality portion in this bill. We hear from a lot of people who are concerned about their neighbors and are afraid of neighbor retaliation. The confidentiality statement is extremely important. We collected the data, which was discussed previously, on the number of animal cruelty citations for 2010. [See [Exhibit R](#).] A comment was made about the fact there were only 203 citations for cruelty in the unincorporated area of Clark County. However, I remind you by state statute the primary function of animal control is to handle animal bites and to provide rabies protection. It is animal control's major priority.

Unfortunately, we are often called to investigate situations where there is no known offender. The portion of the bill which specifically refers to "any cat or dog" or companion animals is very important for overseeing the many cases we have which involve stray cats and dogs.

We also reaffirm the linkage between animal cruelty, domestic violence, and child abuse. It is important to acknowledge the links between them. I have two videos ([Exhibit E](#)) to present to the Committee. The first video is about kittens, which were born inside a concrete block wall. The man who did the maintenance work at the location did not like the kittens being there, so he sprayed them with urethane foam. This type of foam expands on contact. Another organization was advised of the situation, and they rescued the kittens. They took them to Dr. David Henderson, a local veterinarian. Not all of the kittens were saved. Dr. Henderson is unavailable today to give testimony although he did testify at the Senate hearing on this bill. He said it was the worst case of animal cruelty he had seen in more than 30 years of veterinary practice. Ask yourself this question: Was this a willful and malicious act of cruelty? Still photographs have also been provided for you showing the kittens covered with the foam ([Exhibit U](#)). Are you able to play the video?

Chair Carlton:

We were watching it as you spoke. So the Committee has seen the video.

Karen Layne:

In the second video ([Exhibit E](#)), which has been substantially shortened for the purposes of this hearing, you will see a man go up and hit the dog, which is unseen but not unheard. What you do not see is the man moving away from and around this dog for several times before he hits the dog. This man was charged with a misdemeanor—as was the man in the foam kitten incident. This man's misdemeanor charge was not just for this incident, but it was also for a series of these incidents. The veterinarian who videotaped this particular incident had watched the man on the video repeating these dog beatings for almost one year. The dog never left the patio and the chain that held him there was never removed. The veterinarian watched the dog get kicked, punched, whipped with a belt, and hit on the head with a wooden mallet. The dog was not provided proper shelter. He contacted us with the video after trying to get animal control to do something about the situation. We did follow-up with animal control, and we gave them the video. In addition to the misdemeanor charge, the man had to complete 500 hours of community service. Again, the question you have to ask yourself is whether or not these acts were willful and malicious.

Nathan Sosa, Private Citizen, Las Vegas, Nevada:

I am a practicing attorney in Clark County, and I am also one of the founding members of the Animal Law Section, State Bar of Nevada. I am not speaking on behalf of the group today; I am testifying as a private citizen. I am testifying today to address some of the questions you had.

Assemblyman Hansen asked why we would impose harsher penalties when the judge and the judicial system do not enforce the laws that are already on the books. Currently, under NRS 574.100, there are penalties in place for people who abuse animals. After the first offense, it is a misdemeanor and the resulting punishments are penalties and fines. If a second offense occurs within seven years, it is still a misdemeanor, but additional penalties are included. If there is a third offense, the charge becomes a felony. The reality is in today's judicial system hundreds of misdemeanors are being dismissed and hundreds of felonies are being reduced to misdemeanors. Why? The system is overloaded. There are not enough prosecutors; there are not enough judges; there is not enough time or resources to allow the state to actually prosecute these cases. There are cases where there are human victims who have been assaulted, robbed, or raped, and these cases are being negotiated. Cases that have a voiceless animal as the victim of crime are usually not heard. It is not like this because prosecutors do not care, or because they are being indifferent. It happens because they do not have the time. The reality is defense attorneys who are handling animal cruelty misdemeanor cases will invariably get the case dismissed. Therefore, you never reach the threshold of three convictions for animal cruelty that would amount to a felony. Putting this law into place would give the state the opportunity to bring the most serious animal cruelty cases forward. The felony cases of malicious and brutal cruelty will at least make their way through the system. In the end, the cases may be reduced to misdemeanors, but at least there will be a conviction on the record for the purposes of later enhancement. That is why it is imperative to have a felony charge for the worst types of animal cruelty crimes.

The question was asked, are we treating animals the way we treat people? That is not the case. If you intentionally murder a human being, it is a category A felony. If you intentionally maim a human being, it is a category B felony. Under this proposal, if you maliciously kill or harm an animal, it would be a category D felony. To some of you, a category D felony still sounds like it might be overkill. It would help to know what other offenses are considered category D felonies. Here are some examples of category D felonies: negligently overloading a passenger vessel, such as a boat, which tips over and someone accidentally drowns; improperly intercepting another person's phone call; and improperly stealing cell phone service.

Under this bill, you would be treating people who maliciously and intentionally beat, maim, or murder animals the same way as a person is treated for stealing cell phone service. That is the equivalent. As a society, we generally try to protect the most vulnerable groups whether it is battered women, abused children, or abused senior citizens. Animals are even more vulnerable than these groups because they cannot call the police. They cannot open the door, run to the neighbor, and ask for help. They cannot even comprehend the nature of what is happening to them. They cannot get on a stand in a court of law and tell a jury or a judge the horrors that they have endured; they cannot urge the court system to act against the perpetrator. These creatures have no voice, and that is why it is imperative for us to pass this bill. It will permit animal control officers, police officers, and prosecutors to take the most heinous cases to court, and ensure the perpetrators of these acts will receive some level of punishment.

Chair Carlton:

Are there any questions for our witnesses in southern Nevada? [There were none.]

**Chuck Callaway, representing the Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

I did not sign in to speak today, but after hearing the testimony, I need to clarify our neutral position on the bill. Also, I will answer some of the questions that have been raised. We were opposed to the original bill on the Senate side because it was so broad, and it would have allowed any animal cruelty act to become a felony. In Clark County, animal control officers handle the majority of animal complaints. If these crimes were to rise to the felony level, then it becomes the responsibility of Metro to pick up those calls. That would create a fiscal impact on us. We met with the bill's sponsor, and we offered the current language in the bill about the maiming, killing, and torturing of an animal. The confidentiality portion was added by the bill's sponsor. We agreed, if they adopted our language in the bill, our position would be neutral on the bill.

Currently, if a complaint comes in and the person chooses to remain anonymous, we do not give that information to the suspect. After a crime report has been taken, a person can go to the records section of the courts to obtain a copy of the report. However, the witness and victim information is redacted from the report before it is turned over to the citizen.

In many cases, where the crime is charged as a misdemeanor, an officer cannot make an arrest unless the misdemeanor occurred in his presence. If the witness refuses to provide his information or refuses to come forward, then we cannot pursue prosecution of the case.

Assemblyman Goedhart:

If a witness does not provide the information, the case is suspended and there will be no continuation of the investigation. Is that correct?

Chuck Callaway:

In the case of a misdemeanor that would be correct. We would not be able to pursue our investigation if the witness does not sign the complaint. However, in cases involving a felony or a gross misdemeanor, we can use the facts and circumstances available to establish enough probable cause to pursue an investigation.

Assemblyman Goedhart:

Some constituent concerns I have received are about people filing a misdemeanor complaint, and the person making the complaint does not want to go on record. They worry animal control officers, without a signed statement, will continue an investigation on a misdemeanor charge.

Chuck Callaway:

If that was the case, the animal control officer would probably hear the district attorney say in order to pursue further investigation I need the witnesses' information. The witnesses would have to be the complainant.

Assemblyman Ellison:

If an officer was on the scene and he saw some heinous act of animal cruelty, he would make an arrest immediately. Is that correct?

Chuck Callaway:

Yes, that is correct. If an officer was on the scene and witnessed a heinous act, he would make an arrest.

Assemblyman Ellison:

That arrest is based on the current laws. Is that correct?

Chuck Callaway:

Yes.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

We were, also, originally signed in on this bill in opposition. We shared some of the same concerns the Metro lobbyist had. We appreciate the bill's sponsor making changes to the format of the bill, and in particular, addressing our concerns about the overburdening of the criminal justice system.

The last testifier from Las Vegas, [Nathan Sosa] description of category D felonies is the case in point. We urged the Senate Committee in this session and in future ones to consider the reclassification of crimes. It needs to be done. The current problems have happened because there is a patchwork of approaches to categorizing crimes. This is why we end up with such disparity in felony and misdemeanor sentences. This form of the bill does not represent as much of a burden as the first iteration of the bill. However, it does increase penalties. This state does not have the money to fund incarceration of people guilty of certain crimes. The existing law that has been mentioned, [NRS 206.150] about a person killing, maiming, disfiguring, or poisoning an animal of another person, creates a little bit of an overlap with this bill. The American Civil Liberties Union supports bills that are clear in nature, not vague.

Our last concern is the due process element. If someone is jailed or criminally prosecuted on an anonymous complaint, the complainant could no longer remain anonymous. Also, section 3 of this bill, which is already in statute, sets forth the circumstances under which an officer can take possession of an animal. We would like some legislative intent to clarify that an individual's property—a dog or a cat—cannot be removed from the owner on an anonymous complaint. Otherwise, there could be some due process issues.

Chair Carlton:

Are there any questions? [There were none.] Mr. Callaway, did you have a comment?

Chuck Callaway:

Yes, I do. I wanted to clarify my response to Assemblyman Ellison's question. Under the current law, if it was a first offense, the charge would be a misdemeanor. More than likely, the perpetrator would receive a citation to appear in court. Depending on the circumstances and other factors that might be involved, an arrest could be warranted. That would be the officer's discretion at the scene.

Assemblyman Hansen:

Why are judges not using the maximum penalties already available for sentencing in these animal cruelty cases? Why are we enhancing the penalties when we are not using the ones that are currently available?

Chuck Callaway:

I am not speaking on behalf of the judges, but in an attempt to save time, money, and resources in the courtroom, plea bargains are often made.

People frequently plead guilty to a lesser crime than what the original charge was. The plea bargain results in a reduction in their fines and sentences.

Rebecca Gasca:

Each case is always evaluated by judges on the merits of that individual case. Your comments further support the reasons why the Legislature should move forward with the reclassification of crimes. If you are concerned about what judges are and are not doing, then it is a broader issue than just what the penalty is in state law. We believe that judicial discretion is built into the law for a reason because individual cases merit individual consideration. You cannot always have a one-size-fits-all response.

Chair Carlton:

We have had a thorough hearing on this bill. If there is anyone who has not testified, and you would like to put something on the record, you will have that opportunity now.

Beverlee McGrath, representing the American Society for the Prevention of Cruelty to Animals; Best Friends Animal Society; Political Animal Welfare Political Action Committee; Action for Animals, Nevada Humane Society; and Nevada Political Action for Animals:

All the groups I represent are in strong support of this bill.

Holly Michael Haley, representing the Humane Society of the United States:
We support this bill.

Mendy Elliott, Member, Board of Directors, Nevada Humane Society:
We are in strong support of this bill.

Chair Carlton:

Is there anyone in southern Nevada who would like to testify? [There was no one.] I am closing the hearing on S.B. 223 (R1). Is there any public comment? [There was none. The Chair requested the following exhibits be included for the record: (1) Brief on the Lola Kennel Case submitted by William Becht ([Exhibit V](#)); (2) Testimony submitted by Juanita Cox ([Exhibit W](#)); (3) Testimony submitted by Jennifer Nunn ([Exhibit X](#)); (4) Testimony submitted by Natalie Unzueta ([Exhibit Y](#)); (5) Testimony submitted by Susan Meuschke ([Exhibit Z](#)); and (6) Testimony submitted by Marlene Johnson ([Exhibit AA](#)).]

This meeting is adjourned [at 4:28:p.m.].

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblywoman Maggie Carlton, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Natural Resources, Agriculture, and Mining

Date: May 10, 2011

Time of Meeting: 2:29 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|------------------|---------|-------------------------|--|
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B. 223 (R1) | C | Gina Greisen | Letter in Support from Michelle Foredice |
| S.B. 223 (R1) | D | Kathleen Denning | PowerPoint Presentation |
| S.B. 223 (R1) | E | Kathleen Denning | CD Containing 3 Video Clips |
| S.B. 223 (R1) | F | Holly Natwora | Testimony |
| S.B. 223 (R1) | G | Tony Yarbrough | Fiscal Note |
| S.B. 223 (R1) | H | Tony Yarbrough | Proposed Amendment |
| S.B. 223 (R1) | I | Tony Yarbrough | Supporting Document Extracts |
| S.B. 223 (R1) | J | Barbara Kubichka | Penalty Comparisons |
| S.B. 223 (R1) | K | Barbara Kubichka | Proposed Amendment |
| S.B. 223 (R1) | L | Barbara Kubichka | Story of a Lady |
| S.B. 223 (R1) | M | Chris Vaught | Testimony |
| S.B. 223 (R1) | N | Chris Vaught | Fact Sheet |
| S.B. 223 (R1) | O | Senator Shirley Breeden | Testimony |
| S.B. 223 (R1) | P | Senator Shirley Breeden | Proposed Amendment |
| S.B. 223 (R1) | Q | Susan Somers | Testimony |
| S.B. 223 (R1) | R | Karen Layne | List of Citations |
| S.B. 223 (R1) | S | Margo Larson | Testimony |

| | | | |
|------------------|----|-----------------|------------------------------|
| S.B. 223 (R1) | T | Karen Layne | Testimony |
| S.B. 223 (R1) | U | Karen Layne | Photographs |
| S.B. 223 (R1) | V | William Becht | Brief on Lola Kennel Case |
| S.B. 223 (R1) | W | Juanita Cox | Testimony |
| S.B. 223 (R1) | X | Jennifer Nunn | Testimony |
| S.B. 223 (R1) | Y | Natalie Unzueta | Testimony |
| S.B. 223 (R1) | Z | Susan Meuschke | Testimony |
| S.B. 223 (R1) | AA | Marlene Johnson | Testimony |