

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

**Seventy-Seventh Session  
February 26, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:08 a.m. on Tuesday, February 26, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau, and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jason Frierson, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblywoman Olivia Diaz  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Wesley Duncan  
Assemblywoman Michele Fiore  
Assemblyman Ira Hansen  
Assemblyman Andrew Martin  
Assemblywoman Ellen B. Spiegel  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Teresa Benitez-Thompson, Washoe County  
Assembly District No. 27

Minutes ID: 336



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Karyn Werner, Committee Secretary  
Gariety Pruitt, Committee Assistant

**OTHERS PRESENT:**

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence  
Margaret Flint, representing Nevada Humane Society and Canine Rehabilitation Center & Sanctuary  
Christine Schwamberger, Legislative Advocate, Nevada Political Action for Animals  
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department  
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office  
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada  
Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada  
Lisa Rasmussen, Legislative Committee Co-chair, Nevada Attorneys for Criminal Justice  
Gina Greisen, President, Nevada Voters for Animals

**Chairman Frierson:**

[Roll was taken. Committee protocol and rules were explained.] This is the fourth week of the session, and we have three bills on the agenda today. Assembly Bill 110, at the request of the sponsor, is going to be moved to a future date. There are some things that the sponsor would like to work out. We will post it again when it is ready to be heard. We have tried to let everyone know.

**Assembly Bill 110: Revises provisions concerning canines and breed discrimination. (BDR 15-567)**

We will move to Assembly Bill 115 and open the hearing.

**Assembly Bill 115**: Revises provisions governing the information required to be provided to suspected victims of domestic violence by law enforcement. (BDR 14-628)

**Assemblywoman Teresa Benitez-Thompson, Washoe County Assembly District No. 27:**

I am introducing Assembly Bill 115. Victims of domestic violence are often coerced and threatened by their abusers through threats of harm to their pets. There are many horrific stories of how pets were tortured and killed as a means to terrify and control their owners. To help victims of domestic violence protect themselves and their pets, protective order statutes in many states have been amended to include pets ([Exhibit C](#)).

In the 2007 Legislative Session, Assemblywoman Sheila Leslie sponsored, and the Legislature passed, Assembly Bill No. 282 of the 74th Session. Unfortunately, *Nevada Revised Statutes* (NRS) 171.1225, which requires law enforcement to provide information to victims of domestic violence, including information on protective orders, was not amended at the same time. Assembly Bill 115 seeks to correct that oversight and ensure that victims of domestic violence receive complete information about the protections that can be provided to them through a protection order.

With that, I will hand it over to the Nevada Network Against Domestic Violence to provide additional comments and insight into A.B. 115.

**Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:**

I am the Executive Director of the Nevada Network Against Domestic Violence, which is the statewide coalition of the domestic violence programs in Nevada. I am here today to testify in favor of A.B. 115. [Read from written testimony ([Exhibit D](#)).]

I have provided a sample of that information ([Exhibit E](#)) and how it is delivered. We are not trying to change the protective order statutes. All we want to do is make sure victims of domestic violence receive this information, so we need to amend the statute. [Continued to read from ([Exhibit D](#)).]

**Chairman Frierson:**

I remember being on the other side of the aisle when Ms. Leslie's measure passed previously. I believe this came up before, but for those members who were not here then, will you discuss the notion of someone's pet being an issue and under what circumstances that would be applicable?

**Susan Meuschke:**

I did not bring all of the information about the horrible things that happen to pets. I know there are others who will testify about some relationships, but there is a strong relationship between threats of harm and harm to pets as a way to control their owners. It is not only the pets that the victim might own, but it may also be the pets that the perpetrator owns. It could be a threat to kill it or to harm it. I can give you the graphic examples if you want. It is just another tactic that an abuser uses to control and manipulate the victim.

**Chairman Frierson:**

It is too early for some of those details. I remember there being questions about why someone would have a restraining order with respect to their own pet. If I recall, the notion was because, "I know you love my dog. I am going to do this to my dog if you do not come back," or something like that.

**Assemblyman Ohrenschall:**

I was here in 2007 and then-Assemblywoman Sheila Leslie asked me to cosponsor this bill. We heard a lot of gripping testimony about what was happening. Many of us did not realize that domestic violence included animals being tortured or killed. When the bill passed, we were one of the first states to pass legislation that extended the law to animals. Has there been less of this going on since we passed the law in 2007? Do you see the abuser attacking the family pet as often?

**Susan Meuschke:**

It would be wonderful if I could say that it has decreased, but what it has done instead is to provide options for the victim. Instead of feeling that she needs to stay to protect the pet and make sure nothing happens, this has provided her an option of leaving. Unfortunately, abusers continue to use pets to control their victims. We have seen people more willing to leave knowing that their pets can be protected.

**Chairman Frierson:**

Are there any questions? I see none. This seems pretty straightforward. This seems to be a direct attempt to clarify the statute.

I invite those who are here in support of A.B. 115 to come forward at this time.

**Margaret Flint, representing Nevada Humane Society and Canine Rehabilitation Center & Sanctuary:**

It is not uncommon for people to use pets for intimidation during cases of domestic violence. Therefore, we would like to be on record that we are in total

support of A.B. 115, and we ask that the members consider this very seriously. These acts are very cruel, violent, and heinous.

**Chairman Frierson:**

Are there any questions? I see none.

**Christine Schwamberger, Legislative Advocate, Nevada Political Action for Animals:**

This is a bill that has been needed as a result of Assembly Bill No. 282 of the 74th Session. I sent you a fact sheet from The Humane Society of the United States ([Exhibit F](#)). It has some quick and easy facts to read about animal abuse and domestic violence. I will give you one fact: 74 percent of pet-owning women have reported their pet was threatened, injured, or killed by their abuser. This is something that you do not normally hear about, aside from legislative actions that you are involved in. These things are not reported. As an attorney, I have seen police reports where these acts of cruelty are not being prosecuted. I do not blame law enforcement for that, but down the road we will need to address it. It is very important that abused women get the information cards that give them options. To be clear, I am here to support Assembly Bill 115.

**Assemblyman Hansen:**

If a domestic violence situation occurs and whomever the protective order is against comes in and kicks the dog, does law enforcement ignore that, or how is it currently handled?

**Christine Schwamberger:**

I have not been involved in a lot of those cases, and I do not know how the protective order would be handled. I have seen reports where the initial abuse was reported before the restraining order had been granted. For a number of reasons, the pets fall through the cracks. Law enforcement has limited resources to deal with these issues, but we have been working on it. This is something that needs to be addressed in the future.

**Assemblyman Hansen:**

I will be interested to hear law enforcement's take on this.

**Christine Schwamberger:**

I can tell you from firsthand experience that they are very supportive, but lack resources.

**Chairman Frierson:**

Are there any questions? I see none.

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

We do not ignore animal abuse cases. What often happens in domestic violence situations is there will be multiple charges against the offender. Standard procedure is to not stack charges on an individual. We pick the most appropriate charge for the situation. If domestic violence is the best charge, or assault with a deadly weapon, or crime against a person, we will often make that charge rather than a misdemeanor animal cruelty charge.

Last session, there were measures taken that enhanced the penalties for animal cruelty regarding the maiming, torturing, and killing of an animal. Our violent crime section has been pursuing prosecution of those cases and submitting them to the District Attorney's Office.

**Chairman Frierson:**

As a point of clarification, even if law enforcement were to arrest someone based on whatever they deemed to be the most serious charge, the prosecutor would still have the discretion to charge whatever he deems to be the most appropriate based on those facts.

**Chuck Callaway:**

That is correct. What we do is in the details of the Declaration of Arrest and the arrest report that the officer fills out. We list all of the facts and circumstances of what occurred during the situation. If abuse to the family pet was part of the overall situation, that would be listed in the details of the report. As you said, the District Attorney could choose whether to prosecute on those charges.

**Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:**

I am in support of A.B. 115. If the animal or anything related to the animal is listed on the protective order, we enforce that as well. If it is not, or it is overlooked, we cannot enforce it. Sometimes the only thing we have to go on is the protection order, where we will see an animal case listed saying that the perpetrator cannot have contact with the dog. It is very important that this get listed in the protective orders. This is common-sense legislation about public policy and offers additional protection for victims in their time of crisis.

**Assemblyman Wheeler:**

What are the victim's reporting procedures now versus what A.B. 115 will clear up?

**Chuck Callaway:**

Our officers in the field carry little blue cards, which are similar to the card that is on the table, and they contain all of the information provided to a victim during a domestic violence situation. The card tells them how to go about getting a protective order and gives information on victim assistance. I did not say earlier that we do support this bill.

**Eric Spratley:**

It is not just that we hand them a card, we also go through it line by line. Some victims are very familiar with that information and may not want or need it. In cases where people are concerned about their pets, we go through the card explaining how to add the extra layer of protection.

**Chairman Frierson:**

Are there any questions? I see none.

**Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:**

We would like to add a "me too" in support of A.B. 115.

**Chairman Frierson:**

Is there anyone else here in support of A.B. 115? I see no one. Is there anyone in Las Vegas who would like to testify in support? I see no one. Coming back to Carson City, is there anyone who is in opposition? I see no one. Is there anyone in opposition in Las Vegas? I see no one. Is there anyone neutral? I see no one, so I will invite Mrs. Benitez-Thompson to give closing remarks.

**Assemblywoman Benitez-Thompson:**

I have no closing remarks; just my deepest appreciation for the Committee not wanting to rehash the testimony and the horror stories that initially put this legislation in place. I was personally not looking forward to walking down that road. I appreciate your sensitivity and your consideration of this bill.

**Chairman Frierson:**

With that, I will close the hearing on Assembly Bill 115 and open the hearing on Assembly Bill 116.

**Assembly Bill 116:** Revises certain provisions concerning accessories to certain crimes. (BDR 15-135)

**Assemblywoman Teresa Benitez-Thompson, Washoe County Assembly District No. 27:**

I am here to discuss a bill that is of an entirely different nature from what we just heard. Assembly Bill 116 discusses who is considered an "accessory after the fact."

To clarify the portion of the law that we are talking about, it is those persons who are considered parties to a crime after the crime has happened. According to *Nevada Revised Statutes* (NRS) 195.010, there are two different types of categories: principals and accessories. We are addressing the accessories.

*Nevada Revised Statutes* 195.030 defines who can be considered an accessory. The definition is here for you to read ([Exhibit G](#)). [Read from ([Exhibit G](#)).]

The same language is used in discussing who can be considered an accessory in a gross misdemeanor. The State of Nevada adopted this language as part of the 1911 Crimes and Punishments Act. Since we adopted it, it has served this state well for 102 years. It has not been amended, touched, or revisited. I researched and there is not a legislative record or history to go along with this. There is no way to dig into the minds of our predecessors in that session to get a good feel for why they included relatives as an exemption under this category.

Here we are 102 years later and, over the past two years, there has been a case that has played out in northern Nevada which I think begs the question of this definition and who could and should be considered as an accessory after the fact. That is the case of Eric Preimesberger. Some basic information about the case is that he died on April 24, 2010. He was bludgeoned to death by the perpetrator Timothy Morgan. Timothy Morgan was convicted of a felony, second-degree murder, and he will serve 25 years to life for that crime.

Why does this relate at all to this definition of accessory? One reason: Kristi Preimesberger. Kristi is the wife of the victim, Eric, but she is also the sister to the perpetrator, Timothy Morgan. That sister role is the role that is bringing about the contemplation of Assembly Bill 116. In court, through the trial process of Timothy Morgan, Kristi admitted to a couple of different things. She admitted to witnessing the death of her husband. She did not know that her brother was going to kill her husband, but she happened to be there at the moment the death occurred. She admitted cleaning up the crime scene with her brother, and she helped him move her husband's body into the trunk of a sport-utility vehicle (SUV). She moved the SUV multiple times around different parking lots around town to avoid the body being found. She helped purchase a large freezer that would eventually become Eric's coffin. She concealed her brother's whereabouts during the police investigation and maintained to



law enforcement that her husband left on his own accord, that he had just taken off and left the family, knowing full well that that it was not true.

The question being contemplated by A.B. 116 is the definition of "accessory." The definition itself categorically prohibited Kristi from being charged as an accessory and from taking any accountability or having any culpability in the role she played after her husband was killed. It begs the question, should a relative be granted special exemptions under our criminal law, be immune from being defined as an accessory, and face the charges and sentencing that goes along with that? What actions by relatives are reasonable, and what are those that are criminal? For me, I came to believe that Kristi's actions were criminal and that there should be some type of legal process by which charges could be brought against her, and that she should face punishment for the role she played after the fact.

I want to be very clear about my intent, because there have been lots of discussions around this bill. We do not have a legislative record from 1911 to know what those legislators thought, but we can establish one today. The intent of this bill is not to punish the well-meaning relative who does not harbor, conceal, or aid his loved one to avoid arrest, trial, conviction, or punishment. I have some examples to illustrate what I am referring to. I am talking about those relatives who are defined by statute right now that cannot be prosecuted, but participate in a crime after the fact in such a way that the perpetrator avoids being arrested, going to trial, being convicted, or from being punished. Keep in mind that if Kristi had been a neighbor or a best friend, if she had been any other relation other than sister, brother, grandparent, grandchild, or those named by the statute, she would have been charged. I think it is about begging the question of how special is that relationship as a relative; is it so special that you should be able to avoid any type of charges being brought against you?

For the record, to clarify my intent, here is an example of "aid." An adult grandchild calls his or her grandparent and says he or she shot a man in Reno just to watch him die, and he or she needs help. Right there, the grandparent knows that a murder has been committed. A big part of the definition is knowing that something wrong has happened. The grandparents are in good standing and should not be prosecuted if they counsel the grandson to turn himself in to the police, call a lawyer, and make arrangements for the lawyer to meet their grandson. That is reasonable. There is nothing in their actions that obstructs the arrest or gets in the way of their grandson facing any charges. They are pointing him in the right direction and doing the right thing by getting a lawyer and going to law enforcement.

What is not good, and where a process should be available to look at the actions of the grandparents, is when the grandparents say that it is a horrible thing and grab a shovel to help him or her hide the body. Those actions should be contemplated to decide whether accessory charges should be brought against those grandparents.

**Assemblywoman Spiegel:**

We live in a world where there are shades of gray. In the "good" example that you gave, if the grandparents counsel their grandson to speak to a lawyer before he turns himself in to the police, it is like coaching him to hide for a while before turning himself in. Would that be considered on the "bad" list since they are not telling him to turn himself in immediately?

**Assemblywoman Benitez-Thompson:**

I am not looking to prosecute the grandparents who direct their grandson to start the process, follow through, talk to a lawyer, and get himself turned in. If the grandparents say to hide out or in any way imply he should avoid arrest, prosecution, or punishment, then I think it begs the question and gets a little bit gray. I am working with public defenders and the American Civil Liberties Union (ACLU) to help get more specific about what types of actions or aid would rise to the level of prosecution and criminal activity as an accessory. Those are the conversations that we are currently having. I want clear-cut examples. We do not want to open the door for well-meaning relatives to face charges unnecessarily. We are really looking for acts and actions by relatives that really do try to keep their loved one from being arrested, receiving any type of punishment, or avoiding trial.

**Assemblyman Duncan:**

The way the statute is written, in a situation of duress where the perpetrator says he is going to kill you if you do not help him, your behavior may still be criminalized if you intend to conceal him or do any other illegal acts. I want to know, in terms of the legislative intent, that the defense of duress is still in play here.

**Assemblywoman Benitez-Thompson:**

My goal would be that the relatives walk through the same process as other folks who do not have a category exemption to decide if they are an accessory after the fact. My understanding of the process is that circumstances like that are considered for anyone else who is being considered an accessory after the fact. The intent is to have a legal process for relatives who act in such a way that it rises to the consideration of charges, and not to change anything after the fact once the charges are levied for them, including considering circumstances like that with duress.

**Assemblywoman Cohen:**

Why do spouses continue to be exempt from this? If you turn this case around and had the victim been the brother instead of the husband, the acts of cleaning up and hiding the body in the trunk are still very heinous.

**Assemblywoman Benitez-Thompson:**

That is a very good question. This was my starting point of looking at the relatives. There have been conversations about whether all of the category exemptions should be taken out, including husband and wife. My research shows that most other states have gone to language that says "all persons." In California, anyone can be prosecuted as an accessory after the fact. Louisiana says "any person." Ohio recently changed their statute since they had the same statutes adopted around 1911 as we do. It was a uniform law that many states adopted at the same time. They recently changed theirs to be "any adult person." Florida, in their statute, has the same language. They have one statute that reads like ours with husband, wife, parent, grandparent, child, et cetera, but then they put in a subsection to that statute that says for certain crimes any and all persons can be considered an accessory after the fact. It is part of the ongoing conversation about how special that relationship is. There seems to be more of an appetite to make it one clean sweep of "any person" and take out all of the relationships as exemptions, and that may happen as well.

**Chairman Frierson:**

Along those same lines, I wonder if you had any discussions about applying this change only to the most serious crimes. You mentioned other states that have made changes; are you aware of any of the other states that have limited it to only felonies or murder, or if they applied it to all crimes across the board?

**Assemblywoman Benitez-Thompson:**

It is my understanding that Florida is the only state that limits the types of crimes in which relatives are not exempt from being an accessory after the fact. They list child abuse, child neglect, aggravated child abuse, aggravated manslaughter, murder, et cetera; their list is pretty exhaustive. It looks like it does not address everything that would typically be considered a felony in our state, but more along the lines of those that would be considered a felony with child abuse in the mix. I think a good start for us as we move forward is to contemplate whether it is still meaningful and relevant to have these exemptions. We, including the public defenders and the ACLU, are still discussing what the exemptions should be.

**Chairman Frierson:**

I have other questions about obstruction of justice. A relative may not be able to be charged under aiding and abetting, but I am wondering if that same relative could be charged with obstruction under existing law.

**Assemblywoman Benitez-Thompson:**

You can have your legal counsel clarify this, but my understanding is that obstruction charges can be brought now, and those are misdemeanors. The difference with A.B. 116 is that, the way the law is written right now, the sentence for an accessory after the fact to a felony is the same as a felony category or a gross misdemeanor. That is true for most states when you look at the sentencing structure for accessory after the fact. It parallels what the charges were brought against the perpetrator. We still need to ensure we do not get relatives charged with a felony and they end up serving a number of years in jail when they played a role after the fact. Conversations that I have been having with public defenders and the ACLU are making it so that, if you were charged as an accessory after the fact in what are now category-exempted relations to the perpetrator, the sentencing structure would actually match those under gross misdemeanor versus felony sentencing charges.

**Assemblyman Duncan:**

Do we have any idea of how many more offenders may be caught and charged under a statute such as this if those exemptions are eliminated?

**Assemblywoman Benitez-Thompson:**

My understanding is that it would be used less often than one might think. When I first started research on this bill, I floated the language from the current NRS around to lots of folks, and I was surprised at how many folks did not know there was an exemption for relatives for accessory after the fact. This whole bill came about because there was an appetite for charges in this case in Reno. We discovered that charges cannot be brought as an accessory after the fact because she is the sister, and sisters are exempt from such charges. Lots of folks were shocked to find that out. As I floated this bill, the comment that I got from most people was, "Wow, I did not even know this was a law." My understanding is that the statute as it is written right now is not a tool that is often used by public defenders or district attorneys. It has been a sleeper, at least in northern Nevada. This case has gotten a lot of media attention, so I understand that it might be brought to the forefront more, and there may be more of an appetite to use it. Before we start using this as a tool, it is worth our legislative time to contemplate if it is still appropriate to have these kinds of exemptions.

This next slide tries to clarify the legislative record a little bit more, and once again we are looking at the relative's actions and what the intent is behind their action. [Read from ([Exhibit G](#)).]

Could they have called the police right away? Yes, but is there anything in their actions that indicates they were trying to help their son avoid arrest, trial, or punishment? No. [Read from ([Exhibit G](#)).]

They are taking action to help their son avoid arrest and prosecution. They are helping to cover up what is going on.

I will end my presentation by letting you know that there is ongoing work to address two different parts of this bill: the sentencing provision and the definition of "aid." My legislative intent is not to get well-meaning relatives tied up in this and to make sure we are giving a reasonable tool to our public defenders and district attorneys. We will be looking at the sentencing structure. I am agreeable to a sentencing structure that mirrors gross misdemeanor sentencing for both the felony and the gross misdemeanor aspect. We are working on a better way to define what "aid" is and to flesh out some of these gray areas. In my research, I have found that Ohio has listed actions that really show at what point a relative is crossing the line. You will see amendments coming to address those two parts of the bill.

**Chairman Frierson:**

Are there any questions? I see none. I will invite those who are in support of the bill to approach at this time.

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:**

I am here in support of Assembly Bill 116. My background is in major crimes in the City of Reno. I retired 13 1/2 years ago. There were some significant murders and, as you all know, to this day we have a lot of problems in our entire country with gangs and shootings. In the past couple of weeks, we have had a number of gang shootings, which is pretty much on board with what you are saying in the bill. Gangbangers shot a kid because he was not a member of the gang. Then they went back and were hidden by other gang members. What you have in this bill exposes what has apparently been going on for quite a few years in our state. It is an attempt to fix a loophole. Having done my job for as many years as I did, I did not know this was a loophole. I think you have a fix here. You have a way to provide law enforcement with a tool to stop some of this. The case that Assemblywoman Benitez-Thompson presented is a beautiful example of how someone can get away with a crime, and this fixes that. With that in mind, as much as I appreciate the questions that brought up

the issue of why not everyone, I asked the same question. Why not everyone? But this is a start and I think it is a good start. I ask the Committee to support A.B. 116 in the way it is written, or with any other changes that she may bring up. I think you now have the ability to fix a loophole in the law.

**Chairman Frierson:**

I want to clarify the record. Your example was exactly what the sponsor said this is not designed to do. I want to make sure that we are clear. The bill is talking about whether relatives enjoy protection with respect to aiding and abetting. I think Mr. Dreher was talking about gang members and maybe harboring, but he said hiding a fellow gang member. I think your examples provided quite a bit of insight into the legislative intent, but I do want to make sure we are consistent.

**Assemblywoman Benitez-Thompson:**

He is along the right line if we are talking about family members who are hiding and protecting their son, grandson, or brother after he has committed a murder or shot someone. In that case, we must again determine if that relative deserves special consideration of being exempt from being an accessory after the fact. The example that I gave about the grandparents was, if Johnny is adjudicated for being a gang member and shooting a fellow gang person, then running home where his mother cleans his clothes, buries the gun, and gets him some money to get out of town. Those actions should be considered. What if she keeps him overnight and then tells him that he is way over his head and that he needs to go to the police?

**Chairman Frierson:**

We have opened a slippery slope to some extent. We have an example of a loving parent who wants to take time to counsel his or her child about taking responsibility, and the example of someone taking affirmative steps to participate in the crime by hiding evidence. The example is in the gray area of letting someone stay in your house and not calling the police. Is it your intent for that behavior to be included?

**Assemblywoman Benitez-Thompson:**

The intent is to ensure there is a legal process open for examining that. In this Committee, we are not going to be able to run through an exhaustive list of examples. I want there to be a clear process by which law enforcement can look at what really happened and what role the relative played. Did he or she take actions to help the perpetrator avoid arrest? There needs to be a process by which that can be looked at and considered before the legal process; if the relative should be considered an accessory to a crime. At this point, we have

no way to fact find because relatives are categorically exempt from being considered an accessory to a crime.

**Assemblyman Duncan:**

What is your intent in terms of a parent who hides a child and later turns him or her in? Is it your intent that that would be a criminal act by the parent?

**Assemblywoman Benitez-Thompson:**

That is a very good question. That is actually one of the questions that was contemplated in the Preimesberger case, because ultimately it was Kristi who turned her brother over to the police four months later. Once again, it is about opening a process by which all of the facts can be looked at. On one hand, you can say Kristi is the one who actually turned her brother into the police four months later; but you can also look at it as Kristi is the one who helped hide the body and clean up the blood. She helped him evade arrest, prosecution, trial, and conviction. What this is about is opening up the door for the process. I imagine that in the same way obstruction charges and accessory after the fact charges are contemplated for nonrelatives—whatever that process is—the process would be the same for relatives. Your neighbor tells you what he has done and states that he needs your help. You help him. The way you are evaluated to determine if you are an accessory after the fact would be the same way a relative would be evaluated.

**Assemblywoman Diaz:**

Are we saying that relatives have to be more rational than emotional when they come in contact with their loved one? I am thinking about scenarios where something happens with my cousin, my son, or my husband and my first instinct is to help and protect my family, friends, and loved ones. I think sometimes you act, but not within reason. It is that moment in time when something happens to someone you care for. What happens to individuals who are caught up in that? Maybe that is where some of the history behind this comes from.

**Assemblywoman Benitez-Thompson:**

Absolutely. Relatives have a special connection. A cousin is not protected but a sister or brother is. If a man who committed a crime goes to a house where his cousin and sister are hanging out together, and both of them help him in ways that prevent him from being arrested or prosecuted, the sister will never face accessory after the fact charges, but the cousin will. We are begging the question, does that sibling relationship deserve special status, or should we consider the actions of the sister? I am here to argue that we should consider the actions of the individual, not his or her relationship to the perpetrator.

There ought to be a legal process by which those actions can be considered versus no legal path at all to consider those actions.

**Assemblywoman Fiore:**

Are you willing to make an amendment? Allowing prosecutors discretionary action is an oxymoron because prosecutors are going to prosecute to the end. I do not see them taking anything into consideration. This is a devastating issue that we are talking about. Are you willing to amend the bill about using discretion with family members who did not blatantly hide evidence?

**Assemblywoman Benitez-Thompson:**

That is exactly the conversation that I am having right now with public defenders and the ACLU. The point is to open the door for a legal process by which fact finding to consider the actions of relatives is done in the same way as any other person's actions would be considered. I would be very remorseful if we came back in session in two years and found that we had opened the door by which relatives, for the slightest of actions or inactions—and I am more concerned about the inactions—are being prosecuted in such a way that would seem unfair. One of the resolutions that we are working on addresses sentencing. If the person is charged as an accessory after the fact in a case where the perpetrator was charged with a felony crime, the most the relative could be charged with is the sentencing structure for gross misdemeanors, which I think is up to one year in jail. In that way, he or she, as a relative, would not come out with a felony conviction, but would be sentenced in the gross misdemeanor structure.

**Assemblywoman Fiore:**

I want to make sure we get this right and completely clear, because it is financially devastating, as well as the impact on someone who really did not have anything to do with the crime.

**Assemblywoman Benitez-Thompson:**

I think that is always the question that is considered any time an accessory after the fact charge is brought. As a reminder, this just opens the door to changing the legal process for relatives to be the same as anyone else. Right now, there are a lot of things that are considered before the charges are brought. How much of a role did they play in obstructing the investigation? Was that person useful in bringing the person in? How much duress did that person have? There are all of these different things that are considered under the current legal process, but I think relatives' actions should be considered in the same way, with the same due diligence, that is given to nonrelatives when actions are being contemplated.



**Assemblyman Hansen:**

Are the attorney-client privilege and other types of privileges in statute, or is it just a common-law practice? Does this family privilege fall into that category? Is this just through statute? What other types of exemptions are there? If I commit a crime and then go to my religious leader and confess it and he does not turn me in, he is currently exempt by law. Is this something similar?

**Brad Wilkinson, Committee Counsel:**

I think you are talking about evidentiary privileges, which are when someone is required to testify in court and reveal information that was told to him.

**Assemblyman Hansen:**

I am not sure, but my understanding is if I commit a felony and I have an attorney and I confess to him that I did it, the attorney is not under any obligation to go to court and tell them his client committed the felony. Are there other types of exemptions like that, and is this family exemption built along the same lines?

**Brad Wilkinson:**

Those are evidentiary privileges that are set forth in statute, like the attorney-client privilege; there are specific circumstances. Generally, something that is told to an attorney in confidence would not be allowed to be divulged to anyone, except under special circumstances. There are very limited exceptions for that. This is a different situation. The only thing that would be similar would be the privilege of a wife not being required to testify against her husband.

**Assemblyman Hansen:**

That was the example that I was thinking of. Is that similar to what the original intent of this was? Brother against brother? I like the bill and think it is completely reasonable. I wonder if we are crossing the line where exemptions are built in for safety. I also wonder what the legal aspects are.

**Chairman Frierson:**

We discussed that prior to the hearing. One of the distinctions is that testifying would be after the fact. This bill deals with participants of the crime, directly or indirectly, concealing the crime. Mrs. Benitez-Thompson indicated that was part of redefining "aid" and some other definitions to provide clarity in the bill.

**Assemblywoman Dondero Loop:**

What about two people in a longstanding relationship who may not be married? What happens in that case?

**Assemblywoman Benitez-Thompson:**

There have been conversations about adding domestic partners to the husband and wife exemption if it stays in the process. It may be appropriate in this day and age. The bigger question though is whether we exempt all relationships and make it apply to any person. Or should we keep husband and wife and exclude everyone else? My initial thinking about keeping husband and wife is that they already have certain privileges, and I did not want to mess that up in any way. My understanding now is that husbands and wives testifying against each other is different from accessory after the fact.

**Assemblywoman Dondero Loop:**

That would be my understanding also. We may want to think about that. You are absolutely right, not only in this day and age, but we do have a lot of people in long-term relationships who are not married for a variety of reasons.

**Ron Dreher:**

Let me give you an example. We had a very horrific murder in 1994 of a little girl which fits the example you were giving to a tee. After the child was murdered, the woman supposedly harbored and provided coverage for the suspect and did everything that Mrs. Benitez-Thompson's bill would make them responsible for as an accessory after the fact. I would have a concern about eliminating those individuals. That is why I said "all persons" earlier. I do not think you should let anyone go in these situations. It goes back to what Assemblyman Duncan mentioned about limiting tools. This provides tools for the prosecutor. We have very good investigators for this type of case. We put the case together before it is sent to the district attorney's office for prosecution. We look at all of the factors that this bill incorporates. This bill provides more tools and accomplishes a lot more than what we are currently doing. There are some gray areas, but very few. It gives law enforcement more tools to do their job.

**Chairman Frierson:**

Murder is obviously one of the most egregious of the crimes and it was the provided example, but would you be supportive of this bill being applied to other crimes? For example, a person steals an iPod from Best Buy and runs home. The brother knows about it and tells him he can put it in the brother's room. That would be covered under this proposal as well, correct?

**Ron Dreher:**

Absolutely. I am all for providing the tools to do the job. Not that it would ever be prosecuted, but it should be looked at, and it might provide a chance for us to counsel the brother and move forward in ridding society of these things. It gives us more tools.

**Chairman Frierson:**

Are there any questions? I see none. Is there anyone else to testify in support of A.B. 116? Is there anyone in Las Vegas in support? I do not see anyone. Is there anyone here to testify in neutral? I see no one. What about in Las Vegas? We are back to Carson City and those in opposition to A.B. 116.

**Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada:**

I want to go on record as opposing the bill the way it stands. However, as Assemblywoman Benitez-Thompson has been saying, we have been working with her. We oppose it as it stands, because we believe people will more often than not turn to their close family members for guidance at a time of crisis. Probably, when the statute was created, those were the close family members. We would support an amendment to include domestic partners, and to expand it a little to include all close family members.

We also believe that by taking the immune folks out, it criminalizes people who are not actually criminals at a time when our jails are already overflowing. We do not need to over-incarcerate any more. We have been talking about the definition of "aid" and it would bring in all types of people if we did not define that better to include the worst of the worst.

Regarding the sentencing, we would support an amendment that would go to a misdemeanor as opposed to a gross misdemeanor.

**Chairman Frierson:**

Are there any questions? I see none. Is there anyone else in opposition? What about in Las Vegas?

**Lisa Rasmussen, Legislative Committee Co-chair, Nevada Attorneys for Criminal Justice:**

I sent a letter to the Committee indicating our opposition, but also indicating that there may be some room for revisions ([Exhibit H](#)). As has been expressed, those conversations are ongoing with the lobbyist for the ACLU and the public defenders. Unfortunately, I am not today for our organization. I was going to give you some examples, but I think Assemblywoman Benitez-Thompson has really run the gamut of what could happen.

What is important for the Committee to know is that when a client is accused of a crime or has committed a crime, it is a time of crisis. It is natural and healthy that they would turn to family members for help. Our concern is that the process will be somehow criminalized. All of the examples that you have heard are good examples of the difference between when it is an accessory

after the fact and when it is not. The problem in real life will be either in some gray area in between, or in the implementation of the law if we change it as it is presented. I would trust the Assemblywoman to know the difference, but what will happen in reality is that law enforcement and prosecutorial agencies are going to be deciding how to apply the law, not us here in this room. That is always our concern, and we feel it is our obligation to protect what could be the criminalization of conduct that is merely family-oriented. In a serious crime, the whole process of going to a family member seeking help could take three or four days. Not all people have the money to hire a lawyer. The grandparents may tell them they need to hire a lawyer, but with an indigent defendant, they may not have the resources to do so. Where does this conduct end up falling?

The other points that have been raised are the overlapping of the privilege law and immunity for helping someone after the fact. That is what we are talking about. I think the reason that spouses were contemplated as being left in the bill is because there is spousal privilege. There is no other family privilege. There is no parent-child privilege against testifying or any other relationship. Spouses have always had privilege against testifying against one another, and that is part of the history of our common law. For that reason, we would say that spouses should definitely be left in, and it should be extended to domestic partners since that mirrors the current status of immunity in other areas.

I understand that different states have different schemes and we would be willing to explore those with the sponsor of the bill. Nevada Attorneys for Criminal Justice is opposed to the bill as written, because it leaves a lot of gray area. The other point that has been addressed is that, if it was a different sentencing scheme and it called for a gross misdemeanor rather than a felony, we would be more amenable to it. I am open to an ongoing dialogue to make revisions that impact the bill. This has been a very thoughtful conversation.

**Assemblyman Ohrenschall:**

Do you get many defendants who engage your services after they have gone to a relative and then you have to walk them in to turn themselves in? Is that something that you have seen? Please elaborate on that.

**Lisa Rasmussen:**

It is a combination of both. In the most serious of the murder cases that I have handled, I usually get appointed to represent the person after they have been taken into custody. In going back and retracing how they got there, I can give you two examples of very young defendants who were 18 years old. They knew they were wanted on a murder charge and, in both instances, went to their grandparents to ask for help. In both instances the grandparents had

counseled them over a period of days to turn themselves in, to talk with a lawyer, and figure out the severity of the circumstances. I know what a critical time that is and it is a time of crisis. I know no one feels sorry for someone who has been accused of murder, but it is a family crisis that encompasses a lot of dynamic and different aspects. We need to be very careful about throwing that into a criminal context; it would be inappropriate.

**Chairman Frierson:**

Are there any other questions? I see none. I appreciate the sponsor of the bill working with folks who are concerned about the practical application of a very well-intended measure. I would invite Assemblywoman Benitez-Thompson to come back up for any closing remarks or if she has anything else to address.

**Assemblywoman Benitez-Thompson:**

No, thank you. I appreciate the fact that we are creating a legislative record on this subject where there has not been one. I also appreciate the fact that the public defenders, the ACLU, and the folks who have expressed their concerns have been so willing to engage in dialogue. How do we get to a place where we have a bill that is workable, and that we contemplate a number of different scenarios and situations to get to the right spot? I am confident that we will get there. I think it is a very fascinating subject and well worth our legislative time to contemplate. I want to thank everyone who is participating in the discussions.

**Chairman Frierson:**

Thank you for a very good presentation that was very thought-provoking. I look forward to the work that all of the stakeholders will do.

**Assemblyman Wheeler:**

I was waiting for one of the prosecutors to come up to ask this question. Section 1, subsection 1 says there has to be clear intent. Intent is extremely hard to prove, as you well know. I think this bill as written gives an out to some people as far as family relationships are concerned. Using the word "intent" causes some of the problems that you are coming up with.

**Assemblywoman Benitez-Thompson:**

I think that is part of begging the question of intent. In looking at other states' statutes, my intent would be when a relative knows that something has happened. That has been communicated or, otherwise, we are opening a door into the gray area. We are not trying to get to the relative who does not know that something has happened because it was never disclosed or shared. This is about the relative who willfully knows that something has happened and takes

action to prevent the relative from being arrested. He needs to be treated in the same manner as anyone else charged under accessory after the fact.

**Chairman Frierson:**

I see no other questions. With that I will close the hearing on Assembly Bill 116. We will take any public comments.

**Gina Greisen, President, Nevada Voters for Animals:**

I was watching this online at home and thought it was important to get down here because I am in support of Assembly Bill 115. It is very important since you are educating victims of domestic violence about their rights, protections, and options. I would like to add some proposed language to the bill.

I am the author of Cooney's Law, which is the felony animal cruelty law in Nevada that passed in 2011. Chuck Callaway helped work on that and wrote the language that created the enhanced penalty for animal cruelty.

In section 1, subsection 1, paragraph (b), subparagraph (2) where the officer is making these statements to the victim, it says, "If I have probable cause to believe that a battery has been committed against you, your minor child, or the minor child of the person believed to have committed the battery . . . ." I would suggest adding the language that is being added in subparagraph (4) here in (2). It is important to educate victims of domestic violence that it is already a possible class C felony for the animal to have been harmed. In NRS 574.100, the cruelty statute, it says if the animal is tortured, mutilated, or killed, but the definition of tortured in NRS 574.050 says, "'Torture' or 'cruelty' includes every act, omission or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted." It is important to inform the victim of domestic violence that there is already probable cause to arrest the person if an animal has already been abused by someone in order to threaten, intimidate, or terrorize another person. It is not necessary to wait to include the animal in a protective order, which I agree with.

**Chairman Frierson:**

This is of course public comment. The hearing on A.B. 115 is closed. I would suggest that you pass on any of your concerns and thoughts about that measure to the sponsor of the bill for her consideration. Unfortunately, she is not here anymore this morning.

Is there any other public comment? I see no one.

I am seeking a motion to introduce bill draft request (BDR) 38-991.

**BDR 38-991**—Revises provisions governing proceedings relating to the abuse or neglect of a child. (Later introduced as [Assembly Bill 174](#).)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE  
BDR 38-991.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

There is no other business from previous meetings, so today's meeting is adjourned [at 9:31 a.m.].

RESPECTFULLY SUBMITTED:

---

Karyn Werner  
Committee Secretary

APPROVED BY:

---

Assemblyman Jason Frierson, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** February 26, 2013

**Time of Meeting:** 8:08 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 115	C	Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27	Written testimony
A.B. 115	D	Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence	Written testimony
A.B. 115	E	Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence	Victim information card
A.B. 115	F	Christine Schwamberger, Legislative Advocate, Nevada Political Action for Animals	Information sheet on Animal Cruelty and Human Violence
A.B. 116	G	Assemblywoman Teresa Benitez-Thompson, Assembly District 27	PowerPoint presentation
A.B. 116	H	Lisa Rasmussen, Legislative Committee Co-chair, Nevada Attorneys for Criminal Justice	Memorandum dated February 25, 2013