MINUTES OF THE JOINT MEETING
OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION
AND THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
February 28, 2017

The joint meeting of the Assembly Committee on Corrections, Parole, and Probation and the Assembly Committee on Judiciary was called to order by Chairman James Ohrenschall at 8:03 a.m. on Tuesday, February 28, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins

COMMITTEE MEMBERS ABSENT:

Assemblyman Jim Wheeler (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James E. Dzurenda, Director, Department of Corrections
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Tonja Brown, Private Citizen, Carson City, Nevada
Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago, Illinois
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office

Chairman Ohrenschall:
[Roll was taken. Committee protocol and rules were explained.] This morning, we are going to start with a hearing on Assembly Bill 74, and I will now open the hearing on A.B. 74.

Assembly Bill 74: Revises provisions relating to the testing of offenders for exposure to human immunodeficiency virus. (BDR 16-257)

James E. Dzurenda, Director, Department of Corrections:
I am going to briefly go over what I saw when I entered the Department of Corrections (NDOC) that effected Assembly Bill 74. I talked to the U.S. Department of Justice (DOJ) about what the correctional officer's responsibility is when exposed to the human immunodeficiency virus (HIV) or he is notified of HIV. The NDOC tests every offender coming into the system for HIV. When tests are positive, according to our state law, we notify staff that the offender is HIV-positive, then we separate the inmate and isolate him so the officers and staff know where he is. This indirectly lets the other inmates know as well. Anytime an offender is moved to a different location, if one person knows why he is there, they all know why he is there. It is irresponsible. The agency should not be separating HIV-positive offenders in this day and age; it is a violation of the Health Insurance Portability and Accountability Act (HIPAA).

When I started reviewing things for Assembly Bill 74, it was to ensure there was something in our law that stated we cannot notify staff about HIV-positive offenders unless it is related to a clinical reason, and then only clinicians are notified. The correctional officers do not get notified, and we do not separate inmates based on their testing positive for HIV. One reason for this is that staff are automatically trained to take precautions in every situation, no matter what an offender may or may not have. Just because an offender tests negative for HIV, we still assume that everyone has HIV or can contract it down the road after testing. When staff persons respond to incidents, if there is blood, they automatically use latex gloves, take precautions, and do blood-exposure cleanup and protocol if they are exposed to any fluids.

Right now, what I am asking for is support to follow federal law. When I found out about our procedures regarding HIV, I immediately took it offline. I automatically follow federal guidelines. We still test every offender coming in for HIV, but the custody staff are not notified about positive HIV testing, and we do not separate offenders based on HIV. I changed the housing units used for HIV-positive inmates and made it regular population housing. We moved those inmates to general population around the state.

Basically, what we are doing is following HIPAA and federal guidelines from the DOJ. I am asking the Legislature to make the language in our law similar to the federal guidelines.

Assemblyman Pickard:
I appreciate the fact that we are trying to adhere to HIPAA rules and minimize the negative consequences that separation brings. I recognize that the staff are trained, but what about the activities within the population that can spread HIV? How can we be assured that those who have been identified as having HIV do not further spread it among the population?

James Dzurenda:
We added a layer of education to those offenders who test positive. There is still the part of the law that says, if an HIV-positive offender knowingly has sexual intercourse or sexual contact with another individual and does not notify the other offender, it is still against the law and the offender will be arrested. I cannot guarantee that it will not happen—anything can happen—but we do notify them and educate them more about what HIV is and what can happen if they have sexual intercourse.

Assemblywoman Jauregui:
We are no longer going to segregate the HIV-positive population, but under section 1, subsection 4, it says if an offender tests negative but engages in behavior that increases the risk of transmitting the virus, they will be segregated. Does that not defeat the purpose of not segregating those who test positive? Would this not be misleading to those who test negative but are segregated? People would know why they are segregated.

James Dzurenda:
We do not condone any sexual contact. Any offender who has sexual relationships with another offender, or attempts to have sexual contact with another offender, is still acting against the law. We will arrest them for sexual assault and will put them in segregation based on the charge of the disciplinary infraction; but they do not stay there. It is based on the discipline, so we can investigate the incident and find out what happened. Maybe he was assaulted and we did not know it, so we isolated the individual in restrictive housing until the investigation was complete. The charge that the offender gets for sexual assault is not only an arrest crime, but also a disciplinary infraction in the prison system. That follows the same guidelines as any disciplinary infraction that is on the level of any other assault that might happen.

Assemblyman Thompson:
I am reading this bill and see that you are doing the testing and identifying, but can you share with us what the medical care is for HIV-positive offenders? What are the steps that staff is taking to ensure the offenders are getting the appropriate medication? Are they cared for in a way so that they are not infectious any longer?

James Dzurenda:
The first thing we do with the offenders when they test positive is educate and counsel them. Right after counseling, they are seen by the medical staff and started on a regimen based upon where they are with their treatment. They may have been receiving treatment in the community, but if not, they will start treatment for HIV. The medication used is based upon whatever the doctor recommends for controlling HIV and treating HIV symptoms if there are any, so that it does not go into full-blown acquired immune deficiency syndrome (AIDS). We treat everyone who tests positive for HIV. Right now, there are a little over 100 offenders statewide who have tested positive for HIV. All of those offenders are currently under medical care and prescription medication treatment.

Assemblyman Thompson:
Moving forward, what about those of the 100 identified HIV-positive offenders who are released back into the community? Are we connecting them with medical care to ensure they continue on their medication upon release? Is that part of their reentry aftercare?

James Dzurenda:
I cannot guarantee that we always do, but we are connecting them with services in the community. The only thing we need to do a better job on is the Medicaid applications. Part of the services we provide inmates is medication for the first four weeks in the community, and we hook them up with medical service in the HIV community. I would not know if they continue to get their medications, but we need to make sure we go through the Medicaid process with those who qualify.

Assemblyman Thompson:
We are glad you are addressing that.

Assemblyman Hansen:
You test all inmates who come in, so obviously 100 have tested positive. What is the state's liability if someone comes in negative and ends up contracting HIV or AIDS while they are in prison? Is there any liability to that? How do you protect the people who do not have it? What happens to the state?

James Dzurenda:
That is more of a question for the Office of the Attorney General. We have policies to supervise, to monitor, and to ensure inmates are doing the right thing all of the time, but you cannot guarantee it. There is no way to stop everything bad from happening inside the prison system. All we can do is ensure our staff is trained to monitor, watch, supervise, and stop anything that looks like a wrong activity. We also do periodic monitoring of individuals we think might need it.

We are 100 percent PREA-compliant, which is the Prison Rape Elimination Act. We have four outside agencies that come in to audit all of the prisons to ensure we are in full compliance with the PREA laws: that we have policies in place, there is adequate supervision, there are no blind spots in the facilities, notifications get to the inmates, and that the staff is trained. We have all of that, but you still cannot guarantee that something will not happen. We know we are within the federal guidelines for compliance with PREA, and we have done everything we can to prevent rape as long as staff does their jobs right.

Assemblyman Hansen:
The reason they used to segregate the offenders was to protect the other people who were not HIV-positive, but the federal law does not allow that any longer. Is that the purpose of this bill?

James Dzurenda:
That is part of it. When you segregate inmates with HIV, they become victimized by the other inmates, not for sexual assaults or AIDS, but they are targeted. They get assaulted just because they are positive for HIV, or they are treated differently. Inmates cannot go to effective programming because they will not be accepted in the program. It is more an array of everything that happens in a prison system when you start separating them for issues like HIV.

Assemblyman Hansen:
There is no easy answer.

Assemblywoman Cohen:
What is done to prevent victimization from guards and staff?

James Dzurenda:
It is the same thing under PREA. The Prison Rape Elimination Act has a piece in there about training correctional officers in what they can and cannot do. If correctional officers engage in any type of misconduct with an inmate, they are dealt with. If it is sexual, they are arrested.

Assemblywoman Cohen:
Is that monitored by an outside agency?

James Dzurenda:
It is monitored by NDOC. Video coverage is part of PREA, so areas that are vulnerable inside a prison—outside the showers, recreational areas, common areas—are on video. The majority of high-risk areas are on video unless they are directly supervised at all times by two staff members. Every incident or claim by an inmate about an officer approaching them in a sexual manner, or in what they believe might have been in a sexual manner, is investigated by our Inspector General. All of those are monitored—the offender, the perpetrator, and the victim—throughout the year. If we have one officer or one offender who is constantly being identified by multiple inmates, that is dealt with differently. Those staff members are monitored more closely. Even if they are not found liable, we still make sure they are notified in writing that it is against the law and that they will be arrested. We cannot prevent everything, but PREA is very clear on how to manage staff that are showing misconduct towards sexual relationships with offenders.

Chairman Ohrenschall:
Looking at section 1, subsection 3, you change the "must" to "may." I would like to know the rationale for that. Also, section 1, subsection 4, paragraph (b), deletes "such as battery, sexual activity or illegal intravenous injection . . ." and is changed to "as determined by regulation of the Department." What is the rationale for that change?

James Dzurenda:
It went to "may" because of incidents where an offender had been accused multiple times of possibly having sex with other offenders. We, the Inspector General and I, would have to be notified so that it can be investigated. We do not need to know about every case, but if it is impropriety, against the law, or if that sexual conduct is continuing, then we need to know. That is why the "may." It is on a need-to-know basis based on exposure: for example, continued sexual relationships; a staff member is exposed by blood-to-blood contact in an incident; or an inmate has a weapon and purposely cuts himself, then stabs someone else to infect him with HIV. If this happens, we will have it investigated through the Inspector General to see if the law was broken.

The other case that you mentioned relates to the risk of the offender. Offenders who have certain victimization traits are targeted by multiple offenders based on femininity or sexual preference. If an offender who tests positive is a perpetrator going after victims who tend to be victimized more frequently, I need to have regulations on how we deal with those offenders. Those offenders may be separated if they show risk of victimizing other offenders. There has to be something in my regulations at NDOC on how we deal with those offenders. If the risk of transmitting is higher for a perpetrator, we have to deal with them differently.

Chairman Ohrenschall:
Over all, passage of this bill would lead to safer conditions for those offenders who are HIV-positive, and there would be less possible transmission.

James Dzurenda:
That is correct.

Assemblywoman Krasner:
In section 1, subsection 3, if the results of a supplemental test are positive, does the federal law mandate you change that to "may"?

James Dzurenda:
The federal law basically says that there is no need to know if anyone tests positive for HIV unless someone needs to know. Nonclinicians do not need to know when an offender tests positive, unless there is a crime or something that would show the person is purposely trying to transmit the HIV to someone else. There is no need for any of us to know because we are all trained in blood-borne pathogens and to take precautions at all times.

Assemblywoman Krasner:
Going back to what you just mentioned, what if an inmate intentionally wants to infect other inmates? Maybe he is in food service and intentionally cuts his finger to bleed into the food. Are you saying that you are not going to do anything until later, when it is too late?

James Dzurenda:
If an offender has actions, we respond to the actions. For example, we do not know everyone out in the community who is HIV-positive. He or she could be working in a restaurant or such. For that same reason, if they purposely try to infect someone, you react to that. We prevent problems by education, not by segregating inmates who have HIV. Anyone in the community could have HIV, but we treat everyone the same way.

Assemblywoman Krasner:
I understand what you are saying about fair treatment. We want everyone to have fair treatment, but this is not "out in the community." This is in a correctional facility. Would it not be smart to at least have records of who is infected with HIV, so you do not put them in food service where they might intentionally cut their finger and bleed into the food? That seems preventative to me.

James Dzurenda:
When offenders have HIV, we follow the HIPAA guidelines and do not stop them from working in food services or having a job like everyone else. We react if they purposely victimize people, but they are going to be treated like any other offender.

Chairman Ohrenschall:
Is there anyone who would like to speak in favor of Assembly Bill 74 here or in Las Vegas?

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We are testifying in support of this legislation. It is a project that we have been working on with NDOC. Since the DOJ sent a letter (Exhibit C) to NDOC stating that it was not in compliance with federal law, we want to commend NDOC for acting swiftly and bringing this legislation forth in order to become compliant and to respect the civil rights of those individuals. It enables NDOC to fully implement their changes in regulations and furthers the legally-required protections for HIV-positive inmates. It also shifts some of the responsibility to the new medical director. We want to commend the department on the new medical staff who are prepared to deal with that issue. The risk of contracting HIV is through an exchange of bodily fluids, and you can get more information on that from a medical person.

One of the biggest problems is work credits. We sent a letter on behalf of a particular HIV-positive inmate who was not able to earn work credits or to be able to participate in any type of programming due to the segregation. That person could have qualified to get out of prison earlier. Those were our primary concerns.

Chairman Ohrenschall:
Currently, because of the segregation policy of HIV-positive inmates, are they allowed to participate in work programs? [The Director stated offline that they could not in the past, but can now.]

Is there anyone else who wants to speak in favor of Assembly Bill 74? [There was no one.]
I will take opposition now if there is anyone opposed to the bill here or in Las Vegas? [There was no one.] Is there anyone neutral?

Tonja Brown, Private Citizen, Carson City, Nevada:
I like this bill. I want to touch on a couple of things since we are talking about communicable diseases. There is some additional information dealing with other issues that are happening with NDOC that you are probably not aware of that are just as serious. One issue is a highly-infectious deadly disease that is easier to spread than HIV that is called methicillin-resistant staphylococcus aureus, or MRSA. Back in 2007, there was an outbreak of MRSA. Inmates contracted it, and some died. It also went out into the community.

Chairman Ohrenschall:
The bill is specifically on HIV-positive inmates. There will be a public comment period at the end of the hearing, if you want to speak on that issue then. Today, please speak to the bill.

Tonja Brown:
I agree that the inmates need credits. For those inmates who were placed in segregation, would they be able to receive credits retroactively since it is tied to early parole. I think that should be applied somewhere along the line.

Chairman Ohrenschall:
Is there anyone else who would like to speak in the neutral position on the bill? [There was no one.] I want to state for the record that, on the Nevada Electronic Legislative Information System, there is a letter in opposition to the bill from the Washoe County Health District (Exhibit D) that proposes some changes. I do not know if they have contacted the Director and I do not see anyone from the Washoe County Health District here today. Since there is no further testimony on A.B. 74, I will close the hearing.

I will now open the hearing on Assembly Bill 146. Assemblyman Watkins, along with Assemblywoman Cohen, will present the bill. Chairman Yeager has been kind enough to take over now since I will be giving brief assistance to Assemblyman Watkins.

[Chairman Yeager assumed the Chair.]

Assembly Bill 146: Enacts the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. (BDR 3-617)

Chairman Yeager:
To make sure the record is clear, we are formally opening the hearing on Assembly Bill 146.

Assemblyman Justin Watkins, Assembly District No. 35:
It is my honor to present Assembly Bill 146, which seeks to enact the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. We have a very capable panel. Lindsay Beaver, part of the Uniform Law Commission, will talk about the policy behind the bill. Assemblywoman Cohen and Assemblyman Ohrenschall are commissioners from Nevada on the Uniform Law Commission.

I want to discuss the policy reasons behind seeking to enforce this act. We have nearly 10,000 Canadian nationals who live and work in Nevada, and 1.5 million Canadian visitors to Nevada each year. We do not want to create a loophole for offenders to come to the state, either through vacation or work, looking for the victims who are protected by Canadian domestic-violence protective orders.

To breeze through the sections of the bill, sections 1 through 12 simply provide definitions of the bill. The meat of the bill occurs in sections 13, 14, and 15. Section 13 deals with how law enforcement will honor domestic-violence protection orders from Canada. I would be remiss if I failed to acknowledge that we have had some conversations with the Las Vegas Metropolitan Police Department (Metro) and the City of Henderson regarding their concerns with section 13. This may not be the final version of the bill, but it is the final version that we will present today. We need clarification on how law enforcement verifies protective orders from other states, and whether that same protocol is available for Canadian orders. If law enforcement is aware of a protective order that is being presented to them from, we will say, California, they have mechanisms by which they can confirm that it is a real order rather than relying on a piece of paper. We are checking on the back end to see if those same mechanisms are available to them for Canada. Canada has enacted a law that is very similar to this where they have adopted all of the United States' individual states' protective orders. We think there may be a way of sharing information, but we are not sure. Section 13 may change, depending on what information is accessible to law enforcement.

Section 14 deals with domesticating the order. Everyone is on board with this. If Canadian nationals come to Nevada for a long period of time or as a permanent resident, they can present their Canadian domestic-violence protection order to the court system rather than go through the hurdles normally in place for a foreign order. It is treated more like a neighboring state's order.

Section 15 provides immunity to the law enforcement agency if it turns out that the order was invalid.

Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago, Illinois:
I am the legislative counsel for the Uniform Law Commission (ULC). I know that you have a couple of Uniform Law Commissioners on your Committee, but for those unfamiliar with the organization, the ULC is now in its 125th year. It provides states with well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

Thank you for the opportunity to express support for A.B. 146, which would enact many important provisions of the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act (Exhibit E). Recently approved by the ULC in 2015, the act has already been enacted in Delaware and is currently being introduced in four states—California, Rhode Island, North Dakota, and Nevada (Exhibit F).

Reflecting on the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada had granted recognition of protection orders of the United States in the Uniform Enforcement of Canadian Judgments and Decrees Act (Exhibit G). By this act, Nevada and other enacting states will accord similar recognition to protection orders from Canada. It closes the loophole.

The act is the well-conceived product of a one-year study period and a two-year drafting process. The act's drafting committee included judges, law professors, and practicing lawyers. Attorneys appointed by the American Bar Association and its appropriate sections, and representatives of the national family-law organizations, participated in the drafting meetings. Unfortunately, the threat of domestic violence transcends state and national boundaries. By adopting the provisions of this act, Nevada will ensure that domestic-violence victims are protected, even if the order was issued in Canada.

Adoption of this act will encourage law enforcement officers to enforce the terms of Canadian orders. At the same time, the act protects those officers from civil or criminal liability for complying with the act in good faith. The act also provides clear rules for judicial enforcement and provides important protections for respondents whose due process rights may have been violated (Exhibit H).

Thank you for allowing me to testify in support of A.B. 146. I urge the Committee to support the bill.

Assemblywoman Lesley E. Cohen, Assembly District No. 29:
The other two presenters have already covered everything pretty well. I would like to add that sitting on a drafting committee for the ULC is quite an experience for a law nerd like me. You sit with law professors, practitioners who are at the top of their field, stakeholders who are experts in the field; you go through the acts line by line and paragraph by paragraph. Participants bring in issues and important information from the field—and things that you would never think of—to ensure the law is as good and tight as possible. We want to cover the issue as thoroughly as possible. While I did not sit on this committee or work on this draft, I can assure you that a lot of time and care was put into this to make sure that the product that was brought before our Committee, and the rest of the states that are considering this, is a very good law.

Assemblyman James Ohrenschall, Assembly District No. 12:
I would like to give you a little more information about the ULC. It is a nonprofit organization. As Assemblywoman Cohen mentioned, it consists of many committees, like the drafting committee that hammers out the nuts and bolts of an act and the study committees. Different commissioners from the different states look at a proposal for a uniform act and decide whether the issue is right, and if uniformity among the states will

really help the citizens of the whole country. There are many acts that come out of the Uniform Law Commission. They work on promoting positive legislation where they believe there is a need for uniformity among the states.

The commissioners from Nevada are four members of the Legislature—who must be active members of the State Bar of Nevada—certain members of the Legislative Counsel Bureau, and two professors from the William S. Boyd School of Law.

Assemblyman Thompson:
Are you able to determine the impact this may have on the court system here in Nevada?

Assemblyman Watkins:
What I understand from speaking with the Las Vegas Metropolitan Police Department is that they are unfamiliar with being presented with any Canadian domestic-violence orders that have not been domesticated. It seems that people are going through the process of domestication when it actually comes to the point of enforcement. That seems to be the case so far, so I do not see this as burdening the court system any more. If anything, it might be slightly less since they will be taking some of the steps out that are required for international orders to be domesticated in this state.

Assemblywoman Jauregui:
Assemblyman Thompson basically asked one of my questions. My other question is more on law enforcement. Section 13, subsection 4 points out that, if someone comes here with a Canadian domestic-violence protection order but the adverse party has not been informed, it then falls under the responsibility of our law enforcement to try to inform the adverse party. What kind of impact do we foresee on law enforcement?

Assemblyman Watkins:
As I understand this from talking with Metro, this section complies with the way they handle things now. If the officers are out there and have a domestic-violence order that they can confirm and the adverse party says he has never been served with it, the police will actually serve him, and then it will go into the system. They are used to this procedure and our goal is to make this comply with the procedures in the field as closely as possible, but we may still need to address how they go through the confirmation process. As far as Metro is concerned, there is no difference between California and Canada.

Assemblywoman Jauregui:
If someone from Canada moves here to flee from someone else, would they still file the Canadian protection order, or would they file a domestic one in Nevada?

Assemblyman Watkins:
They could do either. The smarter thing to do if they are going to move to Nevada is to go through the domestication procedure of the order. Then there is a Nevada order and there are no problems with the verification process for law enforcement. It is in our system, and the offender would be breaking a Nevada law. The prosecution would be cleaner. That is in section 14 of this bill. The other option, if you are here temporarily and do not have time to go through the court system, is to present the order to law enforcement, and have it subjected to verification.

Hopefully, we will get language that everyone can live with in this regard. Law enforcement can then make a decision as to what the enforcement will be. These are the other concerns that I failed to raise from the part of law enforcement: verification of the order and what crime they are actually being charged with. It could be a Nevada crime, a Canadian crime, or a hold for extradition. We will get some answers for that. We will also communicate with Delaware and see how it has worked there out in the field. We want to give law enforcement as many tools as possible, but we also do not want to legislate their internal policies.

Assemblyman Pickard:
I appreciate the need for this. In my practice, I do a fair amount of representation of clients on both sides, the applicant and the adverse party. That is the genesis of my concern. When it comes to family law and custody issues, we see the protection orders misused on a fairly frequent basis. My concern is, When will we find out about the verification? In the bill we allow law enforcement, if the verification is not made, to use other means of determining if the order is valid, although the other means are not defined. What happens if someone makes it up and creates their own? Law enforcement may not have any idea what the Canadian orders look like. When will we know how you are going to modify this bill? Will we have another hearing to raise other questions that may come if those changes are substantial?

Assemblyman Watkins:
Your concerns echo what was brought to us by law enforcement regarding the language of "other means." We do know that law enforcement does have some limited access to Canadian orders now through the Central Repository for Nevada Records of Criminal History. The concern there, as I understand it, is that the Central Repository is not available to law enforcement on a 24-hour basis to confirm the orders. The next question is, Based on Canada's adoption of all of our orders, is there sharing of these orders on the federal level, and is this information on a national system? We use the National Crime Information Center (NCIC), and if the information is on it, the verification happens in the field and is only a phone call away. The intent is to make sure that this complies with the protocol that is already in place by law enforcement and not to create new protocol for verification enforcement of these types of orders. If we find out that they have these easy means of verification, the language may change very little. I imagine we will address that

during a work session versus another hearing. We will work with all of the stakeholders to ensure this is something they can enforce, are willing to enforce, and provides them with as many tools as possible.

The other thing to recognize about this order is that it is only the non-contact rules of domestic-violence protection orders that we are talking about. It is just separation. He goes that way and she goes the other way. I do not believe we are talking about significant rights, and that allowing this extra layer of discretion to law enforcement is of no particular concern.

Lindsay Beaver:
Section 14, subsection 5 is where the respondent, or adverse party, has the opportunity to raise the affirmative defense if they did not receive due process when they were in court.

Assemblywoman Tolles:
Delaware has already passed this. Are there any other states that have considered this, are currently considering this, or have voted not to pass it?

Lindsay Beaver:
It was under consideration in Colorado last year, but it was not ultimately enacted there.

Assemblywoman Tolles:
What were the reasons for not passing it?

Lindsay Beaver:
In Colorado, there were some concerns about why Canada specifically, and why the protected individual cannot just go to court. The answer, however, is that the evidence may not be here; it may be in Canada. If they have already gone through the process, let us save them that step and enforce the order, especially if it is under an emergency situation where the no-contact order needs to be enforced.

Why Canada? The ULC works closely with our Canadian analog. Canada has a uniform law that recognizes the orders from the United States, so this is an effort to have a reciprocal recognition of their orders.

Assemblyman Watkins:
The other concern with asking them to file a Nevada action specifically is that Nevada may not have jurisdiction over the adverse party until a time when it could be too late. If the person comes here, it is probably too late to prevent the harm from occurring. If we can adopt an order that exists in Canada saying that we have jurisdiction over the person, we might be able to prevent some harm.

Assemblyman Elliot T. Anderson:
If you had the two parties, how would they go about getting any enforcement now? It would be easier if the two Canadian nationals were residents here. It would be easier than a tourist situation. Is there a comity process that they are going through with our court system to get them recognized now?

Assemblyman Watkins:
We are getting some of those answers for you so that I do not misrepresent how it happens in the court system and how it translates to the field. Your example of two Canadian nationals living here is the least likely to be a problem. Nevada would have jurisdiction over both of those individuals, and they could get a Nevada domestic-violence protection order, absent some of the evidence being in Canada. As I understand it, the way law enforcement deals with a California domestic-violence order is, if they get a call and the person says there is someone outside against whom I have an order, law enforcement goes there and is presented with a piece of paper. They call in to dispatch because we have access to all of these orders through NCIC—a universal federal system—they check the number and the case to make sure it is an enforceable order, and then they enforce it. They will make an arrest based on a violation of another jurisdiction's protection order. If they are unable to verify it, they will not just walk away, but will try to de-escalate the situation and keep everyone as safe as possible. We are looking to mirror that and treat Canada as if it were another state in the Union, as long as law enforcement has the same access to the information that they do for other states. We are still discovering what that access looks like. Access through the Central Repository is not as good as that of NCIC. We are going to deal with NCIC and see what that answer is.

Assemblyman Elliot T. Anderson:
Just a comment, but I do not understand why Colorado has a problem with Canada. Of all of the countries with court systems, I think I would worry about due process the least with Canada.

Assemblyman Ohrenschall:
To follow up on Assemblywoman Tolles' question, it has been enacted in Delaware, has not been enacted in Colorado, but is currently being considered in California, North Dakota, and Rhode Island. Assemblyman Watkins put it perfectly when he mentioned that we really want the same ease with the provinces of Canada that an officer has with consulting the NCIC system for an order from another state. Earlier, Assemblyman Watkins had some data on how many Canadians live in southern Nevada and how many tourists come from there, which is a lot more than I expected. There are quite a few folks here in our state who might be subject to this if it does pass and they could benefit from those protections.

Chairman Yeager:
If my notes are correct, I believe Assemblyman Watkins said that we have 10,000 Canadian nationals who live and work here, and 1.5 million visitors every year. That is a larger number than I would have expected as well.

Are there any more questions for this panel? I see none, so we will invite anyone who would like to testify in support of A.B. 146 in Las Vegas or Carson City to come forward. I do not see anyone in Las Vegas, so we will go to Carson City.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
We represent the domestic and sexual violence programs and service providers across Nevada. The Nevada Coalition to End Domestic and Sexual Violence (NCEDSV) urges your strong support for A.B. 146, which ensures Canadian domestic-violence protection orders are upheld and enforced in Nevada (Exhibit I).

In 1994, Congress passed the Violence Against Women Act (VAWA) which includes the Full Faith and Credit Clause (FFC) provision which requires that the protection orders issued in one jurisdiction must be recognized and enforced in other jurisdictions. Soon after that, in 1997, Nevada, like many other states, enacted legislation requiring the recognition of the domestic violence orders of other states to ensure victims received their guaranteed protection of personal safety while within Nevada borders. Furthermore, laws have been strengthened over time to ensure the FFC for domestic-violence protection orders are also extended both ways among states and tribal territories.

The importance of the FFC reciprocity between jurisdictions is widely recognized due to one simple fact: domestic-violence protection orders save lives. I believe that is something that we have not reiterated enough. No matter the issuing jurisdiction, they are not easily obtained, nor are they easily sought out by victims. It is most often a calculated decision by victims who have carefully weighed and measured the pros and cons of possibly causing greater harm to themselves, including the possibility of death, and the hope of becoming free from their abuser.

An important note is that domestic-violence incidents increase. They progress. They do not start out with the victim being killed. It is something that progresses over time. It is dangerous not only to victims but to neighbors, law enforcement, first responders, and more. Most of us probably know that domestic-violence cases are one of the things that law enforcement officers least want to respond to because they are so dangerous.

When orders are already in place from other jurisdictions, they should be enforced and protected—because they protect Nevada communities as well—before the more violent incidents occur. We should be proactive and not reactive, ensure we do something before, and not after, for the safety of the victim.

As Nevada has opened its arms to embrace victims seeking refuge in our state since the 1990s, and has dutifully assured that they receive the protections granted to them by fellow jurisdictions, it would only seem natural that we extend those same protections to our North American neighbors when they are among our population, as it is in our best interest to always protect the vulnerable in our care. Furthermore, as the saying goes, "Treat your neighbor the way you would want to be treated."

Chairman Yeager:
Are there any questions? I do not see any. Is there anyone else in support of the bill? I do not see anyone, so let us go to opposition and anyone who wants to testify in opposition in Carson City or Las Vegas. I do not see anyone, so let us take neutral testimony at this time. I do not see anyone in Las Vegas, so we will start here in Carson City.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am testifying in the neutral although I support 99.9 percent of this bill. I am neutral today because I am working closely with Chairman Ohrenschall, Assemblyman Watkins, and Ms. Beaver on the issues, some of which have been raised before you today.

First of all, obviously our primary concern for law enforcement is protecting victims, and in particular, victims of domestic violence. I believe this bill does provide a tool for law enforcement. The analogy that I used in a meeting this morning—and I will use a reciprocating saw as an example—is that a tool is great, but if you do not have the instruction manual and guidance on how to use it, you may make a hole in your wall and cause more damage than good. I think that is the issue with the 0.1 percent of the bill that I have a problem with: the instructions, logistics, and guidance for our officers in the field. Officers, on a daily basis, are handed a variety of documents. It may be a child custody case, a civil action, the courts may want me to pick up this or that property, temporary protective orders, or extended protective orders, and we have to balance the rights of the victims with the rights of the potential suspect and make sure those rights are properly balanced. The officers are in a position where they have to determine if that document is valid.

As stated earlier, we have a basic process that we go through. The first step is our computer system and accessing NCIC to determine if there is information on the order in that database. Oftentimes, we can determine that the order is valid based strictly on the access to the computer system. Other times, that information has not been entered by the court—and things change daily with the courts—because someone may file a protective order today and hours later the person the order is filed against may go and file a motion to stop the order and appeal. Things are constantly changing with the courts and the information is not always entered into the system in a timely manner.

Our second point of verification is through our dispatch. Our dispatch will make an attempt to contact the jurisdiction in question and determine if the information in the document is valid. Based on that, the officer will then make a decision to take action. In the case of Canadian protective orders, I have been a police officer with Metro for 27 years. I worked the streets for 18 years and I have never seen a Canadian protective order. My office currently—aside from doing legislative work—works with the consulates, which is one of the jobs that Intergovernmental Services does. I am in constant contact with the Canadian consulate about stolen passports, Canadian folks becoming victims of crime, or, in some rare cases, becoming suspects in crimes. Issues of Canadian protective orders have never come up in my discussions with the consulate. Nonetheless, I think it is an important issue and it is good that there is some codification in the law to address.

Another concern on the Canadian front is that parts of Canada speak French and their documents could be in French, so theoretically, an officer could be handed a document that is written in a foreign language and they would have to determine if the document is real and verified.

I checked *Nevada Revised Statutes* (NRS) 33.085 a short while ago after the discussion we had earlier, and I found that, under that statute, other jurisdictions' orders are treated in the same manner as a temporary or extended protective order. A temporary protective order would be a gross misdemeanor and an extended protective order violation would be a category C felony. Most other states have very similar laws in place when it comes to their orders. I do not know what Canada has, or if they have temporary or extended protective orders. Because the violation occurs in our jurisdiction, it would not be a warrant or a fugitive issue, and we would charge the person with violating the order in our jurisdiction. At the least, in most cases, the suspect is usually gone when our officers arrive. The victims usually say they are calling the police when the person is outside pounding on the door, and by the time the officers get there the person has left because they do not want to deal with us. In all of these cases, we document and take a police report and provide a copy to the victim so she can follow up with the court of jurisdiction for potential violation charges against the suspect.

As stated, our primary concern is our ability to verify and then what kind of crime we would charge. I can answer any questions about law enforcement processes. The bill sponsor did a very good job of describing how we do business.

Chairman Yeager:
You mentioned NRS 33.085 and how it basically allows local law enforcement to charge something congruent to what it would be in the other jurisdiction. When law enforcement looks to NCIC to look at the protective order, is there a notation in NCIC as to whether the order from the other jurisdiction is a temporary or extended protective order? And if the answer is "no," how do you find out, when you are making the arrest, when the charging decision is being made?

Chuck Callaway:
It has been a long time since I have actually seen one of those. Sometimes they update how the format is on the computer, and I am not currently aware if the type of order is in that computer screen printout. I assume it probably is included as part of the overall information. I will find out for sure and get that information to you. If it is not in the computer printout, I would assume that, when the person is transferred to the Clark County Detention Center, our dispatch would make an attempt to contact the jurisdiction to determine how their charge correlates with our charge so we can properly charge. I do not want to speak for the district attorney's office, but in the event that we charged incorrectly based on the order, the district attorney would amend the charges when they receive the case.

Chairman Yeager:
When you do come across one of these situations where another jurisdiction has an order entered into NCIC, is it a mandatory arrest in those situations whether it is a felony versus a gross misdemeanor?

Chuck Callaway:
Yes. It is a mandatory arrest, and in most cases of a temporary or extended protective order, I believe it says right in the order that law enforcement officers "shall" make an arrest if they encounter the subject, he is in violation, and he has been served. That is the key component, that he has been served with the order.

Assemblyman Elliot T. Anderson:
Regarding your experience on the street, have you ever run into any other country's protective order? Does Canada have dual language laws that both languages have to be on the form? That is my recollection.

Chuck Callaway:
I will answer your second question first because I do not know what Canada has in their law books. I do not recall being approached by anyone from a foreign country who had a protective order from that country and wanted us to enforce that order in the Las Vegas area where I worked. If someone did approach us in those situations, we would refer them to the local court so they could file for the local order through the local courts.

Assemblyman Elliot T. Anderson:
I think it is incredibly important that we figure this bill out. I do not need to tell you that the Las Vegas Strip security is a huge issue for Clark County, and we need to get this to the point that it works. We need to start thinking about this for other countries' protective orders since we are relying on their tourism. We ought to take a look at what we can do for the main countries whose people visit Las Vegas. This is something that could be very important for making our visitors feel welcome.

Chuck Callaway:
I could not agree with you more. The safety of our residents and tourists is of primary concern for law enforcement.

Chairman Yeager:
Are there any more questions? I do not see anyone. Whoever is next, please proceed.

David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson:
We mirror the testimony of Las Vegas Metro regarding this bill in its current form. We appreciate having the opportunity over the past few days to meet with the bill's sponsors. The concerns of the Henderson Police Department center on the ability of our officers to verify Canadian orders related to protecting those at risk from domestic violence. We look forward to seeing further refinements made to this legislation in order to address this concern.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
We also agree that this is important legislation. Our only concern, if a concern, would be the verification of these orders and the 24-hour access to those orders that would allow our officers in the field the tools necessary to enforce them.

Chairman Yeager:
Is there anyone else who would like to testify neutrally on this bill? I see no one. I will close the neutral testimony and invite the sponsors to come back to the table with concluding remarks.

Assemblyman Watkins:
I want to acknowledge that I have received requests to amend the bill to add some Assembly members on as sponsors. I am willing to do that and have two sponsors that will be amended on, so if anyone else wants to jump on, let me know. I anticipate some amendments to this bill.

Chairman Yeager:
I do not anticipate that we will have the time going forward to have an additional hearing on this bill, but it is clear that the parties are willing to work on it. I agree that it is important to get this right. I would invite any of the interested parties to continue working on it. I can make my conference room available. We will wait to put this on work session until those concerned are in agreement. I will close the hearing on Assembly Bill 146. We will now open the meeting for public comment. We would start in Las Vegas, but I do not see anyone there, so we will come back up to Carson City.

Tonja Brown, Private Citizen, Carson City, Nevada:
I want to touch on my earlier conversation. I do not know if you are aware of this, or even if the Director is aware of this, but prior to his becoming the new director, if an inmate entered the prison system who was sick, he would go into the medical unit. He does not receive any credits. If an inmate is transferred for whatever health reasons to a medical facility, he receives no credits. Inmates who are ill are not afforded the same amount of credits as someone who is not sick. Basically, if you become ill, whether you have HIV or hepatitis C or anything else, and are transferred for medical treatment and cannot leave, you lose all credits. I have not seen any changes. I think that should be part of Assembly Bill 74. Those inmates who have medical issues should receive credits retroactively for every day they have served. About four years ago, I received a letter from an inmate who had been in prison for ten years and had never received any credits. This would alleviate overcrowding if we allow this to happen.

We are talking about diseases in this bill, and it should be amended to include communicable diseases as well. I spoke of methicillin-resistant staphylococcus aureus (MRSA), which is highly infectious. In 2007, there was an outbreak at the prisons, but nobody in the community knew where it was coming from. I do not know if you know what it looks like; I did not. Prior to the new director, if you were an employee of the Department of Corrections, you knew what to look for, but the inmates and visitors did not. It is highly contagious so visitors could take it into the community. There should be a notice inside the prison so they will know what it looks like. It is hard to get rid of, and it could be fatal. You could die of a heart attack, kidney failure, or liver failure from MRSA, not natural causes.

Chairman Yeager:
Is there anyone else who would like to give public comment? Seeing no one, we will close public comment. Is there anything else we need to discuss? I do not see anything. As a reminder, we have an Assembly Committee on Judiciary meeting tomorrow morning starting at 8 a.m. We would like to do the work session first, so please keep that in mind. This meeting is adjourned [at 9:26 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated June 20, 2016, from Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, United States Department of Justice regarding the Nevada Department of Corrections' compliance with Title II of the Americans with Disabilities Act, referenced by Holly Welborn, Policy Director, American Civil Liberties Union of Nevada.

Exhibit D is a letter dated February 24, 2017, in opposition to Assembly Bill 74 to Chairman Ohrenschall and members of the Assembly Committee on Corrections, Parole, and Probation, from Kevin Dick, District Health Officer, Washoe County Health District.

Exhibit E is a document titled "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, Summary," authored by the Uniform Law Commission, Chicago, Illinois, submitted by Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago Illinois.

Exhibit F is a document titled "A Few Facts about the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act," authored by the Uniform Law Commission, Chicago, Illinois, submitted by Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago Illinois.

Exhibit G is a document titled "Why Your State Should Adopt the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act" authored by the Uniform Law Commission, Chicago, Illinois, submitted by Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago Illinois.

Exhibit H is written testimony in support of Assembly Bill 146, authored and presented by Lindsay Beaver, Legislative Counsel, Uniform Law Commission, Chicago, Illinois.

Exhibit I is written testimony in support of Assembly Bill 146, presented by Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence.