MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
February 13, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Wednesday, February 13, 2019, 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 and to Berg Hall Conference Room, 1500 College Parkway, Elko, 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Melissa A. Saragosa, Justice of the Peace, Las Vegas Justice Court; and representing Nevada Judges of Limited Jurisdiction
Keith L. Lee, representing Nevada Judges of Limited Jurisdiction
Camille Vecchiarelli, Justice of the Peace, Dayton Township Justice Court; and representing Nevada Judges of Limited Jurisdiction
William M. Waters, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Mason E. Simons, Judge, Elko Township Justice Court, and City of Elko Municipal Court; and representing the Administrative Office of the Courts; and Nevada Judges of Limited Jurisdiction
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] We have three bills on the agenda today. Just to give a lay of the land, we will take them slightly out of order. Committee members, we are going to hear Assembly Bill 9, Assembly Bill 17, and then Assembly Bill 14. Let us go ahead and formally open the hearing on Assembly Bill 9.

Assembly Bill 9: Revises provisions governing justice courts. (BDR 6-491)

Melissa A. Saragosa, Justice of the Peace, Las Vegas Justice Court; and representing Nevada Judges of Limited Jurisdiction:
Assembly Bill 9 is fairly short. It is offered as an opportunity to clarify our jurisdiction and venue in small claims cases. In our view, one of the areas that needed clarification was timing. It is currently worded that the defendant should be a resident of, do business in, or be employed in the township. What was lacking was at what point in time. Is it at the time that the cause of action arose? Is that at the time that the small claims complaint is filed? That offered some confusion and lent itself to different applications across the state. We hope that this amendment clarifies that it could be either one of those times.

I will give you an example of a situation where that came up in my court, and that is a landlord/tenant dispute. It is a very common type of small claims case where there is a dispute over a security deposit, most likely. In this one case, there was a problem because the landlord who had been the defendant in the matter had since sold the property that was the subject of dispute. We had a Nevada resident who wanted to sue the landlord. He had rented property in Las Vegas and wanted to sue over the security deposit. He was unable to do so based on the wording of the current statute. In the statute, "is" was interpreted as meaning currently at the time of the complaint, the person is a resident in, doing business in, or employed in the township. This particular landlord was an investor from California who owned this piece of property and subsequently sold it.

This amendment is offered to close the loophole on that, allow our citizens access to justice here, and clarify the timing of the residency, business, or employment requirement.

Chairman Yeager:
Are there any questions for Judge Saragosa on the bill itself? [There were none.] Would anyone like to testify in support of A.B. 9, either in Carson City or down in Las Vegas? [There was no one.] Is there anyone opposed to A.B. 9? [There was no one.] Is there any neutral testimony on A.B. 9? [There was none.] We will close the hearing on Assembly Bill 9.

At this time I will open up the hearing on Assembly Bill 17.

Assembly Bill 17: Revises provisions governing bail in criminal cases. (BDR 14-495)

Melissa A. Saragosa, Justice of the Peace, Las Vegas Justice Court; and representing Nevada Judges of Limited Jurisdiction:
By way of introduction, Assembly Bill 17 is offered as a resource issue for the courts rather than a policy issue. I understand that you may get some additional testimony on policy considerations. This bill is offered because of the current situation with the exoneration of a bond—after a case is either dismissed or no charges are filed—in our court. On many occasions the district attorney will affirmatively tell us that they are denying prosecution. When one of those things happens, the current law requires the court to hold on to a defendant's bond for 30 days. That requires our clerks to do approximately three times the amount of work that they would be doing if they had exonerated it right away. It requires us to hold on to either the cash bond or a surety bond for a period of 30 days. That way, our clerks have to essentially babysit the case until that 30-day mark. We set it out for a status check and they run a report. It is just a labor-intensive process.

We have done a little bit of number crunching to determine how that is affecting us. We are asked to do more with less, and we have limited judicial resources. This amendment would save an immeasurable amount of time. In 2018, we had 3,000 bonds that were exonerated as dismissals or denials. Of those 3,000 bonds, only 77 were subsequently transferred to the district court within a 30-day period. What we found is that nearly 98 percent of the cases could have been exonerated immediately. Instead of the current system where we hold it for

30 days and return it immediately by exception, we would like to flip it to immediately return the bond and hold it only by exception when requested by a defendant or by a prosecuting attorney.

We noted as we went through this bill yesterday that there were some portions that were probably inadvertently stricken. They were also highlighted by the letter that you may have received from the Clark County Public Defender's Office (Exhibit C). We agree that there were some areas that needed some amendment, and we are working to draft an amendment. There is one floating around now that I know they have just received, and we are going to work with them on cleaning that up.

Overall, of those 77 cases that were transferred to the district court, 68 of them were already indicted at the time that the district attorney dismissed the case. The bond was transferred as it would be. Part of the letter that the public defender provided to you indicated their concern over the other cases which may be indicted after the matter is dismissed. We found in our records that there were only nine cases in all of 2018—less than one half of 1 percent of the cases—that were indicted within a 30-day period of dismissal. We are working with our information technology department to see whether we can generate any numbers that would show an indictment after a 30-day period. Right now, I do not have that information for you. I know that the public defender has some other areas of concern, but the court believes those to be policy issues that are unrelated to the court resource issue that this bill is meant to address. I am happy to answer any questions.

Chairman Yeager:
I have a couple of questions. You may not be the right person to answer them. I just wondered if you have any idea why it was 30 days in the statute. Is there some significance that you can think of? I believe this proposal wants to basically change it to immediate exoneration, but I just did not know if there was some significance to the 30 days.

Judge Saragosa:
I am sure that there may have been a reason at some point in the past when the Legislature decided that, but I have no basis for knowing that and could find no rational basis in the legislative history. I think that it has just been that way for a long time.

Chairman Yeager:
We can look at the history as well. I just wondered, based on practice, if there was something there. I suspected there was not, so thank you for confirming that.

You have given us some statistics for transfers from Las Vegas Justice Court to district court. This may be a question for Keith Lee or someone else with the Nevada Judges of Limited Jurisdiction, but I am wondering if we can get some statistics from Reno Justice Court about how many times they have had an indictment after the dismissal of the case but within the 30-day period. I do not know if any other justice courts have this issue regularly. They probably do not because I do not think they have grand juries outside of Washoe County and Clark County.

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:
Mr. Chairman, we will do that. In fact, in our telephone call yesterday we implored our members to pull together those numbers. Hopefully we will have those numbers for you in short order.

Chairman Yeager:
I think that Judge Saragosa mentioned that they are trying to find a way to figure out how many times the 30 days have elapsed and then an indictment has happened. That is probably going to be a bit of a monumental feat in terms of data crunching, but I would have the same question. If Reno Justice Court is in a position to be able to answer that in a meaningful way, I think that would be helpful as we try to think about what the best policy is in this particular area.

Keith Lee:
We will do that as well, Mr. Chairman. Thank you.

Chairman Yeager:
I will open it up to additional questions from members on Assembly Bill 17.

Assemblyman Roberts:
I understand that the 30 days was there for some reason that we really do not know. Regarding those nine cases that you mentioned, what would be problematic with the bail being exonerated? Does that cause issues for bringing those cases to district court?

Judge Saragosa:
From the court's perspective, there is no problem with that case proceeding to district court. From a practical perspective from a defendant, if he posts a bond at the justice court level, the case is dismissed, and the bond is exonerated. The defendant owes a certain portion of that money to the bondsman who posted the bond on their behalf. Now, if the district attorney decides to indict more than 30 days later and the justice court does not have that bond to transfer to the district court, the district court will issue a new arrest warrant, and the defendant may be newly arrested and may have to post an additional bond which costs them more money out of pocket. It goes to the bondsman to post an additional bond on the very same charges that the defendant was already charged with initially.

Keith Lee:
Keep in mind that we are talking about two different situations here: the cash bail that is posted by the defendant, and then the bond whereby someone pays a premium to a surety company and usually puts up collateral. Those are the two situations. We think that giving the defendant his cash back sooner rather than later is a good thing. The issue on the surety bond is whether it should stay for 30 days—or some period of time—unless the defendant, his counsel, the public defender, or the district attorney says to return it right away. If we exonerate the bond and the defendant is indicted or rearrested on the same charges, then the defendant is going to have to come up with another premium and more collateral, and pay for that. That is different from a cash bail situation where we return the bail money to the

defendant upon dismissal, and if he is reindicted he makes the decision again as to whether he wishes to post cash bail or a surety bond.

Assemblywoman Nguyen:
Do you have any statistics about how many people post cash bail as opposed to a surety bond?

Judge Saragosa:
I do not have those data figures right now. If you would like, I can try to generate those for you.

Camille Vecchiarelli, Justice of the Peace, Dayton Township Justice Court; and representing Nevada Judges of Limited Jurisdiction:
In the rural areas we do not have statistics regarding that. I do know that the number of defendants who use surety bonds is much higher than the number of defendants who pay the full cash bail.

Chairman Yeager:
Are there additional questions from Committee members? [There were none.] We will go ahead and take testimony in support of A.B. 17. [There was none.] Let us take opposition testimony.

William M. Waters, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:
I submitted a letter along with the proposed amendments (Exhibit C), and that pretty much lays out our position. Succinctly, our concern is what has been addressed already which is having to post a premium twice. The state does have the right to refile charges in many instances after a case has been dismissed. The intent of the bill is admirable: if it is a cash bail, you want to get the money back to the defendant as soon as possible; if it is a surety you want the defendant to resolve that as quickly as possible once the charges are dismissed. It is odd that we are testifying in opposition, but we are in opposition at this point because of the concerns that have already been addressed.

When the state indicts a defendant who has been released and whose bond has been immediately exonerated, he will be arrested if the state asks for an arrest warrant at the presentment on indictment. The district court judge has no discretion. He or she will issue an arrest warrant. Once that person who has not been facing criminal charges for a period of time gets rearrested, he or his family is going to have to come up with additional money to post bail again.

The amendments from Nevada Attorneys for Criminal Justice and the Clark County Public Defender's Office might address issues that are not necessarily confined to what Judge Saragosa is concerned about, but we did see this as an opportunity to address that problem as well. I appreciate the amendments that were submitted. I think they are a step in the right direction, but we are still concerned about that. We believe that once a case has been

dismissed in justice court, the defendant has been released, and the state then chooses to get a second bite at the apple, equity favors the defendant not having to post a second bond or suffer the consequences of another arrest. I am happy to answer any questions.

Chairman Yeager:
Are there any questions for Mr. Waters? There is a letter on the Nevada Electronic Legislative Information System (Exhibit C) that goes through what is sometimes a convoluted process about how cases might get dismissed in justice court and then reappear in justice court or district court. It is a bit technical. Mr. Ben Graham covered that little bit for us last week, but I know that for many of us that seems like a year and a half ago at this point.

Assemblyman Fumo:
The way this bill is written without the amendments, I would be in strict opposition to it. Can you explain to the Committee what happens when a case is dismissed in justice court and the state gets a second or third bite at the apple? They can appeal the ruling of the justice court judge. They can take it by way of grand jury. When it gets to district court, the defense counsel is no longer on the case. The defendant is transferred to district court without an attorney present. The defendant then is sitting in front of a district court judge and a district attorney who is now asking for ten times the amount of bail. It seems to me that the way this bill is proposed, it is just going to further disenfranchise the poor. If you can explain your experience when a case goes to district court for the Committee's edification, I would appreciate it.

William Waters:
Yes, that is our concern. I could really go down a rabbit hole here, but the basic point is that merely because a case is dismissed in the justice court does not mean that the case is over. There are instances where the state would be prohibited from refiling the charges, but those instances are very rare. If the state voluntarily dismisses the case prior to the preliminary hearing or if the magistrate dismisses the case based upon a lack of probable cause, the case could still potentially reappear in a number of ways. If the state voluntarily dismisses, they can always refile the criminal complaint. That is in *Nevada Revise Statutes* 174.085. In 1997, the Legislature gave them the power to refile the criminal complaint and specifically put in statute that if the state chooses to refile, you are not allowed to ask for an arrest warrant or additional bail. I think they were concerned about that same issue of having to post bail again once the case is refiled.

The problem, though, comes when the state goes to a grand jury. Assemblyman Fumo made another point; it is not just going to the grand jury. The state can now also appeal the dismissal of a case in a justice court to the district court. They have 30 days after the case is dismissed in the justice court to file their notice of appeal. Theoretically, the bond can be exonerated, and the state can wait until the last day of that 30-day period and file the notice of appeal. If the appeal is granted and the charges are reinstated, you now have a problem because the defendant has been released and the bond has been exonerated, but the case is then revived.

The state can also file what is called an information by affidavit if they are unhappy with the magistrate's ruling in the justice court. They can go directly to district court, file the charges with an affidavit of a knowledgeable party, and then the district court could grant that motion to file the information and revive the charges. The right to appeal is not statutory. That came from a Supreme Court of Nevada case, *Warren v. Eighth Judicial District Court*, 134 Nev. Adv. Op. 77 (2018), where five of the justices said that the state does have the right to appeal the dismissal of charges at a preliminary hearing based on insufficient evidence. There were two dissenting opinions in that case from retired Justice Michael Cherry and current Justice Kristina Pickering. They said that it is really for the Legislature to draft a law that gives the state the right to appeal; it should not be a judicially created right.

If a case is dismissed at a preliminary hearing—either voluntarily by the state or by the magistrate based on a lack of evidence—and those charges are going to be revived, the vast majority of times it will be through grand jury, at least in Clark County and Washoe County. This creates an inequitable system statewide. If you are in a rural area without a grand jury and the state wants to refile the charges, they can voluntarily dismiss and then, instead of going to the grand jury, they will just refile the complaint and custody status does not change for the defendant. You cannot ask for a warrant. You cannot ask for bail.

In Las Vegas and Washoe County, if the case is dismissed and the state chooses to go to the grand jury, then Assemblyman Fumo is 100 percent correct. What happens is that you are no longer the attorney of record because that case is technically over. The state gets to secure an indictment at a very secretive grand jury process where no one is allowed to be present to represent the defendant. The defendant is allowed to testify, but his attorney would not be allowed to be in there even if the defendant chooses to testify. At the presentment on the indictment—the grand jury is going to indict 99 percent of the time—the attorney is not present and the defendant is not present. As I indicated earlier, if the state asks for a warrant at the presentment, the court has no discretion. They have to issue the warrant. Then, unless it is a capital offense where you are not entitled to bail, there will be an argument about the bailable amount on the warrant. In our experience, we see the district attorneys asking for excessive bailable amounts. This would then result in our having to wait a period of time until the defendant is arrested to get appointed. Then we have to file a motion to address bail. A defendant who has been released of his obligation to his bondsman, who has gone on with his life, will then face an additional arrest and an additional period in custody before he can address bail. There is no guarantee that the bail setting that was in the justice court will be the same in the district court. The district court is certainly not obligated to set an identical bail that had been set in the justice court.

Obviously we understand that this is more of a clerical issue. However, when you start looking into these issues, you see the unintended consequences of well-intentioned legislation. That is why we brought these concerns to the Committee's attention. We feel as though this is an opportunity to remedy an inequitable situation. Obviously, if the Committee wants to separate these two issues and address our concerns in a separate bill, we are more than happy to do that. We do not want to create a roadblock to Judge Saragosa's desire to better use judicial resources, but at the same time we feel that immediate

exoneration of the bond—although admirable—does create a real problem for our defendants.

Finally, none of this even addresses defendants who are released on their own recognizance. As a public defender, I have very few clients, if any, who can actually post a cash bail. Those who can post a bond are in the distinct minority of clients I represent. The vast majority of our clients, if they cannot convince the judge to release them on their own recognizance, will sit in custody throughout the case.

Assemblyman Fumo:
Can you explain to the Committee what happens when the state has that second or third bite at the apple and gets the defendant into district court without a public defender or private counsel present? How much is the difference between the bail that they had in justice court and the bail they get later in district court without defense counsel present? The state has to make an argument to the judge about what bail should be. How much higher is it in your experience?

William Waters:
I do not have any hard numbers. I will say anecdotally that it is usually at least twice the amount that the bail was in the justice court. One of the reasons why is because, at that presentment hearing, where the state is asking for a warrant and they are discussing bail and the defendant and his attorney are not present, the court does not have many facts available to it at the time. Typically, when we make a pitch for a bail reduction, there is a statute that talks about the different factors the court should consider. Some of those factors include information that is only known by the defendant, such as ties to the community or length of time in the community. Now you are at the presentment and the defendant is not present, the attorney is not present, and that information is not given to the district court judge in making a bail decision. Although the court is supposed to consider that, it cannot consider information it does not have. That is probably why you see bail that is generally more than what it was in the justice court. When that bail decision was made in the justice court, the attorney was there, the defendant was present, and that information can be given to the justice of the peace. The justice of the peace can make a more knowledgeable decision about what the bail setting should be.

This is not a widespread problem, but there are examples where certain justices of the peace either set bail too low in the state's mind, or release someone on their own recognizance that the state desires to remain in custody. What the prosecutors can do at that point is immediately go to the grand jury, get the indictment, and on the presentment on the indictment ask for a warrant and bail. It is a way to circumvent a lawful decision by the justice of the peace. Basically, it is forum shopping. You get into a more advantageous forum to alter the custody status that had been ordered in the justice court.

Chairman Yeager:
I think that these issues that we are talking about are somewhat related, but they are distinct policy issues. This bill really talks about what we do in justice court when a case is dismissed: how long the justice court has to hold on to that money. Some of what Mr. Waters and Assemblyman Fumo were talking about is really more of a district court issue, so there is a jurisdictional angle there. I want to try to focus, at least for today's hearing, on this particular policy. I understand there is some tie-in with what happens in district court, but I think we are trying to look at what we are doing in justice court. Should it be 30 days? Should it be zero days? Should it be something else? Committee members, if you have questions about justice court, prosecutions, dismissals, or grand juries, you essentially have your four experts here, including Assemblyman Fumo. Do not hesitate to reach out and ask about those issues. Would you like to give additional testimony, Mr. Piro?

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
I would just say that we did speak with Mr. Keith Lee, and we are more than willing to work with him on fixing some of the issues with the bill. Because of the rules of the Committee, we are in opposition at this time.

Chairman Yeager:
I will open it up for additional questions for the presenters in opposition. Do we have any additional questions at this time? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone who has neutral testimony for A.B 17? [There was no one.] Mr. Lee, would you like to give any concluding remarks on the bill?

Keith Lee:
We have talked to Mr. Piro, and we know of his concerns. I have also talked with Mr. John Jones from the Clark County District Attorney's Office, and there are some concerns there. We pledge to work with all interested parties on this bill to see if we can come back to you with some amendments that we can all agree upon that fulfill what we want to be able to do, which is to return cash bail as quickly as possible. You understand the issues with respect to surety bonds, and that may be more difficult to deal with in terms of when to exonerate. Again, our hope is to be able to return the cash bail upon dismissal so that the defendant and his relatives or friends are not out actual cash money, and to give the right to the defendant and his counsel to say they want it exonerated right away or that they want it held. We will continue to work with the stakeholders in this and try to come back to you with a solution.

Chairman Yeager:
I am certainly willing to make "The Wood Shed" available if you think it would be helpful to try to get this worked out. I do not intend to work session this bill until I have heard back from the stakeholders, either that you have reached an agreement or if you can let us know how close you have gotten to an agreement. There is a distinction between someone who posts cash bail and someone who goes through a bail bond company. It seems that if you post cash bail, you might want that money back a little quicker because it really did come out of your pocket, and that avoids the problem of having to redo a bond and post a premium. I do not think that would solve all of the justice court's issues with having to hold on to cash

for a period of time. It is just something to think about. Maybe there is a way to set this up so we treat those two differently because I think they are different from the offender standpoint of having to potentially post a second bond.

We will close the hearing on A.B. 17. At this point I will open the hearing on our third bill on the agenda, Assembly Bill 14.

Assembly Bill 14: Revises provisions governing court orders for protection when certain children are involved. (BDR 5-499)

Mason E. Simons, Judge, Elko Township Justice Court, and City of Elko Municipal Court; and representing the Administrative Office of the Courts; and Nevada Judges of Limited Jurisdiction:
Chairman Yeager, Committee members, I appreciate the opportunity that has been afforded to me to speak to you regarding Assembly Bill 14 which would make certain clarifying changes to the *Nevada Revised Statutes* with regard to protection orders that involve juvenile applicants or adverse parties.

Under current law, the *Nevada Revised Statutes* (NRS) allows for several types of protection orders to be requested from the courts, these include:

1) Orders for protection against domestic violence (pursuant to NRS 33.020);
2) Orders for protection against stalking, aggravated stalking and harassment (pursuant to NRS 200.591);
3) Orders for protection against sexual assault (pursuant to NRS 200.378);
4) Orders for protection against harassment in the workplace (pursuant to NRS 33.270); and
5) Orders for protection against harm to minors (pursuant to NRS 33.400).

Pursuant to NRS 4.370, in most cases the justice courts have jurisdiction to review and issue these protection orders. The exception to this is that domestic violence protection orders, in jurisdictions that have a family division of the district court (i.e. Clark and Washoe Counties) are processed by the family division of the district court in those jurisdictions.

[He continued to read his prepared remarks (Exhibit D).]

Chairman Yeager:
Are there any questions from Committee members?

Assemblywoman Krasner:
I do have a question about section 2, subsection 1, paragraph (a) of the bill. It reads "A child is the applicant for such an order or a person applies for such an order on behalf of a child." You are talking about granting exclusive jurisdiction to the juvenile court. What if it is a mother and her child who are fleeing an abusive situation? Does the mother now have an

increased burden of applying for a protection order for herself in one court and then going to the juvenile court separately and applying for another order for her child to be protected?

Judge Simons:
That is an excellent question, thank you. Our intention was not to affect the ability of an adult victim to include additional protected parties on an application. In the domestic violence protection order context, you will see a parent come in and allege that she is being abused by her boyfriend, girlfriend, or spouse, and she has listed her children on the application. It was not our intention to affect in any way the ability of an adult victim to list additional protected parties. Those would still go through the justice court, other than in Clark County or Washoe County where those orders go through the family court process. In rural Nevada those orders would go through the justice court. It certainly was not our intention to suggest that in those contexts additional protected parties could not be listed on the application.

Assemblywoman Krasner:
Thank you, I appreciate that it is not your intention to cause an undue burden on a fleeing mother and her child, but would the way that it is worded here cause that? Do we need to make a little amendment?

Judge Simons:
If there is any reason for the Committee to believe that the way we have worded this makes that suggestion in any way, we would certainly be open to fixing the wording so that we do not have unintended consequences. We certainly did not want that to be what we were attempting to legislate. We were simply suggesting, in a context where the juvenile himself or herself is the victim of domestic violence and is coming to the court for protection, that the appropriate venue for such an application would be the juvenile court. In the context of an adult victim who has children that they are also seeking to protect, we did not want to suggest in any way that it would have to go to the juvenile court.

Assemblyman Daly:
When I read the bill, it is giving exclusive jurisdiction when children are asking for protection. You mentioned in your statement that there are some other rules that you might have to change. Are there still all the same standards and due processes? People cannot just come in and say that they need to have this, they must prove that there is an endangerment? All of those due process steps would still apply in this case? Seeing as how you are giving new jurisdiction, do you also have to change something somewhere that says they have to follow the same process that everyone else does in issuing these things?

Judge Simons:
I think that most of that is already spelled out statutorily. In the protection order context, I assume that most of you are probably aware that this is an ex parte process, meaning that it is a one-sided process. An applicant comes to the court with an ex parte application. The adverse party has not seen it and does not know what it says because it is an emergency situation. They come to the court and say that, based on these facts, we are alleging under

oath that we believe we need protection from this other person who is posing a danger to us. The court must determine whether or not they feel that it rises to the level of granting a protection order and then the court can grant a protection order. The first time the adverse party would learn about the order is when they are served with a copy of it. In certain cases, the court can hold a hearing on that application if they think that it may be a close call. They can have a hearing and involve one or both of the parties. Once the adverse party learns of the allegations, he or she can certainly immediately petition the court for a dissolution of that order or for some other change to that order. That is typically what would happen. We are not suggesting any substantive changes to what the process looks like other than the location at which they would make their application.

Assemblyman Daly:
I appreciate that. I understand that there is a one-sided, ex parte deal where people come and ask for the orders and then the court has to make a determination to issue that. What I wanted to get on the record is that the procedural processes that are in place for those types of orders—regardless of the jurisdiction issuing it—would be the same. Do you have to add this new exclusive jurisdiction to those processes, or is it already there? I just wanted clarification that all of the same rules apply when we are giving new authority.

Judge Simons:
The only other potential issue I see that might need to be addressed is just spelling out explicitly in statute that a child who is a victim has the right to seek relief from courts, and that there is a specified process for going about doing that whereby the application must be submitted by a parent or some other responsible party. I do not know that we have that explicitly spelled out in some of these sections. That might be the only substantive change that I can envision. It has always been assumed that that would be the case, but it does not explicitly spell that out. That is not really included in our language here, but it might be an additional consideration for the Committee. Perhaps it might be of some usefulness to spell out specifically that a child is entitled to seek relief and how they would go about doing that by a responsible party submitting an application to the appropriate court on the child's behalf.

Assemblywoman Cohen:
Can you tell us who you are representing with this bill? Who is backing this with you?

Judge Simons:
This is a bill sponsored by the Administrative Office of the Courts (AOC). I am here at the request of the AOC, and I also represent the Nevada Judges of Limited Jurisdiction. There was some consultative process that occurred with representatives from the AOC and our organization. We certainly backed this effort. This was one of the ten AOC-sponsored bills that were submitted by the AOC.

Assemblywoman Cohen:
I have a little bit of a concern with training in domestic violence situations. Are our juvenile hearing masters and judges all getting proper training in domestic violence? Since this would

be effective in October of 2019, if they have not had that training, is there time for all of them to get training?

Judge Simons:
I cannot speak on the behalf of the masters. I am a justice of the peace. I can speak on the training we receive on domestic violence. We do hold conferences twice a year for all limited jurisdiction judges in the state, and that training does involve domestic violence training. We do regularly receive training along those lines. I cannot speak to what the processes are in place for the masters around the state, but I would say that many of those juvenile and family masters deal, sometimes almost exclusively, with domestic violence-type cases. I would expect that they probably have more training about some of those issues than the limited jurisdiction judges. We do receive regular training in domestic violence, and as far as I am aware, it has been mandated by the AOC as well.

Assemblywoman Nguyen:
I have a couple of points of clarification. I have had a couple of justice court judges reach out to me recently about this issue. Is the issue of concern that in a situation where there is a 17-year-old that is seeking a temporary protective order (TPO) against another 17-year-old, and they come before the justice court judge and a TPO is granted, ultimately it is not enforceable? Is that correct?

Judge Simons:
That is part of the consideration, yes. Obviously you can have juveniles who are the victims of domestic violence, stalking, harassment, or sexual assault—they could be a variety of ages—and you can also have the flip side where the alleged perpetrator of these issues is also a juvenile. This does create legitimate questions about how we enforce those orders, who is supposed to get served with the order, and who is supposed to apply for the order. Can a 17-year-old who is a victim of domestic violence come in and apply for that protection order on her own? Does she need to do that application through some other adult person? How is that process supposed to look? All of those questions are ones that we are legitimately concerned about. Our belief is simply that, when it comes to those sorts of questions, the entity that is much better versed in addressing those various issues is the juvenile court. The juvenile courts deal with those sorts of jurisdictional and enforcement questions on a daily basis, not the justice courts which deal exclusively with adult parties.

Assemblywoman Nguyen:
It is my understanding that if a TPO is currently granted and the aggressor is a 17-year-old, the TPO actually goes on the scope of their parent. Is that correct? I have heard that it is recorded with the parent of that child.

Judge Simons:
I cannot speak definitively to that. I am not involved in that aspect of it, but you may be correct in terms of how it gets entered into the criminal history system. I cannot speak to how that is entered because I have not been involved in that.

Camille Vecchiarelli, Justice of the Peace, Dayton Township Justice Court; and representing Nevada Judges of Limited Jurisdiction:
When a protective order is put into the USoft system, which is a statewide system, it is put in the name of the guardian or parent that applied for the protective order on behalf of the juvenile. It is not put in with the juvenile's name.

Assemblywoman Nguyen:
Does that cause problems for the parent if they are undergoing a background check? Does it show that they have a TPO on their background?

Judge Vecchiarelli:
Yes, it probably would. It is in the system, so it would show up that there is a protective order in effect. The adult name would be listed as that individual. Where I have an issue with the enforcement of these types of orders is when I get a motion that the protective order has been violated and I summon the adult into court. That is who I have jurisdiction over. The parent comes in, and many times the juvenile does not even come with them. Then I have to talk to the adult about this particular violation, but how do I enforce that? How do I enforce the minor child with this? I happen to be the juvenile master for Lyon County as well, so that helps me. The last time I had this issue, I went ahead and issued an order and referred them to law enforcement to go ahead and do a statement of a possible violation. I let the district attorney determine whether or not a violation occurred, and then they would file it as a petition for juvenile act. The individual would then go to juvenile court where it would be addressed. A lot of this is the bullying that we see. There are not a lot of cases, but there are enough to muddy the waters.

Assemblywoman Backus:
I have a couple of follow-up questions to Assemblywoman Cohen's questions. Was there any involvement with the juvenile divisions down in Clark County and Washoe County with respect to drafting this bill?

Judge Simons:
I can tell you that the process that was undertaken in terms of the concept of this bill was that there was consultation. I believe that this was originally spearheaded by Mr. John McCormick of the AOC with consultation from the Nevada Judges of Limited Jurisdiction. The bill was drafted and submitted and was ultimately approved as one of the ten bills that would be submitted by the AOC. I know that, for example, Judge William O. Voy in Las Vegas is aware of this bill. I think he does have some concerns about it. I think Mr. Keith Lee, Chairman Yeager, and I are aware of that. We are certainly willing to address any of those concerns that might need to be addressed. There was not a direct consultative process with them specifically, but there are representatives from Clark County that were involved in the Judicial Council of the State of Nevada when it was approved as one of the ten bills.

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:
We know that some district court judges have some interests and concerns with this. We have talked with them. We have agreed to continue working with them to see if we can

resolve those differences, much like we are going to do with the previous bill we heard. We are aware that there are some interested stakeholders. We will sit down with all of them to discuss their concerns and work something out.

Assemblywoman Backus:
The statute allows for a TPO to be applied for by a person on behalf of a child. Say you are a child advocate as an attorney and you apply for this. Does your name as an attorney go into the statewide system?

Judge Vecchiarelli:
Yes, the attorney's name would actually go into the system.

Assemblywoman Cohen:
If stakeholders are included, I would also ask that the Family Law Section of the State Bar of Nevada be consulted.

Chairman Yeager:
I have talked to numerous folks about this bill. The reason we are hearing it today is because we have a lot of bills coming down in the next couple of weeks, and they are going to continue to pile up. In the interest of getting things moving, I thought it would be useful to have this hearing to get the issues out there. I think we will hear from some other interested folks as well. My expectation is that the interested individuals will continue to work on this piece of legislation to address some of the issues that have been brought up today. Ideally, this would be 100 percent perfect. We are early in the session, so that does not happen all the time. Due to the workload, I wanted to make sure that we had a chance to hear the bill.

Before I open it up for additional testimony, do we have other questions from Committee members? [There were none.]

It seems that one of the things the bill accomplishes is that it moves the jurisdiction from justice court to district court. One of the concerns I have there is that in some areas of Nevada, justice court may be more readily accessible to litigants in terms of location than having to travel to a district court. Obviously that is not the case in Clark County or Washoe County where those are pretty close together. That is just something to keep in mind. In some of our communities, quite a bit of travel is required for district court. Keep that in mind as an issue to think about as you move forward with the bill.

At this time, I will open it up for testimony in support. Would anyone like to testify in support of A.B. 14, either in Las Vegas, Elko, or here in Carson City? [There was no one.] Would anyone like to speak in opposition?

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:
There were district court judges, and others, who would be here expressing many of the concerns that the Committee members have had. A number of judges were asked not to come this morning. Once we got involved in this, we started getting concerns from a number

of other people who are here today. I am not going to go into the issues that many of you have raised. If you have questions you can ask John McCormick.

There are 64 justice courts all over the state. We are not really opposed to the bill; it is almost a neutral situation. The Legislature has been courteous enough to give the judiciary the ability to submit ten bill drafts on behalf of the judiciary. Sometimes there is some confusion—not only from outsiders, but even within our own family—that if it comes in as an AOC bill we necessarily favor all of the contents that are in it. This bill, at times, would have been pulled. I think you see the issues. We have a lot of people out there who have concerns. What we would like to do is gather to try to iron out the concerns and then tell the Chairman what we agree to. There might be some amendments and there might be some areas that we need the Committee to weigh in on. Unless there are any questions, that is all I have to say this morning.

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:
I think that Mr. Graham has covered most of the points. I can answer a number of the questions that the Committee had. I do not know if you want me to do that now or later.

Chairman Yeager:
Let us have you do that later. I think that the issues have been pretty well laid out by the Committee members. Committee members, I will give you credit for doing a great job at looking at a bill and identifying some of the sticking points. If you do have questions, feel free to reach out.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
At this point, I believe that the Washoe County Public Defender's Office is also opposing this bill. The main reason is that we are confused by all of the implications and consequences that this bill may have, primarily on our clients who are involved in the juvenile delinquency system. I think this raises a lot of concerns regarding due process issues. At what point is the juvenile represented by counsel? In the TPO process, they do not have representation by counsel. If this becomes a juvenile delinquency matter, they would be appointed counsel. At this point, we do not have enough information to really know the impact that this would have. That is primarily where our concerns are.

Additionally, I am not sure if this is really a Washoe County and Clark County issue or a rural issue. I think some of that information needs to be provided as well. If this is an issue in Washoe County, I do not really know how many individuals this really involves. My concern is whether we are treating some people differently regarding the TPO process. We have concerns over not only the location, but whether the juvenile would be subject to being part of a public record. There are just a lot of collateral consequences, as well as potentially imposing an ethical responsibility on the judges. The way that we have it in Washoe County is that it is court masters as well as one judge who handles the delinquency cases. If they are

the ones who are also handling the TPO cases, they would have access to information that the attorney handling the delinquency case does not have. Those are our concerns at this point.

Chairman Yeager:
Are there any questions from the Committee members? [There were none.] I would like to thank the presenters for giving me a sense of where we are on this bill. I have requested that a few of the members here who are particularly interested in this issue work with you, particularly Assemblywomen Nguyen, Backus, and Cohen—not to exclude others if they are interested.

Is there any additional testimony in opposition to A.B. 14? [There was none] Is there any neutral testimony? [There was none.]

Judge Simons, do you have any concluding remarks before we close the hearing on this bill?

Judge Simons:
I would just offer a final policy consideration for the Committee to think about. That question is whether we have created a class of victims who are not entitled to relief from the court. These folks could be the subject of domestic violence, stalking, harassment, or sexual assault. The way the system is working basically creates a situation where they are not entitled to relief and protection from the courts. That is my parting thought for you to think about: whether that is something that we are doing. We will leave that for the Committee to think about. Thank you.

Chairman Yeager:
There are some other folks in this room who are interested as well. In the interest of moving along, I have invited all of the interested parties to try to consult on this bill. I think that I understand what the policy being advanced is, but this is a complicated area that touches a lot of our justice system and well beyond. Thank you to those who are here and did not testify today. I know that hard work still lies ahead of us. We will close the hearing on A.B. 14.

I have a Committee bill draft request (BDR) that I wanted to get introduced. It is from one of our interim committees, the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs.

BDR 11-172—Prohibits discrimination against persons with a physical disability in certain proceedings relating to children. (Later introduced as Assembly Bill 140.)

Chairman Yeager:
We occasionally get bill draft requests (BDRs) that come to the Judiciary Committee, and we need to move them onto the floor. Voting to move this to the floor does not commit you to the bill, it simply allows this piece of legislation to be introduced, and then it would come back to the Committee for an actual hearing.

I would like to take a motion to formally introduce BDR 11-172.

ASSEMBLYMAN WATTS MOVED TO INTRODUCE BILL DRAFT REQUEST 11-172.

ASSEMBLYWOMAN MILLER SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
We should have this back as an Assembly bill in the very near future. I think now is the time for public comment. Would anyone like to give public comment either here in Carson City or in Las Vegas? [There was no one.] Is there anything else from Committee members before I go over the schedule for the next few meetings? [There was nothing.]

Tomorrow we will hear a presentation from the Office of the Attorney General. We will also hear two bills. On Friday we will hear from the Nevada Gaming Control Board and hear an additional bill. On Monday, February 18, we will be starting at 9 a.m. It is President's Day, but we do not get any holidays here at the Legislature. Thank you again. The meeting is adjourned [at 9:25 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lucas Glanzmann
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated February 11, 2019 to Chairman Yeager, written and presented by William M. Waters, Deputy Public Defender, Clark County Public Defender's Office, regarding Assembly Bill 17, including proposed amendments to Assembly Bill 17 from Nevada Attorneys for Criminal Justice and the Clark County Public Defender's Office.

Exhibit D is written testimony dated February 13, 2019, presented by Mason E. Simons, Judge, Elko Township Justice Court, and City of Elko Municipal Court; and representing the Administrative Office of the Courts; and Nevada Judges of Limited Jurisdiction, regarding Assembly Bill 14.