MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 2, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:17 a.m. on Tuesday, April 2, 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. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman 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:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Mark Beres, Private Citizen, Vail, Arizona
Caleb Harris, Legislative Officer, Disabled American Veterans
Boone Cutler, Private Citizen, Minden, Nevada
Steve Sanson, President, Veterans In Politics, International, Inc.
Malisa Cutler, Private Citizen, Minden, Nevada
Jessica Anderson, representing Nevada Justice Association
Marshal Willick, representing Willick Law Group
Mary Berkheiser, Director of Clinical Programs and Director of Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
Denise Mariscales, student representing the Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
Ann Goldes-Sheahan, student representing the Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office
Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney
Kareen Prentice, Ombudsman, Office of Ombudsman for Victims of Domestic Violence, Office of the Attorney General
Marlene Lockard, representing Nevada Women's Lobby
Tami Berg, Private Citizen, Sparks, Nevada
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Brian O'Callaghan, Government Liaison, Las Vegas Metropolitan Police Department
Nicole Rourke, Executive Director, Intergovernmental Relations, Clark County School District
John Jones, representing the Nevada District Attorneys' Association
Craig Stevens, representing the Nevada State Education Association

Lindsay Anderson, representing Washoe County School District
Dotty Merrill, representing the Nevada Association of School Boards
Mary Pierczynski, representing the Nevada Association of School Superintendents
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Office of Court Administrator

Chairman Frierson:
[Roll was taken. Committee protocol and rules were explained.]

We have four bills on the agenda today. We are going to go slightly out of order and take Assembly Bill 271 first. I see we do have some veterans here. The other measures are related and, to accommodate those and Mr. Wheeler, I will ask that we handle that bill first. With that, I will open the hearing on Assembly Bill 271 and invite Mr. Wheeler to introduce his bill.

Assembly Bill 271: Revises provisions governing alimony, spousal support and property division in cases involving veterans with a service-connected disability. (BDR 11-936)

Assemblyman Jim Wheeler, Assembly District No. 39:
Assembly Bill 271 is a very important bill that will safeguard the disability pay of our wounded vets from indirect diversion to third parties no matter what their marital status is. Federal law explicitly prohibits this. Nevertheless, for years courts in Nevada and other states have been getting around federal law by awarding spouses alimony based on veterans' disability pay, or at least using it in the alimony calculations. In my opinion, this is an end-run in direct contravention of federal law. Assembly Bill 271 cleans up the language in Nevada, as has been done in Arizona, Wyoming, California, and Oklahoma as well. Other states are also watching what we do here today as a model for their own legislation.

I would like to take a moment to walk you through the bill, and then we will hear from retired Air Force Major Mark Beres. He is an advocate for disabled veterans and has been instrumental in passage of similar bills in other states.

First, I would like to explain my reasons for bringing this bill forward. It is simple. A veteran's disability pay is not a pay that he or she earned; it is not earned income and cannot be taxed. Disabled veterans receive it for the sacrifice they made. Most importantly, it is awarded to try to make that person as whole as possible. It is there to help with expenses that a veteran would not have if he or she were whole. It is not earned income and should never be treated as such. The way I understand it, a veteran who is receiving disability

benefits receives a higher rate of pay, in most instances, if he or she is married. The U.S. Department of Veterans Affairs' (VA) tables of compensation will actually lower the rate of pay when the veteran is divorced. This alone should tell you that that pay, or compensation, was never meant as compensation for the spouse. This is codified in federal law.

The bill itself is simple. We have added specific language in sections 1 and 2 of the bill that says a court shall not use a veteran's disability award in the calculations of alimony or property settlement if the veteran's disability is service connected pursuant to Chapter 11 of Title 38 of the *United States Code* (U.S.C.) that governs military disability. I would like to turn the floor over to Major Beres who will explain more of the bill.

Mark Beres, Private Citizen, Vail, Arizona:
I am an Arizona farmer, a father, a patriot, and a combat-wounded disabled veteran with over 15 years of honorable service to the United States.

I have provided a lengthy statement in which I have gone into some of the details of the legal issues surrounding this issue (Exhibit C). I do not want to reiterate that. What I want to do is cover some of the basic meat and potatoes of what this bill is, why it is important, why it is necessary, what it actually does, and what the results are and have been in other states, including your neighbor Arizona. This is the exact bill, with the exact language, that was recently and unanimously passed in Wyoming and signed into law last month. It was passed unanimously and signed into law in Arizona in 2010. A precursor to this bill, with language that was not as explicit, was passed in early 2010 and signed into law in California as well. The legislation was introduced in Oklahoma with this wording, but it was successfully stalled in committee by the trial attorneys.

I want to talk about some basic things that are true for all of us. This has nothing to do with political philosophy, party lines, color, gender, or anything. Near the end of the Civil War in 1865, when Abraham Lincoln was giving his Second Inaugural Address to the United States, he set out a very basic tenet that applies to every single American: when we send our children off to fight wars in our name—it does not matter if those wars are misguided, or if they were entered into foolishly by a Republican, Democrat, Libertarian, or Socialist—when the decision is made to deploy our troops in combat, all of us have an obligation to care for that individual when he returns to us maimed, wounded, damaged, emotionally disturbed, or in a body bag. This is an obligation that falls on all of us equally. We the people have an obligation to care for our wounded servicemen and servicewomen when they return to us injured. That obligation was codified back in Abraham Lincoln's

Second Inaugural Address. It is the motto of the VA today: "To care for him who shall have borne the battle, and for his widow and his orphan." I want to make sure I clearly communicate that all of us have a burden: a shared responsibility to provide for our wounded. What form does that provision take? The United States Congress appropriates veterans' disability benefits to care for our wounded soldiers. The VA benefits have not been, and never will be, appropriated by Congress to provide for the needs of ex-spouses. This is a fact that has been codified in the law.

Veterans are employees of the federal government. Veterans' benefits are adjudicated and appropriated by the Congress. They are federal benefits, not state benefits. They are protected in federal law in two places. I have provided those references in my written statement (Exhibit C). The first place is in 38 U.S.C. 5301, which specifically and expressly prohibits the diversion of veterans' disability benefits to third parties. The language that Congress chose, which dates back to 1828 when Congress was seeking to provision the wounded soldiers from the American Revolution, is very clear that veterans' benefits should not be diverted to third parties "by or under any legal process whatsoever." The courts have easily circumvented 38 U.S.C. 5301.

The second place in federal law where this diversion is prohibited is in Title 10, section 1408, also known as the Uniformed Services Former Spouses' Protection Act (USFSPA). There is a lot of misinformation about the USFSPA. I am not here to talk about the merits, or lack thereof, of that specific law. I will only mention that, in 10 U.S.C. 1408, veterans' disability benefits are expressly excluded from a state's jurisdiction, including when determining a property settlement in any type of divorce action. The question for you to consider this morning is, if federal law so clearly prohibits the diversion of a veteran's disability benefits under any legal process whatsoever, how and why is it that we are here considering a bill that is designed to enforce in Nevada state law the prohibition of the diversion of veterans' disability benefits? It is a very fair question.

Chairman Frierson:
You cited that last statute, but you paraphrased it. It would be helpful if you read the statute itself if you have it.

Mark Beres:
I do not have it in front of me, but I can give you a good paraphrase if I may.

Chairman Frierson:
I think you did that, so it is fine. If you do not have it, another paraphrase will not help. We have the citation. I would have had you read it if you had it.

Mark Beres:
The question before us today is, why are we here considering a bill designed to protect these benefits? The answer to that question is very straightforward and very simple. The courts, since the law was passed in 1981, have found a way to get around these safeguards. It is easy to do in today's America. It is almost boilerplated into a divorcing serviceman's or servicewoman's divorce decree. There are two methods that they use. This bill, A.B. 271, closes those two methods and prohibits them in Nevada. These two methods are prohibited—outlawed—in Arizona and Wyoming. They are illegal; courts cannot employ them. However, in Nevada, they still can. Assembly Bill 271 would put a swift stop to it. The first method is called indemnification. Indemnification only applies to a disabled veteran who is also eligible to receive military retirement benefits. The other is the indirect diversion using alimony, which applies to those men and women who served in combat who are not eligible to receive retirement benefits.

I will reiterate that I am not here to argue the merits, or lack thereof, of the retirement statute. That is a completely separate matter. However, it is impossible not to talk about the retirement statute, because it specifically deals with these disability benefits and is used to ensnare veterans in court. The federal law at 38 U.S.C. 5301 prohibits a veteran who is eligible to receive both retirement benefits and disability benefits from receiving both.

The attorneys would have you believe that a veteran seeking to damage his ex-wife goes out and gets injured in a devious ploy to unilaterally change the form of his retirement pay to the form of disability pay. This is not what happens and I hope you can see through that ruse. What happens is that federal law at 38 U.S.C. 5305 prohibits such a person from receiving both. An injured veteran must—must—waive retirement pay in order to receive disability pay. Before you move to judgment about that, keep in mind that only disposable retirement pay is divisible as property in Nevada, or any other state in the Union. Nevada, et cetera, does not have jurisdiction over the totality of a disabled veteran's retirement pay. Only disposable pay may be considered by a Nevada court. That is very clear in federal law at 10 U.S.C. 1408(c)(1). That division must be done in accordance with state law. You, honorable legislators, are the ones who make the law, not the courts. In a case where a veteran is required to waive retirement pay in order to receive disability pay, it is absolutely, fundamentally a truth and clearly a part of federal law that the amount of disposable retirement pay available to the former spouse goes down. In the case of a severely wounded veteran, it can be eliminated altogether.

Recall what I said when I first began speaking to you this morning, that all of us have a burden to care for our wounded soldiers. Indemnification is the

reduction that I just described to you. What the courts will do is put an indemnity clause into a divorcing veteran's property settlement which requires him to repay his former spouse any reduction that he may receive pursuant to the waiver. They have to pay it back. What it amounts to, in a practical sense, is that a disabled veteran funds his own disability. How this happens is that courts look at this as a veteran stipulating to it. They actually write that veterans voluntarily enter into these indemnity provisions. There is nothing that can be done. These things have gone all the way to the United States Supreme Court.

The bottom line is that, if the indemnity provision is boilerplated into a military service person's divorce decree, it amounts to a wholehearted, complete waiver of all federal safeguards to that disability pay. Assembly Bill 271 outlaws indemnification and prohibits it *ab initio*, from the beginning. A court cannot do it. In Arizona, where this bill was passed, indemnification is illegal. In Nevada, it is still legal, but A.B. 271 would put a stop to it. If a former spouse of a wounded soldier gets repaid for any amount that he or she may lose pursuant to the veteran becoming injured, this amounts to the former spouse of that injured veteran essentially being exempted from the obligation that I explained to you earlier: all of us—every single American—have a burden to provide for our wounded servicemen and servicewomen.

Let us talk about alimony. What courts will do is very simple: when a veteran is receiving disability compensation, it looks like money to the court, like income. What they do is consider that as income and they include it in the calculations that are used to determine if alimony is justified, and what the amount of that award would be. Oftentimes, they will award the alimony for life, and then they get around federal prohibitions by not stating from where the award has to be satisfied. In the case of a severely wounded veteran where his disability provision is all he has, the court will award alimony and not specify that they are actually awarding it from the disability pay. By doing that, they avoid higher court scrutiny where, if a court ever said they were dividing disability pay directly, it would be quickly stricken down by an appellate court. The courts get around it. It is essentially a court doing indirectly what they are expressly prohibited from doing directly. Assembly Bill 271 closes that loophole as well, and prohibits a court from doing that.

I want to make sure it is very clear that it is not the former spouse of the veteran but the wounded veteran who bears the burdens of the wounds, and carries them with him for life. It is great when our wounded soldiers come back from combat. The flags are waved at the airport and we herald them when they get home, but years later, when those wounds linger on, it becomes much

more difficult for us to see that these provisions and damages that they have incurred go on for life.

I have known of at least four suicides over this. You have no idea the insult and injury it does to combat wounded veterans to see their former spouse enriched off of their injuries. Other veterans have even been jailed. In Georgia, a veteran named Thomas Smith has tried to kill himself twice over this; twice he has failed to overdose. He currently sits in a wheelchair and is basically a vegetable; he cannot even speak. In 2010, in Sierra Vista, Arizona, near where I live, another man put a .45 caliber bullet in his brain over this exact issue. This is serious.

Assemblywoman Diaz:
In the situation where the spouse of the veteran has stood by the vet's side before, during, and after his deployment; through the disability; has been a stay-at-home spouse; and has no other form of income; but they eventually part ways, what would be available to the spouse to make ends meet, especially if she has not worked a day in her life? That is my concern.

Mark Beres:
I understand your concern. That question has been asked in the other states that passed this legislation. I will start by going back to federal law to understand that Congress does not dispense disability to wounded veterans to care for their former spouses. I understand the emotions that go into breakups of families. It is a terrible thing, but federal disability benefits are not dispensed to care for them. There are other programs that provide for the needs of former spouses: retirement benefits and property they may have acquired during the marriage. State law will equitably divide that. There is nothing in A.B. 271 that impacts Nevada's property law with respect to dividing marital assets. If the spouse still has no provisions, there is possible alimony and public assistance as there is for anyone. The fundamental, bottom line is that federal law is expressly clear that disability benefits are there to provide for the needs of the wounded veteran. They are wholly for the wounded soldier. It does not serve our society, and there is no compelling public interest policy that I can think of that would justify the division and diminishment of these benefits of the injured soldier.

Assemblywoman Dondero Loop:
I have a reverse question. What of the spouse who works and has a job that gives them a good income, which allows the veteran to be in the military where he may or may not be making that great of a salary, but allows him to do his passion. She takes care of the children while the veteran is gone. Does it work in reverse? Is he going to be able to ask for alimony? Generally, alimony is

based on the breadwinner being able to provide the other person with the lifestyle that he or she has become accustomed to. How does that work when the other person is the breadwinner?

Mark Beres:
That is a very good question. That is an issue that the attorneys have brought up repeatedly. I would go back to the answer I gave before. We are dealing with federal payments. This is not state money. If I understand the question correctly, if that money is excluded from the court's consideration when determining alimony awards and the amount, can that person use that as alimony? Alimony is expressly your purview. In the case of disability compensation that a wounded veteran is getting, it is wholly within your purview, as the Legislature, to allow a court to look at those benefits and consider those when determining alimony for the wounded soldier. Nevada cannot affect an indirect division of the disability of a wounded soldier. What you are discussing is the reverse scenario where you are dealing with the wounded soldier going to the former spouse for alimony. The state legislative body, in that circumstance, can look at the spouse's alimony and say that the wounded soldier is getting disability pay so he cannot get alimony from the former spouse. That is dealing with the income stream of the former spouse in that situation. That income stream is not shielded by federal law. The only provision that is prohibited from Nevada's authority is the disability pay that the soldier receives. The determination of the alimony of the former spouse in the situation that you describe is wholly within the Legislature's purview to enact. You could easily put in a provision that says, if a wounded soldier is receiving disability compensation, he or she cannot use that as a means to get alimony from the wealthier former spouse.

Assemblywoman Dondero Loop:
Leaving the alimony discussion, in my opinion all monies that are acquired while you are married are yours as a couple. If someone earns retirement, that is split, or social security—and those are federal funds—and if someone has debt, that is split. To me, this is bigger than just that amount. While I recognize and am sensitive to the fact that a wounded soldier has been given disability payments, all other payments, whether federal, state, county, city, private, 401(k), and any other money, is part of that divorce decree and that divorce decision.

Mark Beres:
There is no argument with anything that you said. However, you left one thing out. Disability funds are protected in federal law. There is nothing in federal law that explicitly and clearly prohibits the division of a 401(k). That is completely within the Legislature's decision. However, disability benefits are

expressly—not kind of, but expressly—prohibited from being diverted under any legal process whatsoever. The State of Nevada does not have jurisdiction over disability funds, period. It is wrong and does not serve your wounded soldiers to come up with this harebrained scheme to indirectly get at those funds.

Chairman Frierson:
I understand that this is an emotional subject, but please remember that asking questions is our job so we can make informed decisions. It is not meant to pass judgment. We are entitled to our opinions, but we have to ask questions to come to that. I just want to remind you of that, so you will understand.

Assemblyman Martin:
Mine is a more factual three-part question. How are disability benefits actually determined? I assume it is based on the injury or perhaps the length of service. I have the same question for retirement benefits. The third part would be, is there any way to restructure retirement benefits to be disability benefits? Retirement benefits are taxable, but disability benefits are not. Obviously, disability benefits are what we are talking about this morning.

Mark Beres:
All veteran disability percentages are awarded based upon a doctor's determination in accordance with the VA Schedule for Rating Disabilities. They are all done under Title 38. Essentially, the veteran is evaluated by a medical team based on whatever the disability may be, and a disability percentage is awarded. The law states that the disability percentage represents, as can practicably be determined, the degree of impairment in earning capacity in the civilian marketplace. Therefore, it is not earned income. It is absolutely fundamental to understand that disability funds are not earned. A veteran does not earn his legs being blown off. The VA rating comes up with degrees of impairment, whether you can work, your interaction with other people in the workplace, degree and range of movement, and a whole variety of things that come up with that rating. Once a rating is established by the VA, that becomes the veteran's disability rating. It is determined by the medical doctors in accordance with guidance for the Department of Veterans Affairs.

Remember we are not talking about retirement benefits, they are not the same as disability. Disability benefits are not earned during a marriage; they are not like a car in the driveway that is to be divided. Nevada only has jurisdiction over disposable military retirement pay. That is it. In the law, there are four specific exclusions from Nevada's jurisdiction. Disability benefits are expressly excluded from the definition of disposable retirement pay. You are correct that disability benefits are shielded from seizure, claims of creditors, and taxation.

As for restructuring, that would be something that is required by Congress. In 2003, the law was amended to clarify and protect disability funds if they are comingled in a joint checking account. We are dealing with Congressional intent, which is to protect these funds from being diverted.

Assemblyman Duncan:
As an Iraq war veteran myself, I appreciate bills that help our veterans because of the tremendous cost that accrues to many of them. Thank you to the veterans who are here today.

In looking at this bill, we know that it will apply prospectively. What happens to a car or a home that has been purchased strictly with the disability funds, or there has been comingling over a 20-year period? Does the law look back and say that the community property that has been accrued by the couple is not subject to being divided? Will this only apply to payments if there is a divorce? Does it also shield property that has been acquired as well?

Mark Beres:
That exact scenario was addressed by an appellate court judge in the 1978 Arizona case of *Flowers v. Flowers* 578 P.2d 1006. There was a special concurrence written by Judge Jacobson. In my statement, I paraphrased what he said. If I may read it, it will answer your question.

First, I want to read a couple of sentences to you. When a community exists—when a husband and wife exist—the community shares in all of the benefits of the community. If a wounded veteran is married and receives disability compensation, that disability compensation is part of the community because it represents lost earning capacity. But when the community is dissolved, which is what divorce does, the community no longer exists and, therefore, the community no longer shares in that. As an example, Arizona is unique in that they follow the Spanish-colonial legal system where they have things called "lucrative" and "lucrative title." It is very confusing, but it basically says that, if the couple is married and they use community funds to purchase community assets, the assets are part of the community. When the divorce is affected and the property is divided, the community property is also divided. It does not matter if Nevada is an equitable-distribution state or a community-property state; these distinctions are irrelevant with regard to your question. Judge Jacobson spoke to that. I will read from page 2 of my statement: "During the term of the marriage, since these payments represent earning capacity and loss of wages (labor), they are properly considered community property." The answer to your question is that, if the house was purchased with disability funds, it would still be community property. Once the marriage is terminated, the right of the community to share in the labors of the

parties is likewise terminated. Since one spouse has no right to the future earnings of the other after a divorce, no rights should exist for payments representing those earnings.

Assemblyman Duncan:
If you had to trail the community assets back 25 years, that would present a difficulty. That satisfies me.

Assemblywoman Cohen:
Is it required to waive retirement benefits to receive disability benefits in all cases?

Mark Beres:
The short answer is yes. Federal law requires a veteran who is eligible to receive both retirement pay and disability benefits to waive retirement pay to receive disability pay. That is at 38 U.S.C. 5305.

Assemblywoman Cohen:
Is the retirement pay that is being waived possibly community property? There is no dispute about that, is there?

Mark Beres:
No. Federal law specifically excludes VA disability pay from the definition of disposable retirement pay. It is never community property; however, the amount of retirement pay that it displaces—if there was no disability pay—would be considered divisible under the law.

Assemblywoman Cohen:
If someone has retirement pay and goes through a divorce, and the court divides the retirement pay per Nevada community property law, and then the veteran's spouse gets disability, the veteran ends up losing what has already been awarded in the community property share of retirement pay.

Mark Beres:
I am glad you stumbled upon a fundamental thing that is critical to understand. When a military service person gets a divorce and the judge puts a property settlement in the decree, the disposable retirement pay—which is what they call it—will be divided because the federal law limits Nevada's jurisdiction to only disposable retirement pay. By definition, it excludes VA disability pay. In the situation that you described, there were a few things that you missed. Specifically, when a property settlement is enacted, the member may or may not actually be eligible to receive retirement pay. If the divorce occurs after eight years of service, the military member is not yet eligible for retirement,

so the judge is anticipating the retirement pay because there is no way for the judge to divine what is going to happen in the future. The military member may serve for another 12 to 15 years before he retires. The service member may get injured in the course of his military service, and if he does, he is entitled by federal law to affect a VA waiver. That is not something that the veteran chooses to do; it is a requirement in federal law.

The judge cannot look into the future and see what is going to happen to the service member, but the notice in the divorce decree fixes the award of the former spouse in stone using indemnity provisions so that nothing that happens post-decree can impact his or her share of the disposable retirement pay. This is an injustice to the veteran and why indemnification needs to be outlawed. It may be nice for the judge to affect a fixed amount of property for the former spouse, but notice that the actual amount of disposable retirement pay may or may not change based upon future actions that cannot be foreseen at the time the divorce decree is enacted.

Assemblywoman Cohen:
In the end, what happens is that the former spouse who has a certain amount of retirement pay awarded as community property loses that if the military spouse elects to take the disability pay. That is the bottom line, is it not?

Mark Beres:
Absolutely not. I disagree with the word "certain." The amount of retirement pay that a former spouse is entitled to is usually 50 percent of the disposable amount, but due to things that can happen after a divorce decree is entered—such as injury—the amount of disposable retirement pay may change. If an able-bodied veteran is divorced and five years later he goes to Iraq and gets his legs blown off, and is 100 percent disabled, all of the disposable retirement pay disappears because of the VA waiver. There is no disposable retirement pay.

Assemblyman Wheeler:
I think one of the erroneous things that was said is, "if they elect to take the disability pay." There is no choice for the veteran. If he is entitled to disability pay, it must be taken in lieu of retirement pay.

Assemblywoman Cohen:
I do not know a lot about military disability, but I do know that the Supreme Court of Nevada referred to it as electing to take the retirement pay in *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003) (Exhibit D).

Assemblyman Wheeler:
I am not familiar with that case, and not being an attorney, I probably never will be. The way I understand that it works is there is no election involved. If you are entitled to disability pay, it must be taken in lieu of your retirement pay. If the disability pay is less than your retirement pay, you would take the disability pay, and the balance would come as retirement pay that would be divisible.

Assemblywoman Cohen:
The bottom line is that the former spouse is no longer going to get the retirement pay that he or she was awarded in the divorce for his or her share of the community property retirement pay.

Mark Beres:
There is no retirement pay to get. Federal law only gives Nevada jurisdiction over disposable retirement pay, and if a veteran gets injured in the course of his service, the amount of disposable retirement pay will go down. That is a fact. But remember what I said at first: we all have a burden to care for the wounded soldiers. An indemnification provision would merely exempt the former spouse from incurring any burden associated with it. It shifts the burden of paying for the disability onto the wounded soldier himself.

One of the fundamental injustices here is that the courts, like *Shelton v. Shelton* that you mentioned, actually put in the decree that veterans elect to do this. Let me assure you that I have never known a disabled veteran who chose an indemnification provision. Most of them do not even have an idea what that means. They do not know what it means until they end up in court or with a .45 caliber bullet in their brain. Most of them are angry and bitter, and scream and yell about the courts hating them. They do not understand that the courts look at them as having agreed to these things. These veterans come back from Iraq or Afghanistan—the wars that we the people send them off to—damaged so that they cannot think or read, have post-traumatic stress disorder, and have traumatic brain injuries. These are people who have no money, education, or ability to defend themselves in court. How on earth are these veterans going to pay an attorney to represent them? They cannot get their funds because they are apportioned. Attorneys look at these wounded veterans like pieces of kryptonite. These soldiers go into the courtroom and have no idea what is going on. Half of them end up going crazy and committing suicide. One of them, in a wheelchair, was jailed for 60 days in Minnesota because he refused to abide by an indemnification provision.

You are correct in the words that you cited from *Shelton*, but those words are not functionally and actually what is going on with the veterans themselves.

I would venture to say that very few veterans, if any, have any idea they have agreed to these things in their divorce property settlements. Divorce is a miserable thing for anyone. They are not going to read the fine print. They have no idea what the word "indemnification" even means. It is key that you understand that a veteran does not have a choice in waiving one for the other. Federal law requires the waiver.

When I was injured, I did not receive a form that said to check A if I wanted to waive retirement pay, or B if I did not. It just happened all on its own. I had no idea what was going on at the time.

Assemblywoman Cohen:
Of course we have to take care of our veterans, especially our wounded veterans, but they left families and spouses at home. A parent who stayed home was essentially a single parent, possibly for years, taking care of the children, unable to start her own career, or build up savings. We need to take care of them, too, without leaving them hanging.

Mark Beres:
I agree with what you said; however, diminishing the care that is appropriated to our wounded and disabled soldiers is not the way to affect that public policy goal. There are other ways to take care of those who are left behind. Veterans' disability provisions have never been appropriated by Congress to care for the needs of ex-spouses. I also agree that those needs are to be cared for, but not on the backs of our wounded and disabled veterans.

Chairman Frierson:
Please stay available to offer closing statements when we are through with testimony. I would invite those here to testify in support of A.B. 271 to come forward, both here and in Las Vegas. I would ask that you put new testimony on the record, but if you are inclined, you may just agree with the testimony before you.

Caleb Harris, Legislative Officer, Disabled American Veterans:
I would like to point out that this compensation, especially for those who are most severely injured, really does compensate by allowing the spouse to achieve her own employability. If the veteran is 100 percent permanently and totally disabled—which would be the most serious of injuries—for ten years from the point of injury, the spouse can choose to go to college and be paid for it. She is compensated monthly during that time; I believe in the ballpark of $800 per month. All of her books and tuition are also paid for; therefore, it does give her the ability to advance herself. This compensation is not an earned income. It is a compensation for an injury that was sustained during service.

It is paid throughout the veteran's lifetime. It is not taxable. We believe the standard at the federal level, because this is a federal benefit, should be applied.

I have a letter that I would like to read that belongs to a veteran in the audience who is a Purple Heart recipient. This is from his spouse, who married him after the injury. She was unable to attend due to an injury.

> To the members of the Nevada Legislature:
> Due to recent surgery, I am unable to attend your hearing today. However, I do pray you will consider my thoughts on this matter. I am the spouse of a retired United States Army soldier. My husband receives disability from the Veterans Administration because of the near fatal injuries he received in Vietnam in 1966. He lost the use of his left hand, suffered for nearly two years in the hospital, had to have extensive surgery, and still has pain from his injuries over forty years later. We married over 20 years ago and have worked together for veterans and their issues over the course of our marriage. Should one day come when we can no longer live in harmony, I have no right to take any funds he receives as a result of his service-connected injuries. He was retired out of the Army because of his wounds . . .

This is a misconception. He was medically retired. Retirement does not necessarily mean that you served 20 years. You may have been so severely injured that you are no longer fit for duty and are, therefore, medically retired. That would be the disability compensation. Her letter continues:

> . . . not because he was unable to fulfill his dream of serving our country for more than 20 years as his father had done. I suffered none of those wounds, and I did not put my life on the line for the freedoms we all share. Yes, we have built a home and a life together, but his compensation is for his actions alone and it should remain his alone. He suffers the results of war and his injuries. For the reasons above, I hope you will give serious consideration to seeing this bill passed. It is the least we can do for those who gave so much and suffer so long.
> Respectfully, Vicky Maltman.

Chairman Frierson:
Is there anyone else who wishes to testify? Please come forward.

Boone Cutler, Private Citizen, Minden, Nevada:
I am an Iraq war veteran. I want to thank you for your service to our country. You heard the data, and I think Mark did a good job laying it out.

I have a simple story. I was blown up in Sadr City, Iraq, in 2005. I am 100 percent disabled, and I have Parkinson's disease. I did not have Parkinson's disease when I first got hurt. That developed over time and I was diagnosed last April. My head injury prevents me from being able to read. My injuries continue on, but I have a wonderful wife who takes care of me. She is my caregiver.

You will see a lot of warfighters get really angry, especially our Vietnam veterans. They went to the woods and they came home because they were neglected and pushed out. I see that same type of thing happening today, but it is not with all of our warfighters; it is mostly our female warfighters. Military sexual trauma is huge. They are going to the woods; they are hiding. We have 50,000 female warfighters that are currently homeless, many with children. This affects them, too.

I have been injured, and I deal with this kind of stuff, but I doubt you will see anyone oppose the bill who has a personal issue with it. The people opposing this are going to be the lobbyists and the attorneys. That is how they make their money. I know I should not say that, and I should come up here and pull on your heartstrings. I should tell you how I was hurt, which is the truth, and I spent two years at Walter Reed Army Medical Center. But I had to get a pro bono attorney because I had been abandoned by my former spouse who left me there. She would not even send me money to eat. I spent eight months eating Top Ramen that my mother sent me because I could not go to the chow hall.

These things get to me because I know of a guy in New Hampshire who set himself on fire on the courthouse steps over this very issue. We have approximately 23 veteran suicides a day in America. If the H1N1 virus killed 23 people a day, there would be a national outrage. There are 23 deaths a day and 50,000 female veterans living on the streets—this is ridiculous. Nevada has one of the highest per capita veteran-suicide rates in the country. What you do here today is going to affect everyone.

I am blessed to be on the Governor's Interagency Council on Veterans Affairs. I like to give my opinion because people want to know what suffering looks like and why we need this bill, and why this is so important. It is because this is what we get. I had a radio show a couple of weeks ago. I do not have it any more because I could not hang on to it. I had a community organization called

the Warfighter Community League. I could not hang on to that either. This goes on every day. This goes on all the time because I just cannot get there, but I do my best. When I was in the hospital, I had a pro bono attorney who was going to help me with my divorce and he asked me what I wanted. I told him 50-50 custody, and I want to keep all of my veteran disability benefit or I will be homeless if I have to give up half of it. I could not survive or get an apartment without it. He said that he was sorry, but it was community property. I was told that I could only see my children three days a month because I was considered a negligent father. I had gone to war for a year and was in the hospital for two, so how could they consider me a negligent father? I was told that was the way the court sees it.

You are going to hear some arguments today about how women and children need to be protected. I believe in protecting women and children, too, especially those who are veterans. Our female veterans are falling through the cracks because it has been man against woman for years. Now it is just warfighter against the world. This is about people who fight and suffer, and they need the funds to stay alive.

Chairman Frierson:
I apologize for interrupting you, but we have lots of people who want to testify.

Boone Cutler:
I will finish up. When these warfighters come in, they need a lot of assistance. It is not just males; it is also females. We need the legislators to step in and clarify the federal law for the state. You have that opportunity today.

Chairman Frierson:
Are there any questions? I see none.

Steve Sanson, President, Veterans In Politics, International, Inc.:
A lot of you know me and know of me. We are in support of A.B. 271.

I flew in from Las Vegas last night because I feel this bill deserves personal attention. I am an 80 percent disabled veteran. I suffer from injuries received during the first Gulf War in the countries of Saudi Arabia and Kuwait. My injuries are related to Gulf War Syndrome. [Read from written testimony (Exhibit E).]

Malisa Cutler, Private Citizen, Minden, Nevada:
Boone Cutler is my husband. I am what you would call a post-combat wife. I was not there during the time he served our country, or when he was in Walter Reed Medical Center. We were married about five years after he

was injured. He is 100 percent disabled. The other night we were getting court documents together and we added up his disability. It was actually 210 percent, plus Parkinson's disease.

When you look at the veterans, they look whole. They may not have injuries like missing arms and legs. The signature injury for the current war veterans is brain damage—blast injury. My husband's brain is damaged; he cannot read. The thalamus part of his brain is so injured that his blood pressure can no longer control itself. We frequently end up in the emergency room with blood pressure problems, among other things.

Being his wife, I am at the bottom of the funnel where caregivers—men and women—come into my life. I gave up my career to take care of him, and move to Nevada. My life is taking care of Boone. He tries to be productive; he is very talented. Unfortunately, he has had to pull out of the things that he has made his mission. His work keeps him from wanting to kill himself. There are a lot of things that veterans are dealing with that you are probably not aware of. One of those things is a drug called methoquin that puts lesions on the brain and causes suicidal tendencies. When you add things like divorce, losing children, and financial issues, many problems will surface.

I have started a Facebook group for caregivers and we now have just fewer than 300 people. This group consists mostly of post-combat wives. Unfortunately, there have been divorces in 90 percent of the marriages after five years. Most of our warfighters are abandoned. It happens a lot, although there are a lot of spouses that stand by their veterans. One of my good friends is in Georgia, and her husband is going through these same things. He has a former spouse that used the G.I. Bill to become a triage nurse. She makes $68 an hour, but did not have to give anything to her veteran ex-spouse, and was awarded 50 percent of his disability. Right now, he and my friend eat from a food pantry. He cannot walk any longer and is in a wheelchair. They cannot afford the health care that he needs outside of the VA. The VA tries to take care of their veterans, but they are overwhelmed and give only basic care.

I feel very lucky to be in the Reno area where we have Judge Peck. She oversaw his divorce and followed the federal law. She did everything she could to take care of him, the children, and his former spouse. We are lucky that Judge Peck understood the law—took the time to read and understand it. She educated herself and knew that the spouse has other provisions. She divided everything based on the law. The federal law is put in place to make sure these patriots who come home disabled are treated fairly.

Chairman Frierson:
In the interest of time, I am going to ask that anyone else who wishes to offer testimony in support provide that testimony in writing so we can circulate it to the Committee. There is no one in Las Vegas to testify, so I am going to ask that those who want to testify in opposition here and in Las Vegas come forward now.

Jessica Anderson, representing Nevada Justice Association:
I will defer to my colleague in Las Vegas to start.

Marshal Willick, representing Willick Law Group:
I studied the military retirement system and benefits for decades, and authored a textbook on the subject in 1998. I teach the subject regularly and I am well versed in just about all aspects of military and veteran issues.

Enacting A.B. 271 would be very poor public policy based on a falsehood and would cause a great deal of harm to innocent parties. The real question being presented by this bill is whether we should create a special and privileged class who is treated differently from every other person under the law by the divorce courts in Nevada.

There have been a lot of misconceptions, partial truths, and misinformation and I would be happy to answer any questions that anyone has. The short version is that VA disability benefits are just like all other disability benefits; they are separate property income streams. It is no different than a policeman's, a fireman's, or a school teacher's disability benefit. If you are getting divorced in Nevada, and you have a disability income stream, it is considered your sole and separate property, not divisible upon divorce. That was true, it is true, and it will not be changed by the passage or failure of this bill. However, it is not true that federal law does not allow these benefits to be taken into consideration in any way. Every court that I have read a decision from in the United States—from the Supreme Court on down—says that these benefits are not intended for the benefit of the veteran alone. Congress clearly intended Title 38 VA benefits to be considered a source of income for support purposes. That is what the entirety of the courts and their written testimony has concluded. It is false to say that there is a natural predisposition by Congress to prevent these benefits from taking effect.

There are two things at issue in this bill. One is the question of alimony and the other is the question of indemnification after property has already been divided. I will address those separately. There are multiple federal laws meant to divide these benefits in ways that are appropriate for spousal support purposes. The United States Supreme Court in *Rose v. Rose*, 481 U.S. 619 (1987) said that

these benefits are intended to support the dependents of a retiree or veteran. The falsehood here is that there is some sort of Congressional urging that Nevada has somehow violated; that is not true. The only reason the folks who are pushing these laws through the various state houses—and where they have passed they have been essentially snuck through—is that they have failed to convince Congress of the validity of their argument for the last 25 years. I know because I have been in the room several times as the representative of the American Bar Association during some of those debates. They have elected instead to try a push in the state courts. The bottom line, with all due respect, is that it is a matter of greed. It is a matter of trying to be treated differently from everyone else.

In terms of alimony, the state courts are charged with determining the total economic circumstances of both parties to a marriage, figuring out the benefits and burdens, and doing justice between them. You have heard a couple of people testifying in favor of the bill lauding individual judges for doing exactly that. That is what their job is. What this bill would do is remove the ability of judges to do equity to the parties in front of them based on the entirety of their economic circumstances. Take a look at legal note 53 that I gave you in the material [(Exhibit F), (Exhibit G), and (Exhibit H)] that talked about the *Brownell* case, *In the matter of Ronald Brownell and Irene Brownell*, 44 A.3d 534, 163 N.H. 593 (2012). In that case, the military member received about $3,000 a month in disability benefits, and the former spouse, who was equally disabled, had $200 a month in food stamps. The law there was like the law here. The military member was outraged that the court was ordering him to help support his former spouse with the money that he got every month. At the time of the decision, the court noted that she was living in a shelter and was totally on the public dole. If A.B. 271 was in effect in the *Brownell* case, the $3,000 a month tax-free money that the member got every month to put in his pocket would have been invisible to the divorce court. The only thing the divorce court would have seen would have been the $200 in food stamps, which would have been divided between them. He would have kept the $3,000 and half of her food stamps.

Yesterday, a Las Vegas divorce lawyer called me for help in a case where the couple lived entirely off of the wife's income during their 20-year marriage until she developed Alzheimer's in 2011. The husband got frustrated and put her in an apartment. A friend found her there at the age of 70 confused and deteriorated nine days later. She is now in an assisted-care facility. All of the wife's income and assets were consumed during the marriage. The husband did not work. The only income today that either party has is Social Security and the husband's disability benefits. The husband, in this case, is trying to make sure the wife gets no alimony to support her for the rest of her life. That would

be the result if A.B. 271 was enacted. The wife would die in total destitution after working to support her household. The point of the story is not that injustice cannot occur in one case or another, of course it can. That is the very purpose of the divorce courts, to weigh the entirety of the equities between husband and wife, and determine who should have what benefits and burdens based on the entirety of their actual situations and income.

The question was raised about Arizona. The Arizona decisions have started coming out and the courts have said, Yes, this is terribly unfair, but that is what the Legislature has said to do. That is the way it is. One party may live in relative ease and the other party dies in destitution. If you do not like it, take it up with the Legislature. Those decisions started coming out in 2011. There is no reason to go down that path here.

A lot has been said about federal law and I do not want to get too much into the technicalities. It is in the written material to some degree, but 10 U.S.C. 1401, which was discussed, is not the Former Spouses Act. It is the Uniformed Services Former Spouses' Protection Act. Most of the courts that have talked about that law over the course of the years have said that it would be tragic to interpret a federal law designed for the protection of spouses in any way that served to injure them, which is the truth.

A lot has been said about "every American." That is the whole purpose of equal protection. It has been suggested that equal protection is too lofty and abstract for a legal concept to bring to a legislative hearing. I disagree. I think the idea of treating all people equally before the law is something that this Committee will not have any difficulty understanding.

I would like to turn to indemnification for a moment. Indemnification works to protect the victims of an attempted end-run divorce decree from having a decree undone. That is what happened in the *Shelton* case, and hundreds of other cases that have been reported. Basically, what the people pushing this legislation nationally are complaining about is that, after a divorce judge manages to divide things equitably between parties—taking into account their full economic circumstances—and they take an action which takes money out of the pocket of the person who has already been awarded it and puts it in the other person's pocket, the courts are able to do something to correct that, and they think it is terribly unfair. No, it is terribly fair. Courts are supposed to protect both parties to a divorce decree, and to protect the decree itself. Indemnification is the usual way of doing so. Many states have said that no provision in the decree is required in any way to affect that end. It is just a matter of natural law. Other states have said that they should look at the terms of the decree. It is a matter of protecting the equities as developed. This only

applies in situations where there is a retirement benefit that has already been divided by a divorce court. Remember, if there is a disability existing at the moment of divorce, those benefits are not divisible as property, so that does not happen. If the retirement has been divided and the member unilaterally recharacterizes—you noticed one of the prior witnesses was a little cute in his answer—it is an election to take the disability benefits.

Chairman Frierson:
I would ask that you be mindful that we have a limited amount of time. I would also ask that you be mindful about your tone about the supporters of the bill. I also cautioned them that we are having a respectful conversation. We do not need to judge the position of anyone who has a difference of opinion so we can have a fruitful discussion.

Marshal Willick:
I did not mean to imply that. I was talking about the phraseology. The election of the disability benefit is an election. The waiver of retirement to take the disability benefits is an automatic effect. That distinction was somewhat glossed over. If anyone has any questions about the mechanics of how that works, it is in the written material. I meant no disrespect.

The analogy is much like Social Security, which is also likewise indivisible as property, but is an income resource to be considered when determining alimony. My point is that there is no purpose in stopping the divorce courts in Nevada from taking into account the entirety of the economic circumstances of the parties before them. If you do so, you will create as much inequity as equity by carving out one special class—unlike firefighters, policemen, school teachers, or legislators—who has the entirety of their economic situations considered if they should happen to divorce.

Assemblywoman Fiore:
Did you say you served in the military?

Marshal Willick:
No ma'am.

Jessica Anderson:
We offer the same opposition as Mr. Willick for the reasons that he has already mentioned. Specifically, we believe it should be a fundamental aspect of community property law that all property acquired during the marriage be equally divided between the spouses, and that all income of either party be used to determine an appropriate alimony award.

I think it is extremely dangerous to take away the divorce courts' discretion in these cases. Every divorce case is different. Every case that I have is not like the one I had the day before. In cases where there is a military spouse, there is almost always a nonmilitary spouse who has moved several times, has no alternative employment, and has been taking care of children during times of deployment. To tell that spouse that he or she will not receive alimony because the spouse's only income is disability pay is an injustice. As the prior testimony showed, Judge Peck in Washoe County, a very fair judge, heard the merits of that case and made a determination based on the entire aspects of the case. It was a fair ruling to both parties. To take away a judge's discretion, which is what this law will do, is incredibly dangerous.

I want to also point out that there might be a misconception about alimony in Nevada. We have a very broad statute on alimony. It is within the judge's complete discretion whether to award alimony. When people come into my office for a consultation and they want alimony, I ask them how long they have been married. If they tell me it is under ten years, I tell them that this is not an alimony case absent special circumstances. If I have someone come in who has been married 15 or 20 years, that is an alimony case. As a taxpayer, I do not think it is fair that I would have to pay, since that spouse is now going to be on welfare just so the disability pay is protected.

Chairman Frierson:
I see no questions. Is there anyone else who wants to offer testimony in opposition? I see no one. Is there anyone who wants to offer testimony in the neutral position? Please come forward. Seeing no one, I will invite Mr. Wheeler back up for closing remarks.

Assemblyman Wheeler:
Thank you for hearing this important bill today. The only thing I would like to rebut is that Mr. Willick said these benefits are no different from any other benefits and that is, in my opinion, blatantly false. If you look at the *U.S. Code*, it spells it out directly.

Chairman Frierson:
I will close the hearing on Assembly Bill 271. We will get back on track and open the hearing on Assembly Bill 207.

Assembly Bill 207: Revises provisions relating to juveniles. (BDR 3-51)

Chairman Frierson:
I want to let the audience know that we are going to start moving. We have nine bills on the work session after the next few bills, and I am determined that you folks not have to come here on a Saturday to get through these bills.

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
Nevada has a very strong and effective domestic violence law, as it should. However, during the interim, I have had the opportunity to meet and work with Professor Mary Berkheiser and some of the students with the William S. Boyd School of Law, Juvenile Justice Clinic. There is an area of concern regarding how the current statutes apply to juveniles when a charge is brought up against them in terms of a delinquency proceeding.

Unfortunately, many people who practice in this area believe the net is being cast too broadly and, instead of the positive results that we hoped for from our effective domestic violence law, we believe it is actually causing harm to the children who are getting caught up in the system. A couple of examples were brought to me. One was about a father who was trying to keep his daughter from committing suicide. She was charged with domestic violence for the injuries that he sustained from trying to stop her. There have also been many charges having to do with sibling-on-sibling squabbles.

We have heard many bills affecting juvenile justice this session. There has been a lot of testimony that the young person's brain does not respond like an adult's brain. The current system that we have for adults is not working well for juveniles. With that, I would like to turn it over to Professor Berkheiser.

Mary Berkheiser, Director of Clinical Programs and Director of Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas:
I direct the Juvenile Justice Clinic and have done so since Chairman Frierson was a law student.

In the course of our representation, we have noticed many things. We noticed trends or patterns in the things that are happening with the charging and prosecution of our clients. We work closely with the Juvenile Division of the Clark County Public Defender's Office.

In the past couple of sessions of the Juvenile Justice Clinic, and particularly this past fall, we have noticed an alarming overuse of the domestic violence statute in charging juveniles for batteries that occurred many times with squabbles between siblings, or a child pushing back against a parent who was pushing the

kid around, ending with the child being charged and arrested for domestic violence. Why do we care about this? We care for a couple of reasons. The first is that we think domestic violence is serious and the statute ought to be reserved for what is serious domestic violence. We think that juveniles getting into fights with people that do constitute domestic violence should be dealt with by the law. They can be charged with assault or battery, but not be strapped with the label and stigma of a domestic violence history because of the negative effect history can have on them in the future. Seeing this among our clients, we decided we should do a study and see if what we were seeing was an aberration, or if it was representative of a true pattern that was occurring throughout the charging of juveniles in the Clark County District Attorney's Office and the arrests by the Las Vegas Metropolitan Police Department (Metro).

Working with the Juvenile Division, we were able to access the case files for a six-month period last year from May through October, and look at all of the cases that were charged as domestic violence. We looked at a lot of different data points to come up with something that was quasi-empirical that would either support or refute what we have been concerned about. I have with me two of my very able students who were in the clinic last semester representing clients and who have continued in the clinic to work on this important policy issue this semester. I am going to ask them to talk with you about what we found in that study and in the course of our own representation. We will be brief, so I will turn this over to Denise Mariscales, who will describe the statistics that we found, and then talk about the true domestic violence cases that were among them. After that, Ann Goldes-Sheahan will describe some of the cases that I would call more garden-variety assault and battery cases that had been charged and prosecuted as domestic violence cases. She will then make concluding remarks.

Denise Mariscales, student representing Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas:

The study that we conducted went from May through October 2012. In those six months, there were 135 domestic violence charges that were brought against juveniles. The range of the ages of the juveniles that were charged with these offenses was 12 to 17 years of age. It should be noted that only two of those kids were 12. Of the juveniles arrested, 52 percent were females and 48 percent were males. We analyzed the data to determine which of these cases were, in fact, domestic violence related cases. We found of the 135 cases, only 13 percent of those were truly domestic violence cases. That means 87 percent of those charges were not related to domestic violence. They had other forms of battery, but they were not domestic violence as is intended by the Legislature. That also means that almost nine out of ten cases

had juveniles charged and prosecuted under the domestic violence statute when, in fact, they had not committed domestic violence. Under A.B. 207, these charges would be removed, allowing for scarce resources to be given to those who truly need them. Instead of sending 87 percent of cases that were not domestic violence to domestic violence counseling, or other required services that are given in adjudication, these services could be offered to kids who actually need them.

I am going to talk to you about a couple of cases that we came across. We are aware that there are some cases where juveniles are committing domestic violence, and we did find some of those. The first story is about a girl and her boyfriend. She went over to her boyfriend's house to pick up their child. When she got there, no one was home, so she walked around the neighborhood while waiting. She came upon the boyfriend as he was riding a bike down the street and asked him where the child was. He took her to a random stranger's house and said that his friend who lived there was watching the baby. When they got there, the girlfriend was very upset that someone she did not know was watching over her child, so they began arguing. He took her into the garage and told her to stop embarrassing him in front of his friends, and then took from his book bag a handgun with a silencer. He put it against her neck and started pushing it into her throat telling her he was going to "plug her." It is important to note that the girlfriend was 14 years old at that time and the boyfriend was 15 years old. They are young and we understand that is domestic violence.

The second story also involves a couple. The girlfriend is a 20-year-old pregnant girl and her boyfriend is 17 years old. On the day of the incident, the boy received a message from a friend regarding his girlfriend. The couple began arguing over the statements that were made and the boyfriend picked up a wooden dowel and began beating her with it. When the police got there, she told them that this was not the first time he had done it, and her injuries had been worse. The police found welts going down her body from her shoulder to her thigh.

We understand that these are very violent incidents, but they were also very rare. As I said, only 13 percent of the case studies were domestic violence related and these were the two that were very clear cases. Under A.B. 207, these kids could still be charged with domestic violence.

Ann Goldes-Sheahan, student representing the Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas:

Denise shared some of the more serious cases that we saw when we were representing clients and through our study of the cases from May to October. What we were concerned with were cases that were in direct contrast to those

that she just discussed. We were thinking about what domestic violence is, and what it constitutes. We are utilizing a definition from the National Coalition Against Domestic Violence which says that domestic violence is a pattern of behavior used to establish power and control over another person with whom an intimate relationship is or has been shared through fear and intimidation, often including the threat or use of violence. Clearly, the cases that Denise shared with you fit directly under this definition.

In contrast, the other cases that we saw, and in particular the first case, alerted us that there could be a problem. A young man who was 16 years old had removed himself from his parents' home because of the domestic violence that had been going on between his parents. He was supporting himself, and was going to high school. He received a phone call from his mother one day, who said she feared for her life. Being a 16-year-old, he ran to her rescue and came in as his father was beating his mother. He got into it with his father trying to protect his mother. He was arrested and charged with domestic violence. We represented this young man and we were impressed with how mature he was, and how much of an adult he had become through this situation. We were disturbed that he was charged with domestic violence when he was just protecting his mother and was attacked by his drunken father. The young man wanted to join the military, but may not be able to as a result of these charges.

The second story that we heard about was of a 17-year-old young man who had been arrested due to an altercation with his brother. He had come home at night to a locked house and was trying to get in. He threw a rock at the house to alert his brother that he needed in. His brother came outside yelling and screaming and they got into a fight on the front lawn. The police were called. The 17-year-old was arrested for domestic violence, but his 20-year-old brother, who was in the fight with him, was not arrested. This fight between siblings does not fit under our definition of domestic violence. Although a battery charge may have been appropriate, that was not the charge. That is what A.B. 207 is intended to complete.

The last case is of a 14-year-old girl who had been told by her mother to go to her grandmother's house after school. For some reason, her mother and sisters were driving around the neighborhood and saw her walking, but not in the direction toward her grandmother's house. They drove next to her and yelled at her to get into the car, but the young girl refused. The mother asked one of the sisters to get out of the car and "whoop her." When the sister got out of the car, she hit our client in the back and our client protected herself. Our client was charged with domestic violence.

These are some of the cases that alerted us to the problem of domestic violence being charged in a way that was not intended by the Legislature when the law, *Nevada Revised Statutes* (NRS) 33.018, was originally enacted. We determined that the current domestic violence statute applies too broadly to juveniles. Assembly Bill 207 intends to limit its application by only charging juveniles with domestic violence when it is warranted. A simple altercation with a sibling, cousin, or parent would not constitute domestic violence under A.B. 207. It is important to note that the bill is not intended to change the domestic violence statute as it applies to adults in any way, shape, or form. Further, it is important to note that it will not prevent juveniles from being charged with domestic violence when the act occurs in the situations described in the amendment that we have put forward, such as the situations that Denise has shared with you. Assembly Bill 207 will not prevent juveniles from being charged with a battery or assault charge if that is appropriate. It would simply take away the domestic violence charge when it is not warranted.

Why is A.B. 207 necessary? We have talked a little about that, but juveniles are subject to serious collateral consequences beyond the stigma of having a domestic violence charge when it is not warranted. There are also stigmas that accompany the crime related to military issues as we discussed in the first case.

There are also serious immigration issues. When a noncitizen attempts to adjust his or her status, juvenile adjudication can be reopened, even for adults. That can affect their ability to change their status. The affect that A.B. 207 will have on our justice system is also important. It will strengthen the domestic violence law that we currently have by focusing the scarce resources of our state onto actual domestic violence situations. As we have said, the current domestic violence law applies too broadly and dilutes the domestic violence law to apply to situations where it is not warranted.

Assemblywoman Spiegel:
What happens if a child keeps beating up on one of his parents to maintain power and control? Is the answer to that question different if the adult being beaten up is the live-in partner of one of the parents, or a domestic partner?

Ann Goldes-Sheahan:
That would definitely fit under our definition of domestic violence. It is a pattern of behavior used to establish power and control. In that instance, the juvenile may be arrested each time, whether for battery or for domestic violence before the amendment came into effect. That is the kind of information that could be used as evidence by the prosecution to prove the behavior that was used to establish power and control.

If the adult was not the actual biological parent, but was a live-in boyfriend, girlfriend, or spouse of the parent, that would still apply because they are still in an intimate relationship in the home. That would still fit under our definition.

Mary Berkheiser:
I would note that you have a one-page fact sheet in support of A.B. 207 (Exhibit I). We have made it part of the record.

Chairman Frierson:
I would invite those here to provide support for A.B. 207 to come forward, both here and in Las Vegas.

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:
As you heard from the testimony, this was a collaborative effort between the clinic and the Clark County Public Defender's Juvenile Justice Services. On behalf of the Public Defender's Office, I would like to formally support this bill. It seems to make a lot of sense based on the cases that were reviewed. I would urge support of this bill.

Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office:
We would also like to go on the record formally supporting this bill. We believe it is an important narrowing of the definition of domestic violence, such that certain cases that do not rise to domestic violence would be excluded under the change that this would make. We would like to voice support and urge passage.

Chairman Frierson:
Since there is no one in Las Vegas in support, I will now invite those who are here to provide testimony in opposition, both here and in Las Vegas.

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:
I am here today to testify in opposition to A.B. 207.

National studies suggest that 75 percent of juvenile domestic violence is against family members; 50 percent against parents and 25 percent against siblings. Assembly Bill 207 proposes to limit these cases by creating a standard of evidence for law enforcement that exceeds any other requirements. [Read from written testimony (Exhibit J).]

Chairman Frierson:
I am more familiar with the adult process for domestic violence, but it is my understanding that, if a call is made regarding an alleged domestic batterer,

the police, by law, are required to make an arrest and the district attorney, by law, is required to proceed with the case unless there is a problem with being able to prove the case. I give that background so I can state this: siblings fight. If my neighbors had seen my brother and me when we were kids, both of us would have been in trouble. We have discussed this but, recognize that articulating "clear and convincing" in the statute for law enforcement at the scene of a crime is a deviation from the ordinary practice. Is there any room in the juvenile statute for the possibility of permitting discretion, both by the officer who arrives on the scene and the district attorney in light of the fact that we know siblings sometimes tussle?

Susan Meuschke:
I hear the concern and I understand it. We do not think this bill does what you want. Are there other ways of doing it? Perhaps. We have had conversations with the district attorney and law enforcement. I want to make it clear that law enforcement, if they are called and there is probable cause to believe that domestic violence has occurred, they must make an arrest. It does not mean they have to make an arrest just because they got a call. That is not the way it works. They need to have probable cause to believe domestic violence occurred. Not all calls result in an arrest.

Perhaps we need to look at how we can address the discretion issue. We have not been able to come to that determination in the amount of time we have had to discuss it. I do not have the answer for you; it is difficult. We are not saying that a good arrest is made in every case. Every case does not have a good prosecution. In the majority of cases, both of those things occur. That is what we believe about the statute. We know that law enforcement uses discretion in the field in identifying domestic battery, and prosecutors take a look at these cases to determine if they should move forward with prosecution. We could certainly have that discussion, but this particular bill has some huge issues.

Chairman Frierson:
I do not know if that is what I want as much as a concern that I have about the practical nature of what happens. This is the first time I have heard an acknowledgement of any level of discretion on the record. In ten years of practice, it is my experience that law enforcement believes they have to make an arrest if there is an allegation of domestic violence. I appreciate that, and I know it often works that way in Clark County. I appreciate your acknowledging officers do not have to make an arrest if they do not find probable cause. I do not know if officers on the scene are comfortable exercising that type of discretion when they appear.

Susan Meuschke:
That sounds like a training issue to me.

Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney:
To answer some questions regarding discretion, I can give you some statistics. We filed 361 cases that involved a domestic violence charge. We also did not file 857 that came through. Those statistics were provided by juvenile justice services. They could have been handled through intake, so police officers are using some discretion in the field for misdemeanor citations to juveniles. When they come in through citation to the intake division, the Department of Juvenile Justice has a special battery-domestic violence program. They have a psychologist in their intake department who is assigned to the case and conducts home visits with families whenever a youth has been charged or cited at least two times for domestic violence. This has been very important, especially in my commitment to juvenile justice in Clark County to identify—right up front—the needs of a family to get the appropriate services in place. If we are charging the right things and getting services in place, we are, hopefully, preventing that deep-end commitment and preventing recidivism. Clark County Juvenile Justice does have a diversion program through intake with the psychologist who works with children who have been charged at least twice. We do use some discretion.

I first learned about this proposal during the May 2012 interim meetings of the Legislative Committee on Child Welfare and Juvenile Justice that was chaired by Senator Wiener. At that time, the Committee chose to take no action regarding a similar proposal. There were discussions between the district attorney's office and Susan Meuschke of the public defender's office that started in May 2012. I asked her if she sees cases regarding domestic violence that she believes were not appropriately charged to bring them directly to me and I would review them to assure we are charging appropriately. From that time, May 2012, there have been three or four cases that have been emailed to me to look at. We are looking at all of these cases and have some concerns. I want to say "ditto" to what Susan has mentioned.

Assemblywoman Diaz:
As I understood how the Chairman phrased this, it sounds to me like discretion is not being adequately used. What happens to those children who are seen wrestling with their siblings, and one of them gets picked up and arrested?

Brigid Duffy:
I cannot speak on behalf of law enforcement's discretion. I can only speak on behalf of my office's discretion. I think our numbers speak pretty well when we

only filed 361 in a year, and chose not to file domestic violence charges on 857. I think my deputies are taking a good look at it. The Clark County Department of Juvenile Justice has a program in place to help keep kids out of the bigger-end system through the intake process. I am not a domestic violence expert. What may be Chairman Frierson and his brother wrestling could be different for another family. Who is going to make that decision in the field? That is why we have experts, to assess and provide appropriate services.

Assemblywoman Fiore:
I live in Clark County and it is my understanding from police officers I work with on a volunteer basis that, with any type of domestic violence, they have to take someone in. What I hear you saying is that there have only been a few who have actually been arrested. Am I hearing you correctly that they have been arrested, but in the intake process you have gotten them out? Is that what I am hearing? They have been handcuffed, taken to the detention center, and then you have gotten them out before they were charged?

Brigid Duffy:
It may be that way because the domestic violence might not make the point system through the Juvenile Detention Alternatives Initiatives. I see some of my colleagues from Washoe County that may be able to answer that question for you. The misdemeanor domestic violence is not necessarily going to make enough points to stay in detention, so they may be released right back out. They would not necessarily stay, but then we get a packet to file charges down the line.

Assemblywoman Fiore:
What I hope happens is the rigmarole of getting the person arrested, going through the detention center, and then getting released is eliminated. We need to ensure our police officers understand that every time they go to a domestic violence call they do not have to arrest someone on the spot. Is that what you are saying? That they do not actually have to arrest someone on the spot?

Brigid Duffy:
I am not comfortable discussing the policy and procedure of the police department. With all due respect, that is their public safety issue. I am not a police officer and do not know if it is appropriate for me to comment on whether I believe they should be arresting. I know that some of the children that we deal with are cited into intake and not actually cuffed, arrested, and taken to detention. I do not know why one case is different from a police perspective.

Chairman Frierson:
Are there any questions? I see no one. I do not know if we have law enforcement signed in to testify, but I think it would be good to have someone answer the procedural questions.

Kareen Prentice, Ombudsman, Office of Ombudsman for Victims of Domestic Violence, Office of the Attorney General:
My office believes this bill is not workable at this time for the reasons previously stated.

Brigid Duffy:
I also want to respond to how this charge could hurt children in the future. We have a provision in NRS Chapter 62H about sealing records prior to a child turning 21 years of age. If a youth stays out of trouble for three consecutive years, we can agree to seal his or her record prior to him turning 21 years of age. There have been several times that the public defender's office has reached out to me because that is a decision I would make. If the child wants to join the Army and has not had a recent charge, I do a quick search, then stipulate to sealing the record early so the child is not held up, especially if he has stayed out of trouble for three years.

Chairman Frierson:
I see no other questions. Is there anyone else here to testify in opposition?

Marlene Lockard, representing Nevada's Women's Lobby:
This bill was very difficult for the Lobby to come to a consensus on. We did not want to oppose the bill since we feel so strongly about the domestic violence statute, and are concerned about the unintended consequences that Ms. Meuschke pointed out. We felt that we needed to put on the record our opposition.

Tami Berg, Private Citizen, Sparks, Nevada:
My son has been arrested for domestic violence against my husband. Going to Assemblywoman Fiore's question, the police were called three different times. My son was arrested and cited twice. The third time the officers made the decision, based on our recommendation, that they would not take him to juvenile services at that time. The police are very well trained on how to handle a juvenile when it comes to deciding when to arrest for domestic violence, at least in Sparks. My concern with this bill in particular is the wording about "pattern." There was "pattern," but how do you prove it to a police officer on the spot? The officer shows up at your house and there may or may not be scratches on anyone, but the child needs to be arrested and removed from the house so he does not harm anyone else. I am really concerned about changing

this bill based on the section that has to do with showing a pattern of violence. There are great things happening within the juvenile justice system in getting these kids help when they really need it.

Chairman Frierson:
I will now go to anyone wishing to offer testimony in the neutral position. I would appreciate law enforcement's willingness to answer any procedural questions.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
We support the spirit of this bill and a lot of the things behind it, especially the sentencing part. We do have some mechanical issues with a section that I will go over.

As you have heard, it is our ability to determine a pattern of abusive behavior for the purpose of establishing or maintaining power and control. Before I get to that, NRS 171.137 says we "shall, unless mitigating circumstances exist, arrest a person when the peace officer has probable cause to believe that the person to be arrested has, within the preceding 24 hours, committed a battery . . . ." It says we "shall."

I will give you a quick scenario from a law enforcement perspective; a very common call. We were called to an address and when we arrived, a mother and son were out front. The mother had two black eyes and the son had a busted lip, a missing front tooth, and was bleeding. They pointed to Johnny, who beat them up, inside the house. The altercation happened because the Mom washed his favorite white shirt with a pair of red socks and it is now a pink shirt. He got mad at her, the brother came to Mom's defense, and Johnny hit him in the face. It is clearly a domestic battery and we would take the aggressor, Johnny, to jail for domestic battery. We will say he is 17 years old, and we have clear and convincing evidence. They say he did it and they have the injuries. Johnny admits to doing it and has the bloody knuckles. We have clear and convincing evidence, but if this language ends up in statute, we do not have a pattern of abusive behavior. Maybe this has never happened before and this is our first call to the residence. What we have now is a simple battery. Unless the mother and brother are willing to press charges, we cannot make the arrest. We then have two victims of a violent crime, and an angry teenager who may continue to victimize them.

Chairman Frierson:
I am going to stop you, because this sounds like opposition, and ask you to just answer the procedural question. You addressed it briefly when you said that the statute says you "shall" arrest, but you also said "upon probable cause."

A couple of members had the same question: if you were called to appear at the scene of an alleged crime between two siblings, and there is an allegation of domestic battery between them, absent anything obvious like a busted lip or two black eyes, in your opinion, do you feel required to arrest somebody as a result of that call?

Eric Spratley:
We do. Per that statute, we have to make an arrest based on the fact that we have someone who beat up someone else—committed a battery—and they have the relationship. There is a crime of battery and we "shall" arrest.

Chairman Frierson:
To you, probable cause is simply that you got a call that a battery occurred, you got there but did not see the battery, but since you got the call, you have to arrest someone.

Eric Spratley:
We do, and the exception to that would be if we believe there is a mutual battery, then we have to determine the primary physical aggressor—who started the fight and who did what first. There is a list of factors in the NRS, such as prior history and severity of injury. If one brother pushes another brother to try to get him out of his room, and the other brother beats him to a pulp causing injuries, we would look at relative severity of the injuries to the parties. The one who used the most violent force is the one we would arrest, because of the relative severity of injuries.

I would submit that the testimony heard earlier regarding these cases would include other facts that the law enforcement officer on the scene used to make the arrests. They had an extenuating fact there. The sister got out of the car and grabbed the girl walking around the neighborhood, and that girl turned around and did something that may have caused more injuries relative to the whole circumstance rather than getting in the car with her parent. The cops on the scene made that determination and made what they would consider a lawful arrest.

Brian O'Callaghan, Government Liaison, Las Vegas Metropolitan Police Department:
I am going to echo the comments made by Lieutenant Spratley and I will just say that I am neutral. There is still a gray area there. Where is the pattern and how do you get the power and control? That is where the big concern is right now.

Chairman Frierson:
I will ask another question since we are in neutral. In every other single criminal case on the planet, officers on the scene have the ability to exercise discretion if they are going to arrest someone. In your opinion, regarding juveniles, would it be helpful to have that same discretion as you have in 99.99 percent of all other cases that you police?

Eric Spratley:
Yes, that would be very helpful. I want to submit to you that law enforcement officers in Nevada, on an hourly basis, use that discretion in domestic violence cases. We know about two brothers fighting in the yard. The parent may say Johnny is moving out and going off to college, and they have settled things. We will hang our careers on the line on the decision not to arrest. We know Johnny did this, and the parents say they are going to take care of it. He is leaving and the family will be safe since it will not continue. I hate to say this, but we are not going to follow state law and will make the good decision not to arrest.

Chairman Frierson:
I recognize that, especially in small towns where officers know all the people and are familiar with the families, it is easier to exercise discretion than in a larger area where you do not necessarily know the history or the family. I certainly appreciate that perspective.

Eric Spratley:
If some language can be crafted that would grant us that authority, we would certainly love it. I guarantee that I speak for all law enforcement officers. We would want that, but this does not rise to that.

Chairman Frierson:
Are there any questions? I see none. With that, I will invite Mr. Ohrenschall back up briefly for closing remarks.

Assemblyman Ohrenschall:
Inertia is a great thing with the laws of physics, but I really urge this Committee that inertia will not be a good thing as to our domestic violence laws as they are applied to juveniles. I am very impressed with the students at the Juvenile Justice Clinic and the data they put together. I think it speaks to the fact that domestic violence is being overcharged and there are collateral consequences whether it is a young person who is in a troubled home, may have drug-addicted parents, who wants to join the military—which might be his only option—but he is unable to. Yes, sealing is an option, but as I understand

it, it is not easy to get into the military these days, and many recruiters are now asking kids to voluntarily agree to unseal their records.

As to the example of the young person who is a noncitizen and might be hoping to become a citizen or to have legal status, this misdemeanor domestic violence could also seriously hurt him. I think A.B. 207, if you read it carefully, is crafted so the prosecutors still have the discretion to charge domestic violence where it is appropriate, and where there is evidence of someone trying to exert power and control. There are many consequences to having a youth in a detention center.

Chairman Frierson:
Mr. Ohrenschall, you were closing.

Assemblyman Ohrenschall:
I am happy to work with all of the interested parties, but I hope this Committee will consider processing this bill.

Chairman Frierson:
With that, we will close the hearing on Assembly Bill 207. We will now open the hearing on Assembly Bill 377. In the interest of time, we will not be hearing Assembly Bill 261, and that is the Chairman killing his own bill, if anyone wonders if that ever happens. That bill is like Assemblywoman Dondero Loop's bill, so I will allow her to introduce her bill and appreciate her patience on this matter.

Assembly Bill 377: Revises provisions governing the crime of sexual conduct between certain school employees or volunteers at a school and pupils. (BDR 15-514)

Assemblywoman Marilyn Dondero Loop, Clark County Assembly District No. 5:
This bill arose out of an incident in the Clark County School District last year in which two teachers were arrested for having sex with a student who was not a student at the school where the teachers were employed.

Nevada currently has a statute that makes it a crime for a person who is employed or volunteers in a position of authority at a school to engage in sexual conduct with a student at that school. In the incident in Clark County last year, the teachers worked at different schools at the time of the sexual conduct, so the statute did not apply. Hearing that, I decided that the current statute was too limiting since teachers, bus drivers, and coaches, to name a few examples, come into contact with students other than those enrolled at their school.

They should be held to the same standards as employees and volunteers working at the student's school.

In the Clark County incident, one of the teachers had worked at the student's school previously, but had moved to another school. This bill removes the limitation that this crime only applies if the employee or volunteer is working at the same school in which the student is enrolled, because I do not see any reason why it would be any less of a crime if a school employee or volunteer engages in sexual conduct with a student from another school. Of course, there are problems and other crimes that can be charged if these adults have sexual conduct with a minor, but I felt it was important to broaden the current definition of a crime involving students and employees or volunteers. School employees and volunteers are placed in a special position of trust when they are around students. It does not matter which school the student attends. All school employees and volunteers that come in contact with students should be held to the same high standard of behavior, not just those working at a specific school that the student happens to attend.

Also, you may be interested to know that at least two other states, Alabama and Texas, do not limit the crime of sexual conduct with a student, or staff working at the same school as a student. This bill does not change the level of the felony or punishment for the crime. I urge your support.

Chairman Frierson:
We have obviously discussed this matter extensively. The other bill that I am not hearing today attempted to accomplish the same end, but your bill, as drafted, includes current professionals as set forth in the statute who have had any contact. For example, if the adult met the kid in that environment, but was not the kid's teacher, would you be amenable to adding "or was faculty or volunteer" so that, for example, if a teacher worked at a school when the kid was 14 years old and then quit, it would still be a prohibited relationship based on the nature of how that student met that teacher?

Assemblywoman Dondero Loop:
Yes, I think that would be very appropriate due to the fact that many volunteers do just that; they volunteer and then move on to another school, or a bus driver could change routes. Thank you for that suggestion.

Chairman Frierson:
I would be honored if you would allow me to sign on to your bill. When the news report came out, you were right on top of submitting the bill draft for it, so I wanted to allow you to see that to an end. If there is going to be an amendment anyway, I would love to be allowed to be added on.

Assemblywoman Dondero Loop:
Mr. Chair, kumbaya.

Assemblyman Hansen:
I cannot help but play devil's advocate on this. If the age of consent is 16 in Nevada, and now the moral standard has boiled down to anything between two consenting adults is acceptable, how do you get around the idea that these people can be told that teachers cannot have a relationship with a fellow adult?

Assemblywoman Dondero Loop:
I believe that it is 18 in this setting; therefore, they would be bound. Am I correct, Mr. Wilkinson?

Brad Wilkinson, Committee Counsel:
I am sorry. Can you repeat your question?

Assemblywoman Dondero Loop:
The question is, if we have two people who are consenting to a relationship and one is 16 and the other is a teacher, how do we get off telling them that they cannot have the relationship? I believe it is 18 years old. Am I correct?

Brad Wilkinson:
The age of 18 is when the statute no longer applies.

Assemblyman Hansen:
For the record, that is not my standard of morality. I do not accept the consenting adult standard.

Chairman Frierson:
Mr. Wilkinson was part of the staff when this was put into law, and we did some legislative research and history, and uncovered discussion throughout that session. The point was that this was a relationship based on positions of trust, authority, and tremendous influence, whereas a 16- or 17-year-old who one might meet at the store, it might be considered under the age of consent whether we agree or not. When you are responsible for giving a 16- or 17-year-old a grade, that becomes something different. The intention in 1997 from the legislative history was that they wanted to recognize that there was a difference with the teacher-pupil relationship.

Assemblyman Hansen:
Does that same standard apply if the student is 18? I graduated high school when I was 18, so would there be a different standard at that point?

Assemblywoman Dondero Loop:
Mr. Chairman, would you or Mr. Wilkinson be able to answer that from a legal perspective?

Brad Wilkinson:
The statute does not apply at the age of 18, and that was a policy decision that the Legislature made when the statute was enacted to say, at that point, it was no longer a crime.

Chairman Frierson:
Ms. Dondero Loop has raised that question, and my instinct was that the age of consent across the country is 18 at the very least. While that might be something that could result in a human resource consequence—which I believe the school district may address today—an adult is an adult is an adult. I think there is a statute that addresses university faculty as well, so it is worthy of consideration.

Are there any other questions for Ms. Dondero Loop?

Assemblyman Carrillo:
Regarding section 1, where it says "at the age of 21 or older," what if the individual is a volunteer and happens to be in that age group under 21? How would that apply to this? Would it be considered that they are exempt?

Assemblywoman Dondero Loop:
I am not sure where that would go. Unless he was a high school student volunteering, generally, all those volunteers would be 21 years of age.

Assemblyman Carrillo:
Do you need to be at least 21 years of age to work at the school district?

Assemblywoman Dondero Loop:
We can assume that teachers are mostly over 21 because they are certainly educated and have gone through college. As far as a person who is hired as an aide, I would have to defer to the Clark County School District to ask them if there is an age limit. I am not sure of that. Volunteers who work in a classroom under a teacher are usually over 18, and high school students are usually under 18.

Assemblyman Carrillo:
I wonder if there is anyone from the school district that can answer that question, or if it is something you can get an answer to later.

Assemblywoman Dondero Loop:
I will get an answer and get back to you.

Chairman Frierson:
I will describe a scenario that has come to my attention. An 18-year-old high school senior, who is dating a 16-year-old, graduates from high school, and then volunteers at the school. I think the statute was trying to navigate around the closeness of age, at least back in 1997. I would also welcome the school district addressing that if they can.

I see no other questions. I will now invite anyone here to testify in support of A.B. 377 to come forward now, both here and in Las Vegas. Also, we have had a great deal of correspondence on this, but in all fairness I said I was going to hit the gas pedal, and we have a work session we need to get through. We will work through as much as we can.

Nicole Rourke, Executive Director, Intergovernmental Relations, Clark County School District:
The Clark County School District (CCSD) strongly supports A.B. 377. Student safety is a top priority for CCSD. There is no place in a school for an inappropriate relationship between a teacher, coach, or anyone in a position of authority and a student. The statute's original intent was to protect students from inappropriate relationships with school staff or volunteers, and we support closing any loopholes in the law. We strongly support the bill and would like to work with the sponsor on any amendments on the bill that would further ensure the safety of our students and the removal of employees from the school environment when that is violated.

To answer Assemblyman Carrillo's question regarding employees or volunteers under the age of 21, we do have some staff and coaches and volunteers in those positions who are under the age of 21.

John Jones, representing the Nevada District Attorneys' Association:
We are here in support of A.B. 377. We appreciate both of these measures. I want to touch on Assemblyman Carrillo's question. The one glaring omission from my point of view is a person who is a student teacher who is potentially under the age of 21, but working in a quasi-teacher capacity under the supervision of another teacher who could potentially not be covered by the statute due to age. Depending on the age of the student, we would potentially have a statutory sexual seduction charge, which means the victim was under 16 and the perpetrator was over the age of 18. If they are under the age of 21, that would be a gross misdemeanor offense.

Craig Stevens, representing the Nevada State Education Association:
The Nevada State Education Association (NSEA) is in full support of A.B. 377 and we appreciate your bringing this bill forward. This is about the safety and well-being of our students. The NSEA fully supports anything we can do to make sure we are creating the best learning environment possible in our schools, and safety is our number one priority.

Lindsay Anderson, representing Washoe County School District:
We believe this legislation will help school districts and law enforcement agencies in doing all they can to protect the safety and well-being of our vulnerable students under the age of 17. We are in full support of this bill.

Dotty Merrill, representing the Nevada Association of School Boards:
I have spoken with you on behalf of the Nevada Association of School Boards about the importance of clarifying this definition and making sure that it addresses the kind of situation that the Assemblywoman referenced in her remarks. It is unfortunate that this situation has arisen in several districts around the state. In the last two years, we are aware of at least five different situations where, under the existing language, there were problems.

This relates to another statute, NRS 391.312, subsection 1, paragraph (h), which has to do with the grounds for suspension, demotion, dismissal, and refusal to reemploy teachers and administrators. One of these sections in that statute has to do with conviction of a crime involving moral turpitude. We want to ensure that this definition is clarified in order to have it work smoothly with NRS 391.312.

Lonnie Shields, who was here on behalf of the Nevada Association of School Administrators, had to leave and asked me to voice his support on behalf of the Association as well.

Mary Pierczynski, representing the Nevada Association of School Superintendents:
Thank you for working on this bill and bringing it forward to keep our students safe. We are in full support of the bill.

Chairman Frierson:
Is there anyone else in Carson City wishing to offer testimony in support? Is there anyone in Las Vegas?

Since the human resource legislation, or the statute, came up, was there an interest in an amendment to deal with human resources? That may have been

the other bill. Since that is related, I want to give you an opportunity to address it if you want.

Nicole Rourke:
Yes, we would like to look at a possible amendment that may include 18-year-olds within the statute as long as they are still students in our schools. That is part of it. We also want to look at immediate removal from the school environment.

Chairman Frierson:
As far as the immediate removal, was that something that you already had drafted that we can consider?

Nicole Rourke:
I have submitted that for consideration. There are some issues around the "any age" language within what we proposed, but we are willing to work with you and Ms. Dondero Loop on the specifics and the exact wording that would ensure student safety.

Chairman Frierson:
I want to empower the district to take disciplinary action as they deem appropriate. I do not want to pass up the opportunity to get that on the record so we can consider it.

Is there anyone else who wishes to testify in support? Is there anyone who wishes to testify in opposition to A.B. 377? Seeing no one, is there anyone who wishes to offer testimony in the neutral position in Carson City or Las Vegas? Seeing none, I would invite Ms. Dondero Loop back up for any closing remarks she may have. We appreciate the hard work. Ms. Merrill had some language before our language was out, which showed the commitment and concern on this issue.

Assemblywoman Dondero Loop:
I would like to thank everyone for their time. This was a team effort. As a former educator in Nevada, and as a grandmother of a child in the school district, I think this is the right way to go and it strengthens our laws to protect our most valuable resource: children.

Chairman Frierson:
With that, I will close the hearing on Assembly Bill 377. We will take a few minutes to prepare for today's work session.

We do have a work session document posted, but we are going to be pulling Assembly Bill 10, so we will proceed with the remainder of the bills.

Mr. Ziegler, please start with Assembly Bill 102.

Assembly Bill 102: Revises provisions relating to the crime of participation in an organized retail theft ring. (BDR 15-153)

Dave Ziegler, Committee Policy Analyst:
The first bill was A.B. 10, which the Chair is not going to hear today.

The next bill, and the first to discuss, is Assembly Bill 102. This bill was sponsored by Assemblyman Carrillo. It was heard in this Committee on February 18, 2013. Assembly Bill 102 relates to property crimes. [Read from work session document (Exhibit K).]

I think it is accurate to characterize the first amendment from the public defender's office as an unfriendly amendment, and the second amendment from the Retail Association as a friendly amendment.

Chairman Frierson:
So we are clear, it is my understanding that the amendment proposed by the Retail Association would eliminate the original bill regarding the change in value and simply redefine "organized retail theft" without the other provision. Am I accurate?

Assemblyman Carrillo:
That would correct what we are looking to do.

Chairman Frierson:
So that we are clear for Mr. Ziegler, when we presented this, there were some changes in the original bill that were simply clerical to refer to "organized retail theft" as opposed to "organized retail theft ring." That would still hold. It would be section 1, subsection 1(a) that would be removed from the bill and the remainder will proceed as it is with the amendments to subsection 5.

Are there any questions from the Committee? I will entertain a motion.

Assemblyman Duncan:
The amendment offered from the public defender's office was unfriendly, and the amendment offered from the retail association was friendly, correct? What will the motion be for?

Chairman Frierson:
Correct. I was entertaining a motion for amend and do pass with the friendly amendment, not the other amendment.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 102.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

Assemblyman Duncan:
I believe that the amendment offered by the public defender's office makes sense to me so we are not charging people with duplicative crimes. Without that amendment, I will be voting no.

Chairman Frierson:
Is there any other discussion on the motion?

Assemblyman Ohrenschall:
Is the reduction from $3,500 to $2,500 still in the bill with the Retail Association's amendment?

Chairman Frierson:
My understanding is that it is not.

Assemblyman Ohrenschall:
It is not in the bill. I was confused by the amendment. I still have some questions, but I will vote in favor of the bill. I reserve the right to change my vote on the floor.

THE MOTION PASSED. (ASSEMBLYMAN DUNCAN VOTED NO.)

Chairman Frierson:
The floor statement will go to Mr. Carrillo.

We will move on to Assembly Bill 110.

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

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 110 was sponsored by Assemblyman Ohrenschall and was heard in this Committee on March 7, 2013. The bill relates to crimes against public health and safety. [Read from work session document (Exhibit L).]

Chairman Frierson:
I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 110.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

Assemblyman Hansen:
The only trouble with the bill is that it is the straw man argument. No evidence has ever been presented that any county or municipality in the state has had a law that said certain breeds of dogs were outlawed. I will support the bill, but I have that reservation on it. The overall thing is not harmful. Again, I have a problem with passing laws that restrict local jurisdictions, especially when there is no evidence presented that these types of situations have occurred in Nevada.

Assemblyman Ohrenschall:
I value my colleague's comments. As he said, at the hearing there was no evidence that there had been an ordinance like that in Nevada, but ordinances like that have passed in other jurisdictions. I do not think you can base that on a dog's breed. I believe most of the testimony that we heard was in support.

Chairman Frierson:
Are there any other comments or discussion?

THE MOTION PASSED UNANIMOUSLY.

This will be assigned to Mr. Ohrenschall.

We will move on to Assembly Bill 134.

Assembly Bill 134: Revises provisions governing nonprofit corporations. (BDR 7-223)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 134 was sponsored by Assemblywoman Dondero Loop and was heard in this Committee on March 4, 2013 (Exhibit M). The bill relates to the directors and officers of nonprofit corporations. The bill deletes the existing requirement that all members of a board of directors or trustees of a nonprofit corporation must be at least 18 years old. There were no amendments.

Chairman Frierson:
Are there any questions regarding A.B. 134?

> ASSEMBLYWOMAN DIAZ MOVED TO DO PASS ASSEMBLY BILL 134.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Spiegel:
I have several concerns about this bill. The top two are the concerns of giving fiduciary responsibility to people who are unable to sign contracts because of their age. I think there is a conflict in there. Related to that, I also have concerns that there is a possibility that at some point, if there are enough youth on a board, that a quorum could be achieved only by including board members who are, again, not old enough to sign contracts or legally conduct business. For those reasons, I will be opposed to this bill.

I appreciate the intent of this bill and I appreciate encouraging our youth to have an active role. I would be supportive of youth serving in an ex officio capacity.

Chairman Frierson:
You made that point during the hearing as well, so I appreciate that. Is there any other discussion?

> THE MOTION PASSED. (ASSEMBLYWOMAN SPIEGEL VOTED NO.)

The floor statement will be assigned to Assemblywoman Dondero Loop.

We will now move to Assembly Bill 156.

Assembly Bill 156: Revises provisions relating to the sealing of certain records. (BDR 14-590)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 156 was sponsored by Assemblyman Ohrenschall and was heard in this Committee on February 28, 2013. The bill relates to criminal procedure and sealing of criminal records. [Read from work session document (Exhibit N).]

On that last part, it simply is a drafting matter. The way the bill was drafted it was not clear that it was talking about a conviction of all of the listed crimes,

but that is the intent. The second amendment is just to fix a minor glitch in the drafting. The first amendment was proposed by the District Attorneys' Association.

Chairman Frierson:
Is there any discussion or any questions? I will entertain a motion.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 156.
>
> ASSEMBLYMAN HANSEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be assigned to Mr. Ohrenschall.

We will now move on to Assembly Bill 212.

Assembly Bill 212: Prohibits the possession of portable telecommunications devices by certain prisoners. (BDR 16-639)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 212 was sponsored by Assemblyman Hansen and was heard in this Committee on March 26, 2013. The bill relates to corrections and unauthorized or prohibited conduct. [Read from work session document (Exhibit O).]

Chairman Frierson:
Are there any questions on the bill?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 212.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Mr. Hansen, of course.

Next, we have Assembly Bill 352.

Assembly Bill 352: Revises provisions governing hoax bombs. (BDR 15-510)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 352 was sponsored by Assemblyman Horne and was heard in this Committee on March 26, 2013. The bill relates to crimes against public health and safety. [Read from work session document (Exhibit P).]

Chairman Frierson:
Are there any questions?

> ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 352.
>
> ASSEMBLYMAN MARTIN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be assigned to Mr. Wheeler, second to Mr. Horne.

We will move to Assembly Bill 365, dealing with court interpreters.

Assembly Bill 365: Revises certain provisions relating to court interpreters. (BDR 1-483)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 365 was sponsored by Assemblywoman Diaz and was heard in this Committee on March 25, 2013. The bill relates to the court system, witnesses and evidence, and criminal and juvenile procedure. [Read from work session document (Exhibit Q).]

The amendment that is included in your packet is an updated, or cleaned up, version of the amendment that was submitted on the day of the hearing.

Chairman Frierson:
It appears that the newest amendment adds language on the first page of the amendment setting forth an order of preference, with "certified" being preferred over the alternates. I did notice that the original bill proposed to strike the language in section 5, and I think the newest amendment proposes to add that back. I believe on the second page it is in orange where they proposed to take out the language that prohibited a spouse or another related witness. It looks like they are proposing to add that back in. On the next page, it looks like in section 5, subsection 5, the amendment proposes to strike the condition, "If the judicial proceeding is civil in nature, the reasonable fees must be paid by the

requesting party." It looks like that language is stricken. The last one is the addition in section 10 that clarifies that it will be the Advisory Commission on the Administration of Justice who would be appointing a subcommittee to conduct an interim study.

Assemblywoman Diaz:
In reviewing the amendment, I think all of the points being changed in the amendment that you made was an oversight on our behalf to make sure we did not modify anything in sections 7, 8, or 9 until we conduct our study and we make sure we have all the resources in order to ensure that is feasible. I wanted to put folks at ease that it was an oversight that we did not leave the language as we stated during the hearing. We will leave those sections as they were in statute.

Chairman Frierson:
Mr. McCormick, have we accurately reflected the amendment, minus sections 7, 8, and 9?

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Office of Court Administrator:
Yes, to that representation. I failed to purple double-strike-through in sections 7, 8, and 9 in drafting this.

Chairman Frierson:
Are there any other questions on the proposed amendment?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 365.
>
> ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be given to Mrs. Diaz.

Last on today's work session is Assembly Bill 366.

Assembly Bill 366: Revises certain provisions governing nonprofit cooperative corporations. (BDR 7-764)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 366 was sponsored by Assemblywoman Benitez-Thompson and was heard in this Committee on March 25, 2013. The bill relates to business associations. [Read from work session document (Exhibit R).]

It may not be clear who we mean by "proponent." Mr. Luke Busby was representing the Great Basin Community Food Cooperative that day. [Continued to read from work session document (Exhibit R).]

Chairman Frierson:
Are there any questions from the Committee?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 366.
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement is assigned to Mrs. Spiegel.

We have gone through quite a bit of work and I appreciate everyone's patience. We do have floor in a matter of minutes, but does anyone wish to provide public comment? I see none, so the Assembly Committee on Judiciary is now adjourned [at 11:22 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 2, 2013 **Time of Meeting: 8:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 271	C	Mark Beres	Written Statement
A.B. 271	D	Assemblywoman Leslie Cohen	Court Case of *Shelton v. Shelton*
A.B. 271	E	Steve Sanson	Written Statement
A.B. 271	F	Marshal Willick	Written Testimony
A.B. 271	G	Marshal Willick	Written Testimony
A.B. 271	H	Marshal Willick	Written Testimony
A.B. 207	I	Mary Berkheiser	Fact Sheet
A.B. 207	J	Susan Meuschke	Written Testimony
A.B. 102	K	Dave Ziegler	Work Session Document
A.B. 110	L	Dave Ziegler	Work Session Document
A.B. 134	M	Dave Ziegler	Work Session Document
A.B. 156	N	Dave Ziegler	Work Session Document
A.B. 212	O	Dave Ziegler	Work Session Document
A.B. 352	P	Dave Ziegler	Work Session Document
A.B. 365	Q	Dave Ziegler	Work Session Document
A.B. 366	R	Dave Ziegler	Work Session Document