MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
March 25, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:34 a.m. on Monday, March 25, 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. 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
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Jessica Adair, Chief of Staff, Office of the Attorney General
Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General
Elizabeth Ortenburger, Chief Executive Officer, SafeNest
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence
Robert W. Lueck, Private Citizen, Las Vegas, Nevada
Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; and Volunteer Attorneys for Rural Nevadans
Marlene Lockard, representing Nevada Women's Lobby; and Chair, Domestic Violence Resource Center
Amy Coffee, representing Nevada Attorneys for Criminal Justice
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Mindy McKay, Acting Administrator, Records, Communications and Compliance Division, Department of Public Safety
Aaron D. Ford, Attorney General
Dwayne McClinton, Administrator, Public Affairs, Southwest Gas Corporation
Christina Bailey, Senior Government Affairs Advisor, NV Energy
Alissa Engler, Senior Deputy Attorney General, Office of the Attorney General
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Tara Phebus, Executive Director, Nevada Institute for Children's Research and Policy

Chairman Yeager:
[Roll was taken and protocol was explained.] Before we get to the bills on the agenda, we have a number of bill draft request (BDR) introductions. Committee, as you know, today is the deadline for committee bills to be introduced. I have ten Committee bills in front of me, so I think the best way to do this in the most time-efficient manner is to read what those BDRs are and then I will take one motion to introduce all ten rather than going one at a time.

A reminder to the Committee that voting to move these BDRs does not commit you to supporting the bill. It just allows them to go to the floor to receive a bill number and then we will schedule them for hearings in the next three weeks and you can make a decision at that point whether you would like to support it or not.

BDR 14-429—Revises provisions relating to the collection of delinquent fines, administrative assessments, fees or restitution. (Later introduced as Assembly Bill 416.)

BDR 14-714—Revises provisions governing the dissemination of certain records of criminal history to certain persons by the Central Repository for the Nevada Records of Criminal History. (Later introduced as Assembly Bill 417.)

BDR 14-717—Revises provisions governing the criminal forfeiture of property. (Later introduced as Assembly Bill 420.)

BDR R-758—Directs the Legislative Commission to appoint a committee to conduct an interim study of issues relating to driving under the influence of marijuana. (Later introduced as Assembly Concurrent Resolution 7.)

BDR 3-841—Revises provisions relating to construction. (Later introduced as Assembly Bill 421.)

BDR 53-1095—Revises provisions relating to noncompetition covenants in employment practices. (Later introduced as Assembly Bill 419.)

BDR 14-1096—Revises provisions governing criminal procedure. (Later introduced as Assembly Bill 422.)

BDR 2-1115—Enacts provisions governing an offer of judgment. (Later introduced as Assembly Bill 418.)

BDR 16-1116—Revises provisions relating to parole. (Later introduced as Assembly Bill 424.)

BDR 15-1117—Revises provisions relating to certain attempt crimes. (Later introduced as Assembly Bill 423.)

At this time, I will entertain a motion to introduce the ten BDRs that I just read into the record.

ASSEMBLYMAN WATTS MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUESTS 14-429, 14-714, 14-717, R-758, 3-841, 53-1095, 14-1096, 2-1115, 16-1116, AND 15-1117.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Those ten BDRs will be forwarded to the front desk and will likely be introduced today on the Assembly floor. Just so Committee members know, we are waiting on five more BDRs for the Assembly Committee on Judiciary. We are hopeful we will get those during today's meeting. If we do not, we will talk about how to address those at the end of the meeting.

We have three bills on the agenda today, and all three are brought by the Office of the Attorney General. We are intending to take those bills in order.

I will open the hearing on Assembly Bill 19.

Assembly Bill 19: Revises provisions related to certain temporary and extended orders for protection. (BDR 3-417)

Jessica Adair, Chief of Staff, Office of the Attorney General:
As you can see, Attorney General Aaron Ford is not here; he is in transit and will be joining us as soon as he gets here. I am here today with my colleagues, Nicole O'Banion, the Committee on Domestic Violence Ombudsman, and Special Assistant Attorney General Kyle George. In Las Vegas, we also have Alissa Engler, Senior Deputy Attorney General and Children's Advocate.

The purpose of this bill is to strengthen Nevada's temporary and extended protective orders to better serve victims, law enforcement, and public safety as a whole. I would like to publicly thank the many stakeholders who provided feedback on this bill, such as law enforcement, district attorneys, members of the criminal defense bar, the Department of Public Safety, Nevada Enterprise IT Services, the Administrative Office of the Courts, and victim advocates; several of them are here in this room today. I also want to thank my colleagues here beside me and in Las Vegas, including James Humm and Sarah Bradley, Senior Deputy Attorney General. It has been such a pleasure to work with you on this bill and on all the bills we present today.

I would like to clarify that there are two types of protective orders: temporary protective orders (TPO) and extended protective orders (EPO). Temporary protective orders are granted by a judge for up to 30 days and may be granted without notice of a hearing to the adverse party. After a TPO has been granted, it only becomes effective once the adverse party is served notice that the TPO has been granted by a judge.

Currently, extended protective orders may be granted for up to one year. Unlike TPOs, EPOs cannot be granted without notice of a hearing to the adverse party so they may appear to contest the order. For both TPOs and EPOs, an adverse party may file a motion to dismiss or a motion to modify the order. For EPOs, the adverse party may appeal the EPO to the district court. In 2017, there were 13,677 TPOs issued and 3,166 EPOs issued in Nevada. Because TPOs do not become effective until the adverse party is served, it is critical that law enforcement serve TPOs in an efficient manner. The applicant is not protected by the TPO until the notice is served. Unfortunately, there are some who take advantage of this by purposely evading service. I would like to turn to the amended copy of Assembly Bill 19 and take it section by section (Exhibit C).

In sections 1 and 2, we attempt to provide an alternate method of service for those who evaded personal service by law enforcement. In the event that law enforcement has made at least two attempts at personal service, they are permitted to serve a TPO through the normal mechanisms of service under the *Nevada Rules of Civil Procedure* (NRCP) or, as outlined in section 2, by delivering a copy of the TPO to the adverse party's place of employment. This mechanism is currently permitted to be used for EPOs, so the bill would expand this option to TPOs as well once law enforcement has made at least two attempts at personal service.

Section 3 modifies existing law to allow courts to issue an extended protective order for up to three years. The courts must provide a basis for all extended orders for over one year in length. Currently, many domestic violence victims must go to court every single year to get a new EPO. This would allow courts the discretion to reduce that burden should the facts warrant it. As a reminder, the adverse party may file a motion to dismiss or a motion to modify the order as well as appeal.

Section 4 provides conforming changes to reflect the new name for the Repository for Information Concerning Orders for Protection. This new name does not limit orders to just domestic violence, but other protective orders as well. Section 5 provides new penalties for violation of EPOs. Currently, any violation of a protective order is a misdemeanor, no matter how many times that person violates the order. Frankly, this is unacceptable. For the first violation, the penalty for an extended order would be increased to a gross misdemeanor. Any future violations would constitute a category D felony. A person may also be prosecuted for a separate crime if the contact constitutes a crime offense on its own—for example, a battery.

Section 6 provides conforming changes to reflect the new name for the Repository for Information Concerning Orders for Protection. Section 7 provides conforming changes to align with new penalties for violation of extended orders of protection, as outlined in section 5. Section 8 clarifies when an arrest can be made for violations of protective orders. Section 9 expands the scope of the Repository for Information Concerning Orders of Protection to maintain records for additional offenses of stalking, aggravated stalking, and harassment. Additionally, this section calls for the retention of expired temporary and extended protective orders in the interest of public safety. Representatives of the Central Repository are here today to answer any technical questions you might have about how this might be accomplished.

The purpose of maintaining expired protective orders in the Central Repository is to provide law enforcement more information to protect the safety of Nevadans and themselves. For example, if a police officer is answering a call for service, right now they only have information about current protective orders. Under this bill, they would be able to see information about previous orders and respond to the situation accordingly to protect themselves and the Nevadans they serve.

Domestic violence situations are particularly dangerous for law enforcement. In 2017, more officers were shot responding to domestic violence than any other type of firearm-related fatality, according to the National Law Enforcement Officers Memorial Fund. Data from the Federal Bureau of Investigation shows that from 1988 to 2016, 136 officers were killed while responding to domestic disturbances. By comparison, 80 were killed during drug-related arrests in the same time period. To be clear, expired orders in the Central Repository are not viewable by the public. Additionally, this would not affect the ability of a person to pass a background check to purchase a firearm as long as he or she is legally allowed to do so as outlined in section 9, subsection 6 of the amendment.

Section 10 makes a conforming change. Section 11 provides the mechanism by which the court shall transmit information regarding protective orders for stalking, aggravated stalking, and harassment. Sections 12 and 13 are withdrawn. Section 14 makes a conforming change to align with section 3, which allows courts to issue an extended protective order for up to three years. Sections 15 and 16 have been renumbered.

Assemblywoman Backus:
Under section 1 regarding *Nevada Revised Statutes* (NRS) 33.060 with respect to service of a temporary restraining order via NRCP, one of my concerns is that one of the ways of service is serving an individual at his or her place of abode to anyone over the age of 18. What if service is being made by the person who filed the TPO and it automatically goes into effect? Do you have any concerns with respect to that unilateral service of the person filing the TPO?

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
It is my understanding that under the NRCP, a party cannot receive service, so I do not believe that it will be implicated under these rules.

Assemblywoman Backus:
Under the new section 9, NRS 179A.350, one of my concerns is that if we keep the temporary restraining orders in the repository—it is my understanding that when temporary restraining orders are filed, it is by an affidavit of the person seeking it and it is a unilateral granting of the same. Someone could come into court and basically quash the TPO. Would the types of temporary restraining orders that were granted and then quashed also be included? Would there be some information regarding the quashing of the same because there was a full hearing where both parties could be heard?

Jessica Adair:
Yes. I believe we addressed this in the leader of the bill that any vacated TPO is to be removed from the Central Repository. It is in section 9, subsection 6.

Kyle George:
In section 9, subsection 6, there is a line that says, "The Repository for Information Concerning Orders for Protection shall retain all expired records, unless expunged by a court."

Assemblywoman Backus:
Would the expunged include any of those that are quashed and even dismissed?

Jessica Adair:
Yes, we can clarify that language. If so, we certainly do not want the Central Repository to contain protective orders that a judge has vacated. However, we do want to continue to keep expired orders that were not vacated by a judge.

Assemblywoman Miller:
In reference to the amendments under section 2—you briefly touched upon it—we are currently delivering the extended protective orders to a person's work if we are not able to get ahold of him or her prior, and now it is to include the temporary protective orders.

I have many thoughts and concerns around delivering it to someone's work. Is it true that someone could be issued a TPO without ever having stood trial yet? To me, it sounds as if there has not been some type of due process; they have not been convicted. There may not be enough to prosecute. There may, in fact, be an acquittal, yet I am thinking of the public stigmatism that we have now placed on someone who may not have done it. Would you speak a little to the reason, need, or desire for that?

Jessica Adair:
I completely understand your concern, and you are correct. In a TPO, most of the time those are issued without the adverse party being present at the hearing. However, this mechanism would only take place after law enforcement has attempted at least twice to personally serve that person. Unfortunately, we just had a situation where there are people in the state who are purposely evading service, so that TPO does not come into effect and they can continue to contact that victim. I understand your concern that we do not want inappropriate stigma to attach to this person who might be receiving a TPO. This would only happen after law enforcement has tried—at least twice—to personally serve them outside of their place of employment. They can also use other methods of service that are allowed by the NRCP, because this is a civil proceeding.

Assemblywoman Miller:
Would you explain what some of those other options are? Where is the line between the person not being available and intentionally avoiding us? Would you speak to when it is

determined that they are intentionally avoiding us and what some of those other options would be?

Kyle George:
In section 2, subsection 1, law enforcement has to make a showing that the adverse party is evading service. You cannot just say, We knocked on the door and they were not home. Let us do it at their place of employment. We spent a lot of time trying to come up with the best way of creating this section. We wanted to be responsive to the real problems by law enforcement. In Washoe County, we know there is a backlog of TPOs that have not been served. Initially, we thought it was just not being prioritized. After speaking with them, we realized that the reality was they make active efforts to go out there, they make numerous attempts to serve process on the adverse party, and they cannot find them or they are being ducked. We are trying to find a way that allows constructive service to take place so the TPOs can go into effect.

Jessica Adair:
This is not a situation where law enforcement is not treating this as a priority. This is not a situation where law enforcement is not doing their job. They are doing their job. They are trying to find these people, and they simply cannot find them because they are purposely evading service. In that case, we want to make sure the victims are also protected. We share your concern and that is why we purposely built into the language of this statute that it would only be in situations where the person is evading service.

Assemblywoman Miller:
I know that there are individuals who are extremely busy. They may be working one or two jobs, going to school, raising kids, all sorts of natural things that keep people busy and hard to track down. What would some of those other options be?

Kyle George:
Some of the other options available under the NRCP would be service by publication—which is a bit of a costly option and is time-consuming. We like to avoid that if possible, but it remains an option under this amendment, which is cause for any other means by the NRCP. Other options would be service to any other person residing in the house. At the moment, I do not recall if it is adults or any resident of the house. If the person is not at home but someone else is at home, they will be able to receive service under the NRCP.

Assemblywoman Miller:
Do we collect the emails of individuals? It seems that email and texting are sometimes the best way to get ahold of someone regardless of their schedule. Do we have that basic information so we can send an email and let them know that we are trying to get ahold of them?

Jessica Adair:
When someone applies for a TPO, they fill out contact information for the adverse party, so that is included. I am not sure if it includes email, but there is other contact information

when you apply for the TPO. When someone attempts to serve that person, they have that contact information. That is where they get the address of the employer, where they are employed, home address, et cetera. The information is contained in the TPO and that is what law enforcement is relying upon when they try to serve these TPOs.

Assemblywoman Tolles:
In comparing the original bill language with the amended version in previous section 13, now section 14 in the amended version, I noticed that the temporary protection order was originally extended to 45 days, and in the amendment the extension has been removed and kept at 30 days. I am curious about the reasoning and the process for that decision.

Jessica Adair:
It was based upon feedback from other members of this Committee. I believe you might be seeing a similar bill come forward soon.

Assemblywoman Cohen:
As a practitioner who has gone to TPO court regularly, it happens where there is basically an invitation to break the TPO, especially when you are dealing with a former couple where the person who sought the TPO—and may very well legitimately have sought the TPO—still engages with the adverse party. Would you address that concern? I certainly do not want someone who has a TPO against them, they are not going near the other party, but the other party emails or texts them, and now they are in violation because they responded to it. I have seen disputes between the hearing masters and judges about whether or not you can violate your own protective order. Would you address what happens to the adverse party?

Jessica Adair:
I want to draw your attention to section 7, subsection 1, paragraph (a) (Exhibit C). I understand that when we are dealing with TPOs, a lot of times there is a familial relationship and things can get quite messy. We are keeping the penalty for TPO violations as a misdemeanor. However, where we are increasing penalties, it is a violation of the extended protective order. That is when we have a situation in which the adverse party has been present at the hearing, the hearing has been conducted, the extended protected order has been granted, and it has been made very clear—hopefully by the judge or the hearing master—what the rules of that extended protective order are. For the TPO where the person has not been present at a hearing, we are keeping those penalties the same.

Assemblywoman Cohen:
Even with an extended protective order, you can still have an invitation to violate. Would you address that?

Jessica Adair:
I believe that is just going to be an unfortunate circumstance with the relationships we are dealing with. However, we cannot muddy or water down the violations of extended protective orders that really are occurring here and that are dangerous. I understand your concern. When we are talking about extended protective orders where someone has been at a

hearing and a judge has granted that hearing, even despite any evidence that they have produced, I think it is incumbent upon the judge and us as the seat of Nevada to treat those orders with the seriousness with which they should be treated. We are also talking about a first violation as a gross misdemeanor, and only the second violation of that or continued violation is bumped up to the category D felony.

I understand that sometimes there are situations, especially when we are dealing with the custody of children, where these things can get complicated. I think it is incumbent upon the adverse party to make sure they are following the orders of the judges of the courts of Nevada, regardless of the custody situation. I think the custody situation is dealt with appropriately so that someone cannot violate the order and still be around their child. I hope that answers your question, but I just want to make clear that we are talking about extended protective orders, and they should be treated with seriousness.

Assemblywoman Cohen:
I agree they should be treated with seriousness, and we do need to provide people who seek out protective orders with real protection, but I think it is incumbent upon us to make sure the adverse party understands that it does not matter if your ex texts you, comes by your work, or calls you, that if you respond, you are in violation. We are putting them in a very bad position.

Oftentimes, these are people who are not savvy to the legal field. They genuinely do not realize that just because their ex texts them or tries to communicate with them, it does not mean that responding is not a violation. I do not know if that means we need to make sure they are given special instructions or something like that, but especially if we are upping the penalties, we really need to make sure these people understand they are in a very precarious situation and they can make it worse for themselves unintentionally.

Jessica Adair:
I am 100 percent in agreement with you. I think it is then a responsibility of the courts and the hearing masters to make sure it is completely clear to the adverse party and the recipient of the extended protective order. Right now, the Administrative Office of the Courts has a pleading that is used across the state for EPOs and TPOs. I have looked at the pleading. I think it is fairly clear, but if we need to add or have a discussion with the courts to make sure we are adding in that pleading in very clear language—even if the person contacts you, you cannot contact them or it may be a violation of the order—I would be very supportive of it.

Assemblywoman Cohen:
I think it is incumbent on us because we are here discussing it and I do not want to say that we expect our judges and hearing masters to do it. In section 8, subsection 5, paragraph (b) of the bill there is reference to providing information to any agency of the federal government. Why would a federal agency request this information?

Kyle George:
The one circumstance I can think of would be issues with firearm possession. I cannot think of any other reason.

Jessica Adair:
Good catch. I think that might be a vestige of an old version of this bill.

Assemblywoman Cohen:
In section 11 of the bill, reference is made to defenses and providing information about testimony as to the reputation or an opinion of the petitioner concerning his or her previous sexual conduct being inadmissible. Are you removing that whole section?

Jessica Adair:
Yes.

Assemblywoman Cohen:
So the false allegation section is being removed?

Jessica Adair:
Yes.

Assemblywoman Krasner:
I discussed this with your office and the Attorney General, and I appreciate how seriously you take this and how you are doing so much in your office to try and help people, especially domestic violence victims. I had a woman call me in the interim and for 30 minutes, literally, she was telling me about how, after the temporary restraining order had expired, she had law enforcement go out again and again and again to try to serve that extended order. It was a big joke to the adverse party about how he was evading it and how he kept coming back and taunting her. I really appreciate you addressing this.

Senator Spearman, Assemblyman Fumo, and I are going to be bringing a bill that addresses extending the temporary restraining order from 30 to 45 days. I appreciate the Attorney General's input and help on it.

Assemblywoman Nguyen:
When I see a lot of these TPOs, they are in the context of an allegation of domestic violence. A domestic violence first offense is a misdemeanor, and a lot of times these TPOs go into effect before there is even a criminal conviction. I have concerns that a violation of an extended temporary protected order is now a gross misdemeanor when potentially the violent act that the person has not even been convicted of is a misdemeanor. How do you reconcile that increased penalty for the violation?

Jessica Adair:
The difference between what we consider a typical domestic battery and a violation of an extended protective order is that there has clearly been a history of conduct that has been

assessed by a court. The court has determined that this person is in reasonable fear of their life or livelihood, and a court has decided that this person should not contact the victim. That is different than a first-time domestic battery because that assessment has not already been made and that contact has already now taken place.

It is also to provide a bit of teeth to these extended protective orders. Right now it is a simple misdemeanor for violating again and again and again and, frankly, there are people who feel as if it is not worth the burden of getting the EPO if the person is just going to continue to violate and the court is not going to have any way to penalize them.

Assemblywoman Nguyen:
A lot of times in a family court setting, parties will stipulate to stay away from each other even after the initial TPO is there. Would those types of situations also go into the Central Repository?

Jessica Adair:
No. I believe those are private sealed records of court proceedings that would not be going into the Central Repository. We are specifically talking about protective orders only.

Assemblyman Watts:
I have a couple of questions related to sections 5 and 7 in the amended version of the bill, and I am going to take it down to more of a layman's perspective. Does there have to be a violation of a TPO for an EPO to be granted?

Jessica Adair:
No, that is not required. What is required is that the adverse party be served and that they have the opportunity to be present at a hearing. Even if they do not show up to the hearing, most of the time they schedule a second hearing so that person can be served and have made sure that they can come. We have an opportunity for the adverse party to present their case. No, they do not have to violate a TPO in order for an EPO to be granted.

Assemblyman Watts:
Is there any frequency of instances of a TPO being violated more than once before an EPO is granted?

Jessica Adair:
Absolutely.

Assemblyman Watts:
I see under the language structure that any violation of the TPO is a misdemeanor. I see that the intent is, after there has been a hearing and a pattern of behavior has been established, there is an EPO and violations of that are considered more severe. I see a discrepancy between a TPO with multiple violations being a misdemeanor, and you may never violate the TPO but as soon as an EPO is granted, the first violation is a gross misdemeanor and then it goes on to a felony. Would you explain how you came to that point?

Jessica Adair:
The distinction is that the person has had the opportunity for a hearing and the judge has made that determination and hopefully, as we discussed with Assemblywoman Cohen, made it clear that you cannot contact the victim. The standard for the EPO, for achieving an EPO, is much more difficult than an ex parte proceeding, so the penalties should be higher. We are trying to provide a difference for victims for the TPO and EPO.

Assemblyman Daly:
The extended temporary restraining order—that is where I wanted to make sure I see the process and understand this. You are never going to get an extended protective order without a hearing?

Jessica Adair:
Yes, that is correct, unless the adverse party has been served and refuses to show up to the hearing. That is the only instance in which the hearing will take place without the adverse party being present. Unlike a TPO that can be granted without that person showing up to a hearing, that person is allowed and encouraged to participate in that hearing.

Assemblyman Daly:
So when you are going from one year to five years and now back to three years, and the language that you are proposing to delete in the old section 11 about defenses at the hearing, is all of that someplace else? Why did you put it in and then want to take it out? It seems relevant to me that the person should be able to say that the other person is not telling the truth. Is that addressed somewhere else with you taking that language out?

Jessica Adair:
This bill is the product of many weeks of discussions with stakeholders and compromises. We wanted to come to you with the best bill we possibly could with input from people who represent a variety of interests in Nevada. This particular section that you are discussing about the reputation testimony—this would be reputation testimony that is put before a hearing. The judge would determine whether or not that reputation testimony would come into the hearing. When we are talking about TPOs and EPOs, there is no jury. So the judge is going to hear evidence, determine whether or not it is relevant, and then allow it to come into the hearing that then only the judge hears. So if we are talking about the impact that reputation evidence should have on the trier of fact, like a jury, that would be appropriate for that discussion to be had outside the presence of a jury. In EPO hearings, you do not have a jury; you only have a judge. So it really would not make sense to have the judge hear that evidence and then decide whether or not it would prejudice him or herself.

Assemblyman Daly:
I think I got most of it. So we have a process now which can extend up to one year. You are saying there is going to be no change to that process and you can only get it after you have a hearing, and at that hearing the adverse party can put up whatever defenses whether or not it is written in the statute.

Jessica Adair:
Yes and no. You are correct in that the process is not changing at all. There is a hearing. Before that hearing can happen, the adverse party has to be served notice of that hearing. They are allowed to present evidence, and they can appeal once the order is granted. They can also file their own motion to modify or vacate the order. The only thing that is changing is in the EPOs, and the judge can then grant it up to three years. Originally in the bill, it was five years and we bumped it down to three years. In order for them to grant the EPO longer than one year for up to three years, there has to be a finding of fact in order to make that EPO granted for more than one year.

Assemblyman Daly:
But they can bring up whatever defenses they want at that hearing?

Jessica Adair:
Absolutely. That process is not changing at all.

Assemblywoman Tolles:
I would like to follow up on Assemblywoman Cohen's question and circle back to the question about the new section 9, subsection 5, paragraph (b): "Upon request, may be provided to any agency of the Federal Government." I just noticed at the bottom of section 9, subsection 10, it says, "As used in this section, 'Canadian domestic-violence protection order' has the meaning ascribed to it . . . ." I know that we passed legislation in regard to honoring temporary and extended protection orders across the border from Canada to the United States. I am wondering if that is the answer to the question as to why records would be released upon request to the federal government.

Jessica Adair:
That may actually be why it is in there, and I can make sure.

Chairman Yeager:
On your amendment in the new section 5, which was the old section 4, you have some new language at the bottom that says, "A person who commits any other crime which constitutes a violation of a temporary or extended order may be prosecuted for each crime separately." It is a little unclear. Are we saying that each crime that could be a violation of the protective order would be a separate violation of the protective order, or are we saying you can prosecute the underlying crime and also the protective order?

Jessica Adair:
The latter of what you said. If I am forbidden from contacting you and I text you, it probably would not be a criminal offense, but if they committed a battery, then you can prosecute the underlying facts.

Chairman Yeager:
Are there any other questions from the Committee members? [There were none.] Is there anyone here or in Las Vegas who would like to testify in support of A.B. 19?

Elizabeth Ortenburger, Chief Executive Officer, SafeNest:
I want to remind everyone that we are the second most lethal state in the nation for homicides related to domestic violence. In Clark County, the Las Vegas Metropolitan Police Department had 72,000 domestic violence calls. SafeNest, who works only in Clark County, dealt with over 25,000 unique victims. One of the areas of service we provide is court support. It is ear-shattering to hear a woman on the other end of the line screaming because she feels unsafe because we cannot find the abuser to serve the TPO. We have put women in hotel programs and our confidential shelter to avoid homicide in these situations. We are in favor of a more inclusive repository of documents if nothing more than to help keep police safe, but secondarily, it may start to give us some very important data around what is escalating to homicide, again, in a state that has the second-highest rate in the country.

As for the increased penalty, SafeNest is neutral. We would like to state to Assemblywoman Cohen's comments that there is absolutely a need for education to the adverse party.

Chairman Yeager:
Is there anyone else in Las Vegas who would like to testify in support of A.B. 19?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We support.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
Ditto.

Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence:
In 1985, orders for protection against domestic violence were created by this legislative body. They were created to provide victims with immediate access to protection. That access can make a critical difference in the life of the survivor. However, over the past 33 years, there have been a couple of issues that have proven to be problematic—service and the time period for the extended order. In 2017, according to the Nevada Department of Public Safety Uniform Crime Reporting report, there were 16,843 orders issued and only 1,491 orders served. Without service, the order cannot be enforced. We hope that A.B. 19 will provide a service process that will change some of those numbers.

Lengthening the time limit for extended orders is another important change to the protection order statute. Most temporary orders are not extended—only 30 percent of the cases request an extension. We know that when leaving, survivors are in the most dangerous position. Sometimes leaving takes longer than 30 days. Being able to extend the order to three years, as stated in the testimony, will allow a survivor to not have to come back to court over and over and over again in cases where they need additional protection. Thank you for your attention to my testimony, and I hope you can support A.B. 19.

Robert W. Lueck, Private Citizen, Las Vegas, Nevada:
I am a retired family court judge and part-time domestic violence commissioner. I come to testify before you today as a person who has been in the trenches. I have issued literally hundreds of temporary protection orders and some extended orders as well. I have also dissolved some temporary orders that were not legitimate. In the course of my judicial career, I have a great deal of experience in the trenches on domestic violence matters. I submitted written testimony Friday afternoon (Exhibit D). I just got the call Friday morning that you were having a hearing today, so I put it together and kept it simple. In July of 2016, I wrote an op-ed piece that was published in the *Las Vegas Review-Journal* ["Would a protective order have save [sic] woman and her children?", July 9, 2016] (Exhibit E) about a man who killed his wife in the parking lot of a drug store, went and killed his three children, and then committed suicide, all within the space of about an hour. There were five homicides. The woman, who lived in what we call a "coercive controlling violent" relationship with her husband, finally worked up the courage to leave, and then she applied to the family court for a protection order, and her application was denied because it supposedly did not meet statutory guidelines. I was really offended when I read that story, so that is why I wrote the op-ed piece that I did. This was a classic case of coercive controlling violence, and she was in dire need of a protection order and did not get it. I concur with the sentiments from the last speaker about how violence is a real problem and that we should do more.

My concern is that our definition of domestic violence is just basically a list of criminal statutes. It was started in 1985 and has been amended somewhat since then. As recent experts have pointed out in law review articles, that does not cover the entire gamut of domestic violence, especially the coercive controlling violence standards, behavior that may not be criminal in nature, yet is very dangerous to the victims, intimate partners, and children—if there are children in the relationship. That is why I suggested that the Attorney General's Office and this Committee expand what is considered domestic violence so that we actually cover people who may not be the victims of crime yet, but may be in the future if we do not do something.

We should bear in mind that the temporary protection orders and extended protection orders are civil protection orders. We try to prevent things from happening instead of waiting for them to happen. Typically, you almost have to be a victim and be physically hurt before you can get a protection order in some instances. There are other instances where they are issued. We just do not want to have those things happen. I concur on a recommendation that 30 days is not sufficient for the protection order. I would like to see it go up to about 60 days. The reason being is when people are going through a separation phase in a divorce—someone has moved out, someone is living elsewhere, very temporary, very fluid—and when the emotions are highest, raw, and there is a lot of anger and hostility, that is the time when we do need protection for someone. I would like to see it go longer than 30 days; definitely 45 days is a great start, and 60 days would be better.

There has been some discussion today about service. The *Nevada Rules of Civil Procedure* were just amended as of March 1, 2019, and there is a provision about service that allows the courts to use more creative means of service. That is typically something you could do with

an email, if you have a verifiable email address for a responding party. I have researched this recently in a civil case because of a party who was gone quite a bit and lived in a gated community and it was very hard to give personal service, but we knew his email because I had emailed him back and forth. I just attached documents to the email and he received them. There have been quite a number of cases published that allow these creative alternative means when the traditional means fail. I would encourage the Legislature to allow for these unique forms of service that are now provided for in the NRCP. Some people do work hard to evade the service. In my practice during the time I was a family court judge, in only a handful of cases, I would craft an injunction similar to that of an extended protection order and then issue that injunction against the person who was a chronic abusive person. At times I made it a lifetime injunction, and I only did this in a small handful of cases. We need something that goes well beyond just one year. Five years is good—I think that is a much better start. I would like to see these improvements. I hope the Attorney General's Office will take my comments in a sincere fashion. I only want to improve the bill. I only want to have a bill that really works for Nevada citizens. I have no financial outcome of this matter, I have no stake in it, but I really want to see an improved bill.

Chairman Yeager:
Thank you for your testimony this morning. We have the letter that you referenced uploaded on the Nevada Electronic Legislative Information System. I would ask that you continue to work with the Attorney General's Office on some of your concerns or potential amendments to the bill.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We would like to thank Attorney General Ford and his team for bringing forth this important bill. There are a couple of sections of the bill that we are particularly excited about. One is the creative and effective resolution of the service issues that we experience on an almost daily basis in the criminal justice system. The other section is that we are increasing the penalties on those who violate extended protective orders more than once. It is important to understand that if someone is willing to do that, they are probably a dangerous person, and they may not go in violation of that order with the intent to murder their spouse or their former partner, but those situations quickly escalate. It is our hope that increasing this penalty will disincentivize that contact and keep them on the right side of that order.

Bailey Bortolin, representing Legal Aid Center of Southern Nevada; Washoe Legal Services; and Volunteer Attorneys for Rural Nevadans:
I am representing Legal Aid Center of Southern Nevada, Washoe Legal Services, and Volunteer Attorneys of Rural Nevada. We would also like to thank the Attorney General for bringing this bill. We are excited about the personal service and the extension of the time an issue can be ordered. We often have victims who are not willing to go back after the year because they feel it was a traumatic experience, they have already been through this system, they have been questioned where they feel the burden is on them, and we think that giving them more time to have an order will actually save lives.

Marlene Lockard, representing Nevada Women's Lobby; and Chair, Domestic Violence Resource Center:
We are excited about the entire bill.

Chairman Yeager:
Is there anyone else in support of A.B. 19? [There was no one.] Is there anyone opposed to A.B. 19?

Amy Coffee, representing Nevada Attorneys for Criminal Justice:
I only have two main concerns, one of which is service. The concern is that going to someone's place of employment should be a last resort. As was pointed out, that could possibly result in the loss of a job or other consequences. I do not have an issue with attempting to serve or trying to go to the NRCP, but if someone is deemed to have avoided service, perhaps there should be some sort of affidavit attesting to the fact that not only was the person attempted to be contacted, but maybe attempted to be contacted through social media or other means in order to really make sure that that has been exhausted. I understand the problem with service and I think it is really important, and I think there should be a way for people to be served in this important situation. I am also concerned about making it a little too simple to claim someone has avoided service.

I also understand the need for a three-year extended protective order; I have seen situations where people offend, are violent, and are dangerous, and I understand the need for that. However, sometimes the adverse party might have moved away, moved on, not have had any contact whatsoever with the person who got the order. Three years is a long time to just have that hanging over your head. We believe there should potentially be an 18-month mark or something like that, perhaps some sort of hearing so the person who applied can say why they need to extend it for another period. The reason is because the adverse party could have moved on, moved away, want to join the military, want to get a job, want to do something, only to find out that, even though they moved on months after the relationship ended, there is an extended order against them for three years. Again, I understand the need and I know that is certainly not every situation, but we want to make sure there is adequate due process so the other side has a chance to come in and perhaps get it resolved if, in fact, there have been no issues. A judge obviously would have to be the one to decide that.

Other than that, we are pretty much neutral on the rest of the bill. I appreciate the Attorney General's willingness to talk to various parties to try to make the best bill possible.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We have the same concerns as indicated by Ms. Coffee. The way I read section 1 and the changes is that it does not appear that the last resort is to go to the place of employment. I believe it is their intent that they must first try personal service at an area that should not be the place of employment. I would echo the statement that was made about the concerns with specifically going first to the place of employment in order to serve these temporary or extended protective orders.

I also disagree with the extension from the extended protective order from one year to three years. We appreciate that the Attorney General's Office was willing to come down from five years. Our main concern with that is what was stated before, which is their change of circumstances. Sometimes the parties will get back together or custody orders could change. We believe it is important for the parties to have a mechanism to come back every year to make sure that what is actually occurring is maintained in place.

Additionally, we are assuming with this that, based on the initial temporary restraining order and extended protective order, that this person will not be deterred by that conduct. That is why we will have it for the three years. I believe we should be hopeful that if we are issuing these extended protective orders, that the party has received the message that there is conduct occurring that needs to be stopped. We believe that having—if not the yearly court hearings—at least a review every year would make sense to ensure that the status quo is being maintained.

Regarding the increased penalties, as you have heard us indicate several times before, I do not think that what we have seen is that increasing penalties is actually a deterrent. If it is really the conduct that we are going after, perhaps we need to be looking at the treatment that is being provided to individuals who are being accused of committing domestic violence before we just rush to increase the penalties. As has been indicated by this Committee, it does not really make sense for a temporary order to be a misdemeanor. Although they have had an opportunity to be heard at the extended protection order, it does not mean that they have additional information about whether returning that phone call would be a violation. That is our concern. Violation of an extended order is already a gross misdemeanor; that is a severe penalty. Even for an individual who does not have a criminal history, a misdemeanor can be extremely detrimental to their future.

As indicated in section 5, I appreciate Chairman Yeager bringing up the intent of the language regarding if a person commits any other crime, which constitutes a violation of a temporary protective order, he or she may be prosecuted for each crime separately. The way I read that is almost a stacking of charges. We may need to tweak the language to ensure it is really indicating that the crime could be punished as well as for violating the protective order.

Pertaining to the amendment, page 8, regarding the Central Repository, it is very concerning to me how an individual who had his or her temporary protective order could become part of this Central Repository. I understand the reasons for why it may be important for law enforcement to have, and I appreciate that we have put into place some form of mechanism where that temporary restraining order could be taken off the Central Repository. However, in this section, it does not indicate the procedure, so it is unclear if it would be the court or the adverse party and what the process would be for it to actually be expunged and taken out of the Central Repository.

I know that when the court issues an extended protection order, they must provide the information to the Central Repository by the end of the next business day. Again, in this section, there is nothing where the court is required to say they have expunged the record or anything like it.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I agree that domestic violence is a problem in the state. We talk about it all the time. This is my second session, and we continue to talk about it. That being said, the TPO process sometimes becomes a sword and a shield. There is no defense. As Assemblywoman Cohen was saying, the fact that the person who moved for the TPO contacted the same person they got it against is no defense if they return it back. So we are going to up those penalties, but there is no defense. If we were to add a defense in there, perhaps I would not have such a big problem with the increased penalties of the gross misdemeanor, because at least you can talk about something rather than it being a strict liability crime. That would then carry a year in prison.

My other points were covered by Ms. Coffee and Ms. Bertschy; however, the problem with including all of this in the Central Repository is that we all know they are behind on their recordkeeping. No court is going to automatically transmit that a TPO is vacated. That is just not going to happen. You are going to have to move through the sealing process, which is a pretty onerous process on your own if you get it vacated.

Lastly, perhaps we should include some clarifying language about the type of orders that we have. If we are going to track the domestic violence issues, let us make sure those are the orders for domestic violence. As practitioners know, people bring temporary protective orders against the new boyfriend or new girlfriend or their neighbor. So let us not include those in some of the things that we are keeping track of so that we have accurate data when we come back here for evaluation on what we are going to do next.

Chairman Yeager:
Is there anyone else in opposition to A.B. 19? [There was no one.] Is there anyone who would like to testify neutral?

Mindy McKay, Acting Administrator, Records, Communications and Compliance Division, Department of Public Safety:
I am the Acting Division Administrator in the Department of Public Safety's Records, Communications and Compliance Division, which includes the Central Repository (Exhibit F). I brought with me today Alison Lopez, who is the manager of the Criminal Records Unit, which oversees our Protection Order Program, and which currently maintains orders for protection against domestic violence.

Certain sections of A.B. 19 require the Central Repository to maintain records of all temporary and extended orders for protection against stalking, aggravated stalking, or harassment. The bill also requires certain persons to transmit such orders to the Central

Repository, and requires the Central Repository to maintain all active and expired protection orders. I would like to provide some statistics before I discuss the impacts to my division. We currently have approximately 2,119 active orders for protection against domestic violence. There were 549 orders for protection against domestic violence data entered into the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) Indices from calendar year 2018 to March 21, 2019. The NICS Indices are utilized by the FBI and other states throughout the nation when conducting a background check for a firearms transfer. If we add the stalking, aggravated stalking, or harassment orders, the justice courts reported 2,685 of these order types were granted last fiscal year, and then we would have access to that for NICS background checks. Also, I want to clarify that we do not have a backlog of protection orders within the Central Repository.

Should this legislation be passed, we will work very closely with the Office of the Attorney General and the Enterprise IT Services Division (EITS) within the Department of Administration to implement the requirements in this bill to include extensive programming changes to the current system that maintains orders for protection against domestic violence in order to capture and maintain these new order types. We implemented a brand-new protection order program in February, which is much easier to connect to and much more user friendly. We are in the process of rolling it out to all of the courts statewide. We are very excited and thankful to EITS for our wonderful new program.

The addition of stalking, aggravated stalking, or harassment orders to the protection order repository housed in the Central Repository will increase the number of protection orders—the division's Point of Contact Firearms Program manually data enters those into the FBI's NICS Indices; we do not have an interface to that. The addition of these protection order types will enhance our state's NICS Point of Contact comprehensive background checks for firearms transfers and assist with keeping firearms out of the hands of prohibited individuals nationwide. In December of 2018, we received a notification from the U.S. Attorney General informing us that Congress passed the Fix NICS Act in early 2018 to strengthen the NICS in a number of ways. The new law requires the U.S. Department of Justice, in coordination with each state and Indian tribal government, to establish a four-year plan to ensure maximum coordination and automation of the reporting or making available of appropriate records to the NICS. This legislation is an important part of our state's plan to improve our NICS background checks in accordance with the new federal law.

Additionally, one of the goals of the Advisory Commission on the Administration of Justice and its Subcommittee on Criminal Justice Information Sharing is to improve criminal information sharing. This legislation is in keeping with that goal. Lastly, in June 2018, Attorney General Laxalt released his office's School Safety Report following the Special Law Enforcement Summit on School Safety where various stakeholders discussed and assessed the vulnerabilities of Nevada's schoolchildren. This legislation is consistent with a recommendation featured in the report to improve and enhance Nevada's current technological system for running background checks and obtaining detailed criminal history information on suspects and assailants. It is essential that records housed by the Central Repository be as current and comprehensive as possible because they serve a critical public

safety function and ultimately make Nevada's schools safer when properly accessed and used for purposes of threat assessment and to keep firearms out of the hands of dangerous individuals.

There is a fiscal note on the bill as introduced. The fiscal impact could decrease if this bill is amended because our fiscal note would then be amended. Because this bill impacts multiple programs within my division, we may request to return to the Interim Finance Committee in the 2019-2021 biennium should the workload necessitate additional resources.

That concludes my testimony on A.B. 19. Legislators are always invited to meet with us to receive an overview of our many programs within my division. I also wanted to point out that I had passed out pamphlets with a brief overview of each of those programs. I passed those out to your attachés at the beginning of the session. If you did not receive that pamphlet, I am happy to give you another one.

Chairman Yeager:
Is there anyone else in the neutral position on A.B. 19? [There was no one.]

Jessica Adair:
I want to thank everyone who testified regardless of viewpoint and for your time and effort on this bill. I also want to thank the people who brought stories and statistics that show the real problem that we have in this state and gave context for you as to the type of experience that people have when they come to the state of Nevada seeking protection.

I believe some of the concerns that were raised are beyond the scope of this bill. However, should there be a need to clarify some of that language in this bill, we are happy to work with members and other people to make sure the language expresses the intention of this bill.

[(Exhibit G) was submitted but not discussed and will become part of the record.]

Chairman Yeager:
I will close the hearing on A.B. 19, and open the hearing on Assembly Bill 41.

Assembly Bill 41: Revises provisions governing the fictitious address program for victims of certain crimes. (BDR 16-418)

Aaron D. Ford, Attorney General:
I am here today to present Assembly Bill 41. With me is my Chief of Staff, Jessica Adair. With the Chair's indulgence, I will turn the microphone to her for a discussion on this bill.

Jessica Adair, Chief of Staff, Office of the Attorney General:
I want to publicly thank my colleagues in the Attorney General's Office and the many stakeholders who provided feedback on this bill, including law enforcement, district attorneys, members of the criminal defense bar, the Department of Child and Family

Services, county assessors, county recorders, utility and telecom service providers, and victim advocates.

Before we begin, I want to give a brief overview of Nevada's Confidential Address Program (CAP). It is statutorily authorized by *Nevada Revised Statutes* 217.462. It is a program of the Department of Health and Human Services, Division of Child and Family Services (DCFS), and representatives of DCFS are here to answer any technical questions you may have about the program. In order to participate in CAP, a person must apply showing specific evidence that he or she is a victim of domestic violence, human trafficking, sexual assault, or stalking. Once admitted, CAP participants are provided with a fictitious mailing address and a fictitious physical address in order to protect knowledge of where they live from an offender. Nevada is one of 37 states with a confidential address program.

Section 1, subsection 2 allows those participating in the confidential address program to use their fictitious address among a larger number of entities, including any state, county, local, government, or utility that requires such an address. I want to clarify that the reason why we are specifically identifying utility providers in this bill is because most of the time a CAP participant can use a fictitious address and a service provider may be none the wiser.

For utilities, they specifically need the real physical address of that person in order to provide service at that address, so that is why we are including utility and telecom providers for landlines in this bill. It is not because there are bad actors in this space, but because that physical address is needed.

Subsection 3 adds conforming changes and restricts those entities from making telephone numbers and images of the participants available for inspection or copying. There are, however, three exceptions to the entity or utility being allowed to release the individual's information. The first exception would be if a request is made by a law enforcement agency. The second exception would be if it is directed by a court order, but only to the individual identified within that order. The last exception allows for the entity or utility to comply with any other state or federal provisions mandating them to release the individual's information (Exhibit H).

We have had a very great working relationship with utility, telecom, state, and local governments in order to make sure they are able to protect those real addresses but at the same time not create an undue burden on their systems. We are continuing to have those conversations to ensure they can comply with this bill and they have been extremely supportive of the CAP program.

Chairman Yeager:
Are there any questions from the Committee? [There were none.] I want to thank you for bringing this bill forward. I remember talking about this on the Advisory Commission for the Administration of Justice at one of our early presentations from the Attorney General's Office, and this idea was brought forward. We certainly want to make sure that we are protecting people in an adequate fashion. I want to thank you, Attorney General Ford, for

bringing this and making sure we are doing that, particularly with respect to utility companies.

Seeing no questions, I will open it up for testimony in support of A.B. 41.

Elizabeth Ortenburger, Chief Executive Officer, SafeNest:
On behalf of the 25,000 victims we serve every year, we stand in support of this bill.

Dwayne McClinton, Administrator, Public Affairs, Southwest Gas Corporation:
We are in support of A.B. 41, and we are currently working on a proposed amendment to address our concerns as they pertain to building and emergency response. We want to thank the Attorney General's Office for working with us on those concerns.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are in support of A.B. 41. We thank the Attorney General for bringing this bill forward for the additional protection of victims.

Christina Bailey, Senior Government Affairs Advisor, NV Energy:
We are in great support of A.B. 41. We are proud to be supporters in our community of domestic violence programs, and are happy to work with the Department to make some adjustments to our billing system. We also do fictitious names, so we will make sure to add the fictitious addresses.

Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence:
I am here today to speak in support of A.B. 41. In 1997, the Confidential Address Program was created and over the interim has provided survivors with a way to keep their perpetrator from finding them through a public records search or through the inadvertent release of their actual physical address through a phone call or other ways of getting that information. We are so happy that we are strengthening this program and thank the Attorney General's Office for bringing it.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here in support.

Chairman Yeager:
Is there additional support for A.B. 41? [There was none.] Is there anyone opposed? [There was no one.] Is there anyone neutral on A.B. 41? [There was no one.] We will go back to support.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We would like to thank the Attorney General for bringing this important bill forward, which hopefully will help victims of domestic violence, stalking, and other crimes rest a little bit easier knowing that their addresses are protected.

Chairman Yeager:
Is there anyone neutral on A.B. 41? [There was no one.] I will invite our sponsors up for any concluding remarks. It looks as if concluding remarks are waived on A.B. 41, so thank you for presenting. I will close the hearing on A.B. 41.

That takes us to our third and final bill on the agenda, so I will open the hearing on Assembly Bill 60. We are working on a proposed amendment on this measure, and it is available on the Nevada Electronic Legislative Information System.

Assembly Bill 60: Revises provisions related to domestic violence. (BDR 3-425)

Aaron D. Ford, Attorney General:
I am here to present Assembly Bill 60. Accompanying me are several of my colleagues, my Chief of Staff, Jessica Adair, Special Assistant Attorney General Kyle George, and one of our deputy attorneys general, Alissa Engler. I will turn the microphone over to Jessica Adair for conversation on this particular bill.

Jessica Adair, Chief of Staff, Office of the Attorney General:
I know we have already heard some statistics today about the state of domestic violence here in Nevada. Liz Ortenburger with SafeNest provided some statistics earlier. I want to recognize the state that we are in. Every 17 minutes and 20 seconds an act of domestic violence is reported to law enforcement in this state. In Nevada, over 30,000 domestic violence offenses were reported in 2017, a rate that has increased every single year for at least the past five years. Nevada has one of the highest rates of domestic violence in the nation. It consistently leads the nation for domestic violence fatalities. It is clear that domestic violence is a public safety and public health epidemic in this state and is only getting worse. The purpose of A.B. 60 is to strengthen Nevada's domestic violence laws to more appropriately treat these violent crimes that take a severe toll on the physical, mental, emotional, and economic health of victims, and it may have a lasting effect on their ability to live their lives long after physical abuse may have ended (Exhibit I).

Section 1 provides that siblings and cousins who are not in a guardianship or custodial relationship with each other do not fall within the scope of domestic violence statutes. I know it may seem counterintuitive to take people out of the domestic violence statute after the sobering statistics we just discussed. The reason for that is because domestic violence is the abuse that is part of a systematic pattern of power or control from one intimate partner over another. The purpose of statutorily treating domestic violence differently than other violent crimes is to identify the special relationship, a family, or intimacy that makes the victims particularly vulnerable. Adult siblings and cousins, while related, most often do not

have this kind of relationship. When we are thinking about adult siblings who get into a fight at a family event, they are not living together, they do not have that intimate bond, and it is quite different than what we are talking about in a cohabitation or romantic relationship, or in a situation of elder abuse which is also covered by domestic violence.

Also in section 1, we amend *Nevada Revised Statutes* (NRS) 33.018 to authorize a $35 administrative assessment against persons convicted of crimes of domestic violence. This assessment will be used to fund programs in the Office of Ombudsman for Victims of Domestic Violence. Sections 2 and 3 amend the statutes pertaining to videotaped dispositions to include victims under NRS 201.301, which is the facilitating sex trafficking statute. This amendment allows victims to provide video depositions in cases where the state is unable to prove sex trafficking but can meet the lower burden for facilitating sex trafficking.

Section 4 makes conforming changes to NRS 176A.413 based on other changes made within the bill. Section 5 amends NRS 179D.0357 to recognize that the crime of facilitating sex trafficking may constitute a crime against a child. Section 6 is withdrawn. Section 7 provides minor clarifying language to NRS 193.1675. Section 8 makes conforming changes based on other amendments within this bill. Sections 9 and 10 are withdrawn. Section 11 amends NRS 200.364 to clarify that sex trafficking includes violation of NRS 201.301, which is the facilitating sex trafficking statute. Sections 12 and 13 are withdrawn. Section 14 amends Nevada's assault statute to provide that a prosecuting attorney is an "officer" of the state. Similarly, the new section 11 amends Nevada's battery statute to provide that a prosecuting attorney is an "officer" of the state.

Section 15 increases penalties for domestic battery. The fine for a first-time domestic battery increases from $200 to $400. A second domestic battery conviction within seven years is now punishable by a minimum of 30 days imprisonment and a fine of $750 to $2,000. I want to remind the Committee that this is not a second commission of domestic violence; it is a second commission of domestic violence within a seven-year time period. Similarly, a third domestic battery offense within seven years is now a category B felony, punishable by a term of incarceration of 2 to 15 years. This is to reflect the continuous violent commission of domestic violence offense within a rather short time period. This amendment also restores the penalty for domestic battery involving a strangulation to a category C felony. *Nevada Revised Statutes* 200.485, subsection 2 already treats strangulation as a more severe penalty due to the dangerous nature of this crime. A Department of Health and Human Services study shows that a prior nonfatal strangulation was associated with greater than sixfold odds of becoming an attempted homicide and over sevenfold odds of becoming a completed homicide. Strangulation is one of the most lethal forms of domestic violence.

This section also provides that a domestic battery against a pregnant victim when the offender knew or should have known that the victim was pregnant is a category B felony punishable by a term of incarceration from 2 to 10 years. Shockingly, one of the leading causes of death for pregnant women is homicide. Research shows that pregnant women who are battered are more likely to experience violent trauma and are twice as likely to die after

trauma than nonpregnant women. This section also states that a domestic battery resulting in substantial bodily harm to the victim is now punishable as a B felony with a term of incarceration from 2 to 10 years. Again, this penalty is meant to reflect the severity of the violent nature of the crime.

Lastly, this section provides that the court should consider the presence of a child during a domestic battery when sentencing the defendant. This is not a new penalty but allows courts the discretion to consider this when sentencing. In 2017, here in Nevada, over 29 percent of domestic violence cases occurred in the presence of a child who is below the age of three. Representatives from Prevent Child Abuse Nevada are here to testify about the lasting effect of domestic violence on the development of a child.

Section 16 clarifies the punishment for harassment but does not increase current penalties. Section 17 codifies language from the Model Stalking Code to provide that a third stalking conviction is punishable by a C felony with two to five years of incarceration. This section also provides that lack of actual notice or intent is not a defense to stalking. Subsection 6 of this section provides that Nevada has jurisdiction to prosecute this crime if the act was committed within the state or the victim was located in the state. This would pertain to when the victim is here in Nevada but the stalking is via electronic device or telephone. Lastly, this section provides that stalking should be reviewed under a "reasonable person under like circumstances" standard.

Sections 18 through 20 are withdrawn. Section 21 clarifies the punishment for conspiracy crimes related to sex trafficking involving a child. Section 22 clarifies that Nevada's list of domestic violence crimes in NRS 33.018 or equivalent laws in other states also apply to this section. Sections 23 through 36 are hereby withdrawn. Sections 37 through 39 make conforming changes consistent with other amendments in this bill. Section 40 amends NRS 228.460 to reflect the consolidation of statutes pertaining to the funding of the Account for Programs Related to Domestic Violence into NRS 33.018. Section 41 establishes a subcommittee within the Committee on Domestic Violence to review programs for treatment of persons who commit domestic violence, otherwise known as batterer treatment programs. This allows the subcommittee to meet more frequently than the larger committee to conduct reviews of programs. Section 42 clarifies the authority of the Office of Advocate for Missing or Exploited Children to investigate and prosecute crimes of facilitating sex trafficking involving child victims. Section 43 provides a conforming change consistent with other amendments in this bill.

I am going to be moving to accept a few new sections in the bill. New section 24—similar to the amendment reflected in section 1—provides that roommates, siblings, and cousins who are not in a guardianship or custodial relationship with each other are not included in the mandatory arrest provisions of NRS 171.137. This section additionally provides that law enforcement has discretion to not arrest roommates, siblings, and cousins not in a guardianship or custodial relationship with each other for acts amounting to battery. Essentially, they would be treated the same way as batteries among unrelated persons. This

subsection releases the police officer and his or her employment agency from civil and criminal liability for not arresting a person pursuant to this subsection.

Section 25 explicitly provides that the justices of the peace shall impose a $35 assessment for the Account for Programs Related to Domestic Violence on persons convicted of any act of domestic violence pursuant to NRS 33.018. It also clarifies that those convicted of domestic violence offenses by justices of the peace should also attend treatment for persons who commit domestic violence. Section 26 provides that municipal judges shall impose a $35 assessment on persons convicted of any act of domestic violence pursuant to NRS 33.018 and clarifies that those convicted of domestic violence offenses by municipal judges shall also attend treatment for persons who commit domestic violence.

Section 45 addresses the effective date of the amendatory provisions of this act. Section 46 provides an effective date for this act.

Chairman Yeager:
I think you covered this, but I am not sure. It is the amendment in section 22 of the original bill, which will now be section 16. Subsection 1(a) essentially talks about who is prohibited from possessing a firearm. I know there was some work done in the 2015 Session on this particular provision. One of the concerns that was raised then was that our statute, NRS 33.018, includes additional conduct that is not included under *United States Code*, Title 18, Section 921(a)(33). Given some of the amendments you are proposing to make about what constitutes domestic violence, I think it would be helpful sometime after this meeting to get an idea of what additional conduct would be included under our statute that is not included in the federal one.

One of the concerns was how we would communicate with the federal government whether violation of our statutes are precluders under the federal law or not. I am not going to ask you to go through that now, because I think it probably requires a little bit more of a parsing out, but I think it would be helpful to know what additional conduct would be captured. At least by NRS 33.018, the substantially similar laws in other states would be a little more problematic to figure out. I just put it out there as an area to look at—maybe at some of the testimony from 2015 that I think was parsed out a little more. That is not really a question; just a request.

Jessica Adair:
We are happy to provide that.

Assemblywoman Cohen:
I have questions about the old section 17, new section 14 (Exhibit I), which is the stalking section. Having to do with the stalking of a person under the age of 16, what happens if the alleged perpetrator is also a minor? I know they can go to delinquency court, but what if they are certified as an adult—you could end up with two kids where one of them ends up with the category C felony. That has me concerned. I understand that stalking and domestic violence between teenagers is a real and serious issue and something that we have to address.

I have the concern that we are setting up a 16-year-old or a 17-year-old for this felony. Would you discuss that? To be clear, I understand we are talking about the victim as the minor, but oftentimes, teenager to teenager, there are issues with domestic violence and stalking.

Jessica Adair:
I share your concern. I think you articulated something that is a real concern of ours as well. It is not our intention that juveniles who commit stalking be bound over to be held as adults, and the first offense would be a gross misdemeanor. If there is a way that we can clarify this in the statutory language, I would be happy to work with you on that.

Aaron Ford:
Assemblywoman Cohen, I understand your concern. Worth noting, to be certified, the judge would obviously have to make certain findings and approve for a teenager to be bound over and certified as an adult. Under those circumstances, generally we are talking about murder charges as opposed to stalking or some other crime being committed at that juncture. It may not completely allay your concerns but, as a practical matter, those are the instances in which we see generally underage individuals being bound over and certified as adults.

Assemblywoman Miller:
I am working off the proposed amendments. Section 1, subsection 1(e) refers to definitions of what domestic violence would include: "A knowing, purposeful or reckless course of conduct intended to harass the other person." When I am looking at this list—I understand this is existing law—it refers to many things that are of a violent and harassing nature, and then I see larceny. My question is, when we are talking about repeat offenders within that seven-year period and the proposal to extend and enhance the penalties, would someone who had committed a violent, harassing, domestic violence offense, and now within those seven years they are now charged and convicted of larceny, would they also be subject to those enhanced penalties within that seven-year time frame, or would it have to be larceny against the original victim?

Jessica Adair:
I think what we are trying to get at here with larceny within the existing statute is that oftentimes in that cyclical coercive conduct, there are people with the intention to harass people and steal other people's belongings. That is what this statute is intending to address. It is not a typical larceny or theft of property. I want to specifically direct your attention back to the penalties, but that specifically addresses domestic violence battery, not other crimes committed in the course of domestic violence.

Assemblywoman Miller:
Under the penalties for battery where it does have those enhanced, would that be included—what was section 15 and will become section 12, where it talks about the enhanced penalties for battery itself?

Jessica Adair:
These enhanced penalties will only specifically apply to domestic violence battery, not domestic violence and other crimes committed in the course of domestic violence. It is just the battery which, in and of itself, is a violent act. It is not these other crimes.

Assemblywoman Miller:
So you are saying general larceny—grabbing $50 off someone's dresser—would not be included?

Jessica Adair:
Yes. The reason these other crimes are included in the domestic violence statute is if you do commit a larceny or another crime that is in the course of the domestic violence relationship, it can then be tagged as domestic violence for other applications of the law. This particular old subsection 15, new 12, with increased penalties would only apply to domestic violence battery.

Assemblywoman Miller:
So we are looking at the relationship of abuse and control.

Jessica Adair:
Exactly.

Assemblywoman Hansen:
Looking at the bill as introduced on page 19, line 27, the strangulation portion was a B felony in the original language, and in the amendment it is going to a C felony. Do I understand that correctly? The amendment restores the penalty for a domestic battery involving a strangulation to a C felony. I am assuming that in existing law it is a C felony for a battery by strangulation.

You were originally introducing B and now we are taking that out. I am curious why we go from the existing C being essentially in violation of the TPO and different categories like that, and then recommending a B felony which is intent to kill—which strangulation seems to be what they are trying to do—but now we are backing off to a C felony. I am trying to understand the purpose of the amendment.

Jessica Adair:
Yes, you are correct. It is currently a C felony. In the original version of the amendment, it was bumped up to a B, and we are requesting that it be bumped back down to a C. The reason is because the C felony is, for the first time, a strangulation offense, as opposed to what we are asking the Committee to do by increasing penalties up to a B felony and a third-time domestic violence battery or subsequent. We are trying to be cognizant of the Assembly Committee's intention to be very intentional about what we are applying B felonies to. Within that philosophy, we want to be respectful of it, at the same time recognizing the inherent danger, and a compromise of strangulation offenses. It is a compromise that we are making. At the same time, we want to show that we are respectful of this Committee's

philosophy and that we really assess the B felonies in a situation where the violence is either substantial or consistent. That does not mean that strangulation is not a substantial violence felony, but as a first time, it would be a C felony.

Aaron Ford:
This entire bill is a compromise, weighing the different interests. For example, we have a sentencing commission who had interim studies on sentencing. There are different conversations going on about how to pair a particular crime with a particular sentence, so being cognizant of those things, as my Chief of Staff has indicated, is part and parcel of this entire bill. It is an effort to compromise.

Chairman Yeager:
Also a note for the record, conviction for strangulation domestic violence is mandatory prison. You cannot get probation even on a first offense. If it is a strangulation that does not have a domestic violence component, you would be eligible for probation, but to the extent that is not clear, it is pretty severe in the sense that it is a category C, but requires imprisonment rather than probation.

Assemblyman Fumo:
I agree that battery domestic violence is a serious problem in Nevada. If a first offense is a misdemeanor—2 days to 6 months in jail, you have counseling of an hour and a half per week for six months, there is a $1,000 fine, community service, and any other imposition of a sentence that the judge wants to put on there—why is a second offense still a misdemeanor? We are just adding 30 days to the sentence. Why not make it a gross misdemeanor? If we really want to get to the root of the problem rather than warehousing someone for more time, they are going to lose their job, may lose their house, and a lot of times the perpetrator is the breadwinner of the family. Why not do what we do for drug court and just enhance the counseling they get rather than the time in custody?

Drug court is a three-year program. Why not make the second offense a gross misdemeanor, give them 18 months of counseling and, rather than making it an hour and a half a week, make it every day for an hour? Let them learn what they are doing, rethink their problems, and deal with the issue. Warehousing someone to get out after 30 days, they still have the same problem, but if we give them counseling for a longer period of time, maybe then they will realize to address it. We are going misdemeanor, misdemeanor, felony. Would you consider making a second offense a gross misdemeanor with more counseling?

Jessica Adair:
Your suggestion about bumping up to a gross misdemeanor is something we considered. After conversations with both law enforcement, district attorneys, victim advocates, and public defenders, we kept it as a misdemeanor. The reason is because the gross misdemeanor requires a jury trial. Frankly, the jury trial process itself can be quite traumatic for victims. It is a compromise. The compromise that we made was to increase the length of time for incarceration. I like your suggestion about requiring a longer time for counseling. The reason we are requiring a minimum of 30 days for incarceration is that it should be a

punishment. It should be a punishment if it is a second-time conviction within only seven years.

Also, there are many people who commit these crimes who are not entering treatment programs with the full heart and mind that is needed in order to really hear that treatment. When someone is incarcerated for 30 days, it provides the opportunity for forcing that person to attend treatment and to punish the behavior—not just to deter; it is to punish violent consistent behavior. I like your idea about increasing the requirement for attending treatment. People who are committing this crime should be attending treatment.

I also want to note that there have been some really exciting developments in other treatment for domestic violence offenders in the past couple of years. This was brought to my attention by our domestic violence ombudsman. The previous model that we have been using—the psychoeducational model for domestic violence treatment—shows the offender, This is what domestic violence looks like. Here is how you do not commit domestic violence. It is not working. We are seeing it right now when our rates of domestic violence are increasing every single year. Research has shown—and now treatment programs here in the state of Nevada are adopting—the cognitive behavioral therapy model. It is more like therapy, so someone can understand why it is they are committing these domestic violence offenses. I wanted to share that with the Committee because I am really excited about this research and excited that our office and our domestic violence ombudsman has taken the charge to make sure if we are requiring treatment, the treatment is effective.

Aaron Ford:
I want to note that our amendment requires that the hours must occur at a time when the person is not required to be at his or her place of employment or on the weekend. That is an effort on our part to address the issue you talked about where someone may lose their job because of the time they are incarcerated. It is a time frame of not less than 12 consecutive hours during those time periods that we are talking about.

Assemblyman Fumo:
If I understand your answer, the only reason you did not want to make it a gross misdemeanor was because of a jury trial? The defendant could still opt in to a bench trial, correct? The defendant, in any case, has the option to get a jury trial or a bench trial?

Aaron Ford:
Yes. We heard from enough stakeholders to understand that resources are an issue, generally speaking, for a jury trial. The bench trials are all opt in; you are exactly right. That would be a different type of issue or less of a concern. Predominantly speaking, yes, the resources associated with a gross misdemeanor or jury trial is something that we had to take into consideration.

Jessica Adair:
The defendant can opt into a bench trial, but the victim cannot. The burden on the victim for a jury trial is still very much present in a gross misdemeanor.

Assemblyman Fumo:
That is correct, because it is the defendant's loss of liberty. When a defendant is convicted of a battery of domestic violence, even a misdemeanor, there are constitutional violations. They lose their Second Amendment right to own a weapon from that point on. If they are in this country illegally, they will be subject to deportation, so there are serious constitutional consequences that happen on a conviction of a domestic violence battery. I think it is right and appropriate that you do have a jury trial for that.

Aaron Ford:
This back and forth is a real debate on the issues. It is, in fact, a resource issue. If we are going to require jury trials, then this would have to be sent to Ways and Means, and we would have to find money to ensure that municipalities are able to conduct these jury trials. Maybe we go a step at a time in this instance, where we are trying to address some of the issues associated with losing a job. Your point is well taken, and I cannot quibble with those.

Jessica Adair:
I want to clarify for the Committee that this is a second or third offense within seven years. After the seven-year time period expires, we are back down to the first offense penalty, which is the original misdemeanor that would be punished under section 15, subsection 1, paragraph (a), unless you committed a felony. If it is just a second misdemeanor committed after the seven-year time period, it is still punished like a first offense.

Assemblywoman Torres:
I am definitely in support of creating a procedure that is going to help reduce domestic violence in our community. I am referring right now to section 12 on page 17 [page 21, (Exhibit I)] of the amendment. My main concern is about the increase of the fine. I really think that the fine should be equivalent to the crime, but then also have to make sense for the individual who committed the crime. For some individuals, that fine is more excessive than for others. If I make $4,000 a month, maybe that $200 or $400 fine is not that bad. If I make $1,500 a month, that fine is rather excessive. Is there something that can be done to take that into consideration? We are increasing the minimum and the maximum for these fines.

Jessica Adair:
This is your bill now. If you want to amend it, you certainly can. I do not mean that flippantly. This bill should reflect your intent. The increase in fine is a range. The $400 is a floor. If someone makes more money per month, that is something the court should take into account when they are looking at the higher end of the fine. Again, I want to proffer that we are happy to work with you after this hearing to make sure this bill reflects your intent.

Aaron Ford:
If you take a look at section 12, subsection 1(c) of the amendment (Exhibit I), we have substantially decreased the fine from $15,000 maximum to $5,000 maximum. We have attempted to find a compromising range to address some of these issues. It is not going to be perfect, but these are the efforts we are trying to take.

Assemblywoman Torres:
When you take a look at the same section that you just referred to, we are increasing the minimum as well to $2,000. My concern is for individuals from lower-income communities, because it becomes more of a burden, whereas if I am already wealthy, that burden is not going to affect me and the cost is not going to deter me from committing this crime again.

Aaron Ford:
At this point, this is the third offense. When we get to the point of a third offense within seven years—trying to understand that this is also not just a deterrent issue, but a punishment issue, and understanding the difficulties that many people will have from different communities is something we need to take into account.

Alissa Engler, Senior Deputy Attorney General, Office of the Attorney General:
With respect to misdemeanors, the defendants have the option to convert their fine to community service. They would have the option to either pay the fine or to work all the fines off in community service.

Assemblyman Roberts:
Domestic violence is definitely a serious problem in our state. Having worked law enforcement for a while, I can tell you that I have spent a majority of my nights when I was on patrol handling domestic violence calls. I remember the progression of domestic violence statutes over the years and the reason why we went to mandatory arrest was because police officers were not arresting people. They did not have a tool to arrest people, so it required us to do so. Very unpleasant arrests and not very fun doing those cases, but oftentimes it prevented follow-up violence that occurred in the home.

I have a question about the driving force behind removing siblings from the statute. I can tell you a lot of stories where I had 40-year-old brothers living at home beating each other up. I understand we have discretion. My concern will be that officers will fall on that discretion more so than the mandatory arrest. Would you explain the thought process behind removing siblings?

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
We went back and forth with this. There is something about domestic violence crimes that is different than two brothers hashing it out. We would like to think that we live in a society where brothers do not resort to violence but, as one of six kids, I know that is not always the reality, especially in my younger days. What is important is that law enforcement retain the ability to use discretion. If they deemed it dangerous, if they understand that this is such a pressure cooker environment, we do have two siblings who are living together and we need to distance them from each other overnight while they cool off—we just do not think that two siblings who may have just lost their cool really rises to that. As someone else in the Committee indicated a few minutes ago, the consequences of a domestic violence battery conviction is far worse than a simple battery conviction. Loss of gun rights is one consequence of that. It does change certain circumstances where there is a guardianship or custodial relationship between the two, where one sibling really depends on the other for life.

Generally speaking, we want to parse and be nuanced about what we consider domestic violence as part of a larger criminal justice reform attitude to what we are convicting people of.

Jessica Adair:
We have had great relationships with law enforcement in putting this bill together. That was something we discussed with them and why we allowed the discretion to still be there. If officers feel like they need to arrest, they can. When we are talking about increasing penalties, this is one of the reasons why we broke out the siblings and cousins from this relationship. We are really getting at that special intimate relationship. We are talking about increasing penalties and getting to the root of the domestic violence problem. The most common domestic violence offense relationship in the state of Nevada is cohabitants, which is usually romantic partners. We have situations where officers may feel like, I am arresting this person because I have to, but I really do not need to because it is just two adult siblings having a fight. I hope that clarifies.

Assemblyman Roberts:
Thank you; that clarifies it. Take away the mandatory part and people are going to default to discretionary for the most part. I just hope it does not result in further violence in some of these situations.

Assemblyman Daly:
In the first section, in the new language, you are going to be sending people to counseling more? I am not against counseling, but I am assuming there is some place in the statute on what kind of counseling it is. What kind of counseling is it? I do not know how much counseling costs. Is it at their own expense—which could be a higher penalty than the $5,000 fine you are talking about for six months' worth of counseling? Is there an accreditation or is there someone they have to go to? Coupled with that, in section 41 under the Attorney General's Committee for Domestic Violence, you delete the review of programs for the treatment of persons who commit domestic violence. I do not know why you would do those two things in conjunction.

Jessica Adair:
You are absolutely right. There is a certification for the treatment of domestic violence programs. Right now that is conducted by the Committee on Domestic Violence and further certification by officials at the Department of Health and Human Services (DHHS). We are removing the review by the larger committee and moving it to a subcommittee of the Committee on Domestic Violence. The reason for that is because the Committee on Domestic Violence does not meet as frequently as it needs to in order to review those programs that are constantly coming to the forefront. That is why we are creating the subcommittee and that subcommittee will then review those programs and send them to DHHS for certification. There is a certification process for those programs.

Assemblyman Daly:
I am curious as to how much it costs for an hour and a half of counseling?

Jessica Adair:
That is a good question. Right now there is a requirement in this statute that some domestic violence programs provide treatment on a sliding scale for income. I believe it is 5 percent of program participants for domestic violence treatment are required to use a sliding scale. There are some entities that provide more than 5 percent of their program to participants on a sliding scale. I want to say SafeNest in southern Nevada provides significantly more than 5 percent. It is quite a financial burden on that organization, but they are just doing a great job. I do not know if Liz is still down there in Las Vegas.

Elizabeth Ortenburger, Chief Executive Officer, SafeNest:
The average rate for an hour and a half of counseling in Clark County is about $35 with a $70 intake fee. If you do the math, that is 26 sessions times $35. The *Nevada Administrative Code* requires that any program providing batterers treatment provide financial aid to 5 percent of its population that cannot afford to pay. SafeNest provides anywhere from 46 to 80 percent—given the month—of our clients with financial assistance, and these are people who prove through financial documentations that they cannot pay, so we underwrite the program $150,000 to $250,000 per year. That is privately funded, because there are no federal dollars that cover batterers' treatment.

Assemblyman Daly:
Thank you; I was curious. I am looking at the old section 17, new section 14 in the amendment. It starts out at the beginning, "A person who, without lawful authority, willfully or maliciously engages in a course of conduct . . . ." I understand that you have to meet that burden when you start out because it is subjective. Then I look at subsection 13, now subsection 12, of that same section 14 when you say in paragraph (a) "'Course of conduct' means a pattern of conduct which consists of two or more acts over a period of time, however short . . . ."

I understand you need to get over the "willful malicious" role and "reasonable person," which I think is in paragraph (e) [now (f)], would have the other reasonable person standard. When you couple that with subsection 5, where it is not a defense—do not get me wrong; I am not trying to defend people who do this—but when you start stacking all these things, it is not a defense that, I did not know, and I sent two texts in a half hour or something, and I have to understand or predict that person's state of mind. I think when you stack all of those things on there, you almost build a trap for someone. You guys are always going to say, Well, you have to rely on a judge, you have this reasonable person standard, and you have to prove you are willful and malicious. I do not want to have to get into someone else's state of mind over something that happened within a half an hour because you have "however short," establishing your course of conduct, et cetera. Can you see the stacking of those things? It might make an unfair standard.

Jessica Adair:
This language is taken from the Model Stalking Code. This section is specifically addressing stalking. I think that the reasonable person standard is what we are trying to get at what you are describing. We want to get out of this subjective mind frame of what one person might

be thinking, but what would a reasonable person, under the same circumstances, consider stalking? You mentioned in your question two text messages within a short amount of time. A reasonable person would probably consider two text messages within a short frame of time stalking if the language was such that a reasonable person would consider it stalking. For example, I am outside of your house and I am coming to get you. What we do not want is for stalking to be considered two text messages within a short frame of time that would probably not be considered stalking, such as, Hello. This is addressing exactly the problem that you identified, that we want to get out of the subjective situation here with someone's frame of mind, and get to a more objective—what a reasonable person would consider to be stalking. That is exactly what this section is intending to do and why we took this language specifically from the Model Stalking Code that is now implemented in other states.

Assemblyman Daly:
In section 14, subsection 5, you state it is not a defense if I did not know that someone was feeling something. They may feel differently than that, but regardless of what my texts say, if they felt that way, that is not a defense. Then I am only relying on the reasonable person standard or I would have to say, I did not willfully or maliciously do it. People feel different things and it is not a defense for whatever that other person felt, and now it is the perpetrator's fault.

Jessica Adair:
The purpose of this is that it was not a defense for the person who was not given actual notice. It takes the burden off the victim to say, Stop stalking me. A victim, or any person, should not have to say, Stop stalking me, in order to not be harassed. That reasonable person standard, then, is very important. Any person in the state of Nevada knows that the type of conduct that he or she should be conducting with another person should be such that a reasonable person would consider it appropriate.

Chairman Yeager:
That is all the time we have for questions. Members, if you have questions, I would encourage you to reach out to the Attorney General's Office offline. I will put the hearing on pause for a brief moment as I have received another bill draft request (BDR).

BDR 14-428—Revises various provisions relating to offenses. (Later introduced as Assembly Bill 434.)

This is one of the traffic violation bills that came out of the interim committee. At this time, I will be looking for a motion to introduce Bill Draft Request 14-428.

ASSEMBLYWOMAN MILLER MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 14-428.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will take testimony in support of Assembly Bill 60.

Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence:
In 2017, more than 47,000 individuals contacted local domestic violence programs for help. In that same year, according to the Nevada Department of Public Safety and its Uniform Crime Report, law enforcement agencies responded to more than 30,000 domestic violence calls. Of those, only 13,000 resulted in arrests, and the majority of the nonarrests were a result of the suspect being gone on arrival. Over many years, we have been working to try to make the approach to domestic violence better, and Assembly Bill 60 is a part of that continuing effort.

We did not talk a lot about the assessment of the administrative fee. I just want to say that that funding will go to the Office of the Domestic Violence Ombudsman to do a variety of things, one of which is to fund the Committee on Domestic Violence, which I think we just heard a little testimony about; it oversees batterer intervention programs. Hopefully with some additional money, there will be an effort and an ability to do better oversight and evaluation of those programs. It also provides for training for law enforcement, prosecutors, and the courts—again, a critical need in this state and one that we do not have continuing and consistent education on. Lastly, it will provide for education and services to victims which need more and more help all the time. We really support that section.

In terms of removing siblings and cousins from the definition, this has always been a difficult issue, looking at that definition and asking, who do you remove, and who do you not remove? I appreciate the Assemblywoman's comments. Our definition is very broad. It reflects and mirrors many other states' definitions. We are seeing some movement to begin to narrow some of that definition. I think the proposal here allows for people to go ahead and make the arrest; it just is not mandating it. We are going to hope that this will be a positive movement.

Finally, section 22 or 16—whichever document you are looking at—Chairman Yeager had mentioned there were some conversations around the types of crimes that are covered. The other issue is that Nevada's definition of who is included is broader than the federal definition, which does not include dating relationships. If this is possible, this will be a very positive step and will end some of the confusion around if it was a dating relationship or a spouse, et cetera. Hopefully, it will make it easier for people to implement that section.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are here in support of A.B. 60 as amended. We thank the Attorney General for bringing this important and overdue legislation forward for the protection of domestic violence victims. Every day you get the most important bill of the session coming through this Committee, but I am here to tell you, I worked domestic violence for a number of years and this is probably the most important piece of legislation that you are going to see.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We absolutely support this bill. To Assemblyman Fumo's questions about why not make the second commission of a domestic battery a gross misdemeanor, we think that in its current form, this bill strikes a good balance. We are recognizing that once we have a second-time domestic battery, we have a victim whose chances of being seriously injured or killed statistically have just gone up. We also have a penalty that, while recognizing it, does not discourage victim compliance by saying, Well, the penalty for your husband or your wife is now going to be up to one year in county jail. We also do not have victims deterred by a jury trial, and we are able to get more services to the offender and to the victim during that early phase of the domestic battery relationship.

Perhaps even more important, the system would shut down. We do not have the resources to have jury trials for domestic violence for gross misdemeanors. There are no jury boxes built in the justice courts, at least in Washoe County. I would ask you to keep that in mind when you are considering chances like that.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are in support of the bill. I appreciate the Attorney General's Office working with us. I want to make a very quick point that this bill clarifies something that happened last legislative session. I am not taking a position on whether siblings or roommates should be removed; last session they were removed. That is a policy decision for this body. Something that is very important is, for an officer arriving on the scene of a domestic violence, being able to de-escalate and to separate individuals. As you know, if an officer cannot make an arrest for a misdemeanor that does not occur in his presence and when you show up to a call where siblings are having a fight or roommates are having a fight and both parties say they are not leaving, then the officer does not have a choice. We are going to be back there time and time again.

Last legislative session when "roommates" was removed on the very day of the hearing, we had a roommate kill a fellow roommate the same day the bill was being heard. The remedy last session was under NRS 171.137. "Roommates" stayed in for the arrest language, but in the definition of domestic violence, they were removed. This caused a lot of confusion, and I believe that the language in this bill that allows an arrest to be made if the officer believes that not making the arrest will result in the situation escalating, and then on the other side of the coin, if the officer does not believe the situation will escalate and he does not make an

arrest, there is language here that indemnifies the officer and the agency. I believe it is important to clarify those changes that were made last session.

Elizabeth Ortenburger, Chief Executive Officer, SafeNest:
We echo the comments of the Nevada Coalition to END Domestic and Sexual Violence and stand in support of this bill.

Chairman Yeager:
Is there anyone else in support of A.B. 60? [There was no one.] Is there anyone opposed to A.B. 60?

Amy Coffee, representing Nevada Attorneys for Criminal Justice:
I would like to reiterate that we appreciate the cooperation and support of the Attorney General's Office and their willingness to listen to all sides to create the best bill possible.

I want to talk about a few sections, and I am going off of the Attorney General's amendments (Exhibit I). Section 5 would make a new crime, a crime against a child. This relates to another bill that was heard on the Senate side, Senate Bill 7, which takes the crime of soliciting out of our code and turns it into the crime of facilitating sex trafficking. I testified against it because, if you solicit a child, if the person is 17 or 16 and they tell you they are older, even if they show you identification, it would not be a defense. It is a strict liability crime and now I am concerned with, if that passes, not only would that be a strict liability crime, but that person would have to register as a sex offender. Along with our opposition to S.B. 7, we would oppose taking the crime of soliciting and calling it facilitating sex trafficking, and making that person register as a sex offender. I know there are other bills to increase the penalties for that crime, either to a B felony or, my understanding is, there was another bill to have it be a life sentence.

Looking at the amendments regarding fines—I believe it is on page 17 [page 21, (Exhibit I)]—one of the things, as a public defender, is that any increase in fines are very onerous on public defender clients. They not only have to pay the fines, even if they do community service, they have to pay fees. They also have to pay administrative court fees. They also have to pay for their counseling. If there is restitution involved, that might be imposed. Any increase of a minimum fee is very onerous for public defender clients, most of whom are incredibly indigent and will have trouble paying, and a lot of times they end up doing jail time because they cannot afford to pay for all of these things. I do not have a problem with maybe increasing the range; I would just ask that you keep the minimums in place to where they were so that a judge has discretion when imposing that fine.

As to the increase of the punishment for a third domestic violence offense up to 2 to 15 years, the concern we have with this is the prior domestic violence that caused you to get to the felony. They can range from very serious domestic acts of violence or, here in Clark County, it could be a no-injury touching, scratching, pushing, or a very minor act. The concern is that those two really minor acts that did not result in any serious injury will now result in a felony of 2 to 15 years. Further, a lot of people plea to domestic violence without proper

representation because they want to get out of jail or for other reasons, so we are very concerned about increasing this. I would suggest that you keep the current sentence as is, and perhaps make a new category of one with substantial bodily harm be the 2 to 15 years, so it is a more serious crime. Instead of going from two what could be very minor misdemeanors to the 2 to 15 years—I appreciate Assemblyman Fumo's suggestion of the gross misdemeanor. We are very concerned because the prior two could be serious or could be very minor. Again, a domestic battery—looking at this section—against a pregnant victim, agreed, that could be serious, but it could also be a domestic battery that does not involve any injury. We would ask you to consider adding a substantial bodily harm because this could be a minor push, a scratch, and the victim happens to be pregnant—which I do not think is really the intent. I think the intent is someone who is really committing an act of violence and against someone who is pregnant.

Moving on to the stalking section, section 17, as far as who this would affect: we would suggest that this apply to a person over 21. The reason is because anyone who has been around teenagers knows the way teenagers use social media—I do not think the intent of this crime really applies to them and their intent. We would ask that this apply to persons over the age of 21. The section that takes up any defense essentially strips the person of any possible defense of this crime. By taking out all the defenses and inserting the reasonable victim standard, it would make this essentially a strict liability crime. It would strip away any possible defense a person would have. Clearly, in these stalking situations, the intent of the parties is going to be at issue; it is going to be what either a jury would decide or a judge if it were a bench trial. That is obviously the heart of the case. What was the intent of the parties? I think that by adding that language, that takes out the defense and the reasonable victim standard—which is not a proper legal standard—would essentially make every defendant almost de facto guilty and would be impossible to defend.

I am going to defer to my colleagues in Carson City. We appreciate that the Attorney General is willing to listen and reach out and make this a bill that actually goes after and affects people who are truly committing acts of violence. We agree with that. We just do not want to see this be a bill that ends up capturing people who are committing very minor crimes.

Just as a final thought, when you are looking at enhancing a third domestic violence to 2 to 15 years, it is essential that for those priors, a person be allowed to have a trial by jury, that it not be by a judge. What we find in Clark County are judges who almost always find the defendants guilty. It is very tough to get fair treatment, and I think that jury trials for misdemeanor domestic batteries would help make this enhancement process more fair.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

A lot of the points were covered by Ms. Coffee, so I will go into some of the things in the new section 10 [page 17, (Exhibit I)], old section 14, which is now going to add a prosecuting attorney into the enhancements for battery. Hopefully I am not working off of the old copy that was emailed to me (Exhibit J). The concern with that portion is that they

are adding a carveout now for prosecuting attorneys, but it does not really limit the course and scope of the duties. We have had this conversation in this Committee before. I guess if you want to enhance penalties for the prosecuting attorney when something happens due to the course and scope of their duties, then that is this Committee's prerogative; however, if it happens to be a bar fight not related to their duties at all, then perhaps there should not be any increased penalties. Maybe that should be spelled out when we are looking at it.

Moving on to the increased fines that we had talked about, I think the $35 assessment is great and should go into studying it. But raising the fines that we already have a problem with in Clark County, we are having trouble collecting the fines as it is. People are poor and the classes are expensive. The money should be going towards the therapy because that is what is going to stop the problem, not increasing the court's coffers on this issue. Our problem with increasing the fines is for that reason. The money should go towards the therapy.

This is my second session. Over the interim, we were able to study some criminal justice reform and some data was generated, but no data has been generated over the interim concerning our problem with domestic violence. Even though this should be studied, I am glad the Attorney General is putting in committees and they want to look at this. What keeps happening is that the prosecutors keep coming to this Committee or the Senate committee and they say, Let us jail harder. Let us incarcerate our way out of this problem. We have no data to show that that actually fixes the problem in the least bit. How about we put some money in data and study our treatment efficacy? That is really the crux of it. If we are number one in domestic violence, why do we not study why we still remain number one in this terrible category? Why do we not say, Hey, is our treatment effective? If it is not effective, let us do effective treatment. If we have grants, let us dedicate grants to these treatment providers and figure out what is a better way that we can do this so we can actually stop this program in its tracks rather than continuing to spend $25,000 a year to incarcerate people in prison or $170 a day to incarcerate them in jail at taxpayer expense when we are not fixing the problem. That is the same solution that keeps coming to these Committees. Raise penalties and we will fix it. Well, we have not fixed it, so let us try something different.

The increased penalties for substantial bodily harm are understandable. I will say, though, that in terms of Nevada's interpretation of the definition for substantial bodily harm, a bruise itself would qualify for that. It is something that we may want to take a look at when we are raising the penalties. There has even been a court case where a kick in the groin constituted substantial bodily harm. When we are looking at increased penalties, we need to look at the full ramifications.

I appreciate Ms. Adair's exchange with Assemblyman Daly, but I read the language exactly how Assemblyman Daly reads the language. I read it that this is now creating a subjective standard based on the reasonable person, and the reasonable person is the reasonable person who is doing that. They say that they got the language from the Model Stalking Code. There is something called the Model Penal Code that talks about how law should be implemented

across the United States, that talks about the requirement of a union of a bad act, which is a guilty mind and a guilty intent. This bill removes that and takes away any possible defense.

Our job as public defenders is to balance the scales—Lady Justice holds two scales. Whenever you try to remove a defense, what you are really doing is putting your thumb on one side of the scale. We should not be removing defenses when it comes to this, and we should be looking at intent, not just a subjective person's feelings on certain things. Is stalking a problem? Absolutely, but let us deal with it and let us have a full and fair trial on the issues.

Similarly with my colleagues, I will say that we continue to increase penalties for domestic violence. We are in favor of jury trials because of the harsh consequences that can attach. Should there be harsh consequences for domestic violence? Absolutely. But should we be vetting those through the system of jury trials which our country was built on? Yes. If we are going to increase penalties, maybe we should have our community members actually looking at these problems.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

I would echo all the statements made by Mr. Piro and will break down some of the subsections that I believe also need to be addressed. Specifically with section 1, I am concerned regarding how broad we are now becoming in the definition of what constitutes domestic violence. I would caution against adding burglary, home invasion, and pandering specifically to this. I do not believe that pandering necessarily has anything to do with domestic violence, and so I caution against that.

I am very excited to hear that there have been some studies regarding what types of treatments are successful and very disheartened to hear that what we have been using has not been working. I hope there will be a trend going towards the cognitive behavior model, especially now that we are increasing the penalties. Knowing that what we have been doing has not been working, and we are adding an increased fine and increased prison sentence based on what we know now is not working, is concerning to me.

In specifically discussing the fine amounts, I would note that there is some back and forth regarding the fine being converted to community service. That is not how it is happening in Washoe County, so if that is the intention of the sponsor, that it could be an "or," that should be laid out. The way our courts have been interpreting it, it says the person "shall be further punished by the fine of not less than $200." Most judges in Washoe County are interpreting that as saying that there has to be some sort of fine and it cannot be converted to community service.

I think it has been stated, but the fine amounts can be very onerous and those individuals really should be engaging in counseling, and that counseling should be a priority. If someone has to make a decision between going to additional counseling or paying a fine, I think as a society we should be hoping that they are using that money towards additional counseling to

ensure that they are not back for a second or third offense. We heard that part of the intent behind these increased penalties is when it is involving one victim over and over again. That sometimes can be the case. I would caution that studies have shown it is not just a bad actor who sometimes is the one who engages in acts of domestic violence. Usually they were a victim of domestic violence as a child themselves. They grew up in a household where domestic violence occurred, and so it is something that maybe—and hopefully with this new cognitive behavioral treatment—will really help those individuals to make better choices in the future.

On page 18 [page 22, (Exhibit I)] of the amendment in section 12, subsection 6, it should be an aggravating factor if a child was present. I have heard the statistics that it can be very detrimental for children if they are involved or in the home. I am not sure what the purpose is of including this specifically as an aggravator. I know that the courts look at and can consider those factors already. More importantly, it could be considered child abuse and neglect if a child is actually harmed and present. My concerns with this is just because they are in the presence, I do not know if that is in the house, it could be in a separate room; there is no indication that they actually had to have a witness hear the domestic violence or anything of that nature. I believe that this is already being covered and, since it is a separate offense, I do not think it is necessary to spell it out.

Regarding the stalking, I think we discussed it at great length in section 14. When you are taking away defenses, we have severe issues with it, especially when you are taking away defenses where the individual had no reason to have any knowledge or any intent. That is really concerning. Exactly as Mr. Piro indicated, we are really pushing the scales of justice to a point where it is very onerous, not just on this whole system itself, not even just on the defendant.

Regarding section 16, we are talking about how we are defining [a misdemeanor crime of domestic violence]—this relates to the statement from Chairman Yeager. I would echo that when we are talking about substantially similar laws in other states, that is very vague, and I think we may need to work on crafting that.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I want to echo the sentiments of my colleagues from the Nevada Attorneys for Criminal Justice (NACJ), the Clark County Public Defender's Office, and the Washoe County Public Defender's Office. I have a little bit of a different perspective to add when it comes to the American Civil Liberties Union (ACLU) and the way that we approach issues and crimes that disproportionately impact women and minority communities.

It is true that domestic violence does not discriminate on the basis of gender or socioeconomic status or race; they have certainly discriminatorily enforced and systematically devalued the lives of women, minorities, and the poor. When it comes to passing any kind of laws, the ACLU historically has been in support of new domestic violence laws as long as they are attached to some kind of therapy for an individual to ensure that the individual who is victimized has the ability to report. I want to caution and make

very clear on the record that harsher penalties can act as a deterrent to reporting an offense, particularly in minority communities where there are a lot of undocumented individuals. When we are working with the Latino community and working with people who are trying to gain some sort of status—such as U visa status here in the United States, so they can show that they have been a victim of domestic violence—but oftentimes they are reluctant to do that because of the harsh penalties that their former loved one or someone who they were involved in a relationship with may experience.

We want to caution that for any type of new domestic violence enhancements that we are ensuring that any funds or monies are used not only for the rehabilitation of that victim, which is absolutely necessary. We have seen historically that it was not until this last legislative session that undocumented individuals were able to access the Victims of Crime Program compensation fund. That has been a failure of our domestic violence laws, saying they can only apply to one population over another. We want to ensure that whatever fees are assessed by this $35 administrative fee are being used appropriately and are not discriminatorily provided to victims. Those concerns are what we have to add to this, and we look forward to working with the Attorney General's Office on this bill.

Chairman Yeager:
Is there any additional testimony in opposition to A.B. 60? [There was none.]

I will pause the hearing one more time for three Committee bill draft requests (BDRs).

BDR 5-1093—Eliminates the imposition of certain fees, costs and administrative assessments in juvenile proceedings. (Later introduced as Assembly Bill 439.)

BDR 10-1094—Revises provisions relating to time shares. (Later introduced as Assembly Bill 438.)

BDR 3-1108—Revises provisions relating to home warranties. (Later introduced as Assembly Bill 440 .)

At this time, I will be looking for a motion to introduce the three bill draft requests that I just read into the record.

> ASSEMBLYWOMAN BACKUS MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUESTS 5-1093, 10-1094, AND 3-1108.
>
> ASSEMBLYWOMAN COHEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Is there anyone neutral on Assembly Bill 60, either here or in Las Vegas?

Tara Phebus, Executive Director, Nevada Institute for Children's Research and Policy:
I am the executive director at the Nevada Institute for Children's Research and Policy, a center within the School of Community Health at the University of Nevada, Las Vegas. We also serve as the Nevada chapter of the national organization Prevent Child Abuse America. I am referencing the section that refers to the presence of children as a consideration during sentencing.

A 2006 study estimated that more than 15 million children in the United States lived in a home where a domestic violence incident occurred at least once. We know that just living in a home with domestic violence is traumatic for young children and this exposure to ongoing chronic stress can have lifelong impacts on both the physical and emotional health of those children late into adulthood, including being at a greater risk for depression and anxiety as well as chronic diseases like diabetes and heart disease.

Exposure to domestic violence is just one of the identified adverse childhood experiences that have been found to increase those risks of chronic disease as well as mental health and substance use disorders. In addition, exposure to violence in the home has been linked to negative educational outcomes for children, as living under chronic stress can cause additional missed days of school, difficulty focusing on schoolwork, and increased behavioral issues within school. This well-established body of research shows that all children, regardless of age, are negatively impacted by living in a home with domestic violence. Even if they do not actually see those acts of physical violence, children are impacted by hearing verbal or physical altercations, seeing the aftereffects of those altercations including physical injuries and destruction to a home or the place where they live, as well as the diminished protective capacity of the victim of that abuse—the parent who is the victim may have less ability to protect their child and parent them.

In one study, researchers found that children who were exposed to violence in the home were 15 times more likely to be physically or sexually assaulted later in life. While domestic violence itself is an egregious act and a significant public health problem for Nevada—as has been mentioned by multiple others during this hearing—when these incidents involve children, they become much worse. The long-term damage caused by childhood exposure to violence is difficult to repair, especially in very young children—ages 0 to 3—when 80 percent of brain development occurs. We heard earlier that some of the statistics showed that 29 percent of domestic violence incidents had children under the age of 3 in the home at the time. For babies living in violent homes, they can have fewer neural connections which limits their capacity for cognitive and social-emotional learning later in life. Exposure to toxic stress and the impact of violence is particularly damaging for children at this stage in their lives. Therefore, it is critical to protect children from exposure to domestic violence. Take that into consideration when we are thinking about what happens after incidents may have occurred.

Chairman Yeager:
Is there anyone else in the neutral position on A.B. 60? [There was no one.]

Jessica Adair:
I want to address some specific points that were brought up in the past few minutes, such as the inclusion of pandering as a domestic violence offense. The reason we included pandering is because oftentimes as part of this coercive cycle of control, victims are forced to engage in pandering when they would not make that choice of their own agency. I also want to quickly reference the addition of prosecuting attorneys as officers in section 11 [page 20, (Exhibit I)]. This is treating prosecutors exactly like correction officers, judges, et cetera, in the definition of an officer of a court. We are not changing anything else.

I also want to address some comments made previously that battery is not serious. Sometimes there are cases in which domestic violence battery is not serious or a serious offense. I wholeheartedly disagree with that philosophy. Domestic violence battery rising to the level that someone has contacted law enforcement, arrests have been made, and they are continually engaging in the judicial system is serious. It should be treated with the seriousness that it deserves. I also understand that this Committee and this session as a whole in conjunction with NACJ is making a larger and thoughtful deliberation about how we should address penalties in the state. I speak on behalf of the Attorney General when I say we are in complete support of that deliberation.

The penalties included in this bill were treated with the same kind of deliberation with many stakeholders. I want to recognize that the penalties we are talking about are in situations where violence has occurred and is a continuous process within a short amount of time. With that, I want to specifically address the comments made about oftentimes offenders having been victims themselves as a child. That is true. There is a cycle of violence that is often present in intergenerational cycles of violence. It is present in domestic violence relationships; that is precisely why we have included the discretion of the court to consider the presence of a child as a factor in determining sentencing. I want to thank Tara Phebus for her testimony and note that yes, over 29 percent of domestic violence-reported cases in 2017 involved a child under the age of 3. A larger statistic, though, is over 10,000 children in the state of Nevada were present in 2017 domestic violence-reported cases.

Finally, I want to address the comments made about the stalking section. Yes, this is from the Model Stalking Code. This language has been adopted by other states, specifically in regard to removing the defenses. Time and time again in situations of stalking and harassment, we hear a common refrain, Well, she did not say she did not like it, so therefore she must have been okay with it. She never told me that she was uncomfortable. That is unacceptable as a defense. I would encourage this Committee to adopt that language so that such a defense is not used inappropriately in a court of law.

Kyle George:
I have had the opportunity to prosecute a lot of the crimes you have discussed today. Domestic violence is a difficult crime to prosecute. Very often, the victim is in fear and does not want to participate in the process because he or she knows what the penalty will be if the defendant is found not guilty. They know they may have to pay the price for that prosecution behind closed doors at some point.

In the years I have been prosecutor, I worked with a wise judge, someone I admire greatly, who repeated frequently that the scales of justice have two sides: justice and mercy. A lot of the conversation today focused on the mercy aspect. Let us look at what the defendants need. Let us be merciful to these defendants. But this judge reminded me that mercy cannot rob justice. It was not until after many years of hearing this that I realized that there is a religious underlying tone to that. The concept of not robbing justice is really important. This is a criminal justice system. I think sometimes we lose sight of that, that victims deserve justice too. Those you have heard from in the defense bar today come across as if the defense bar is impotent, as if they have no ability, that once these laws are passed, that is it and our clients go down. I am sitting in a room with many brilliant defense attorneys. If a defense attorney believes that something is ambiguous, then they can argue that to a jury, and the jury will determine whether it is or not. If a law we pass is so ambiguous that it is unfair or unconstitutional, the courts will strike it down as unconstitutional. We have those mechanisms in place.

The Attorney General's Office firmly believes that the language of this bill has been vetted and is now constitutional. Some of the ambiguities are left there in the interest of protecting those under trial. The power of the state is a mighty one. As a prosecutor, I was always cognizant of the power behind my words, and the power of my charging documents. The defense bar has an important role in this process, and I respect that, but so do victims. Victims have a right to be heard. Victims have a right to justice.

The comment I heard that was most troubling is that we do not know that the language proposed in this bill will work. We do not know that enhanced punishment will work. I will tell you what we do know. We know that what we have now does not work.

Aaron Ford:
Thank you for entertaining this bill. You have heard from two of my fervent advocates in the Attorney General's Office about the importance of this bill. They know me. They were given a charge to work with all interested parties, and I acknowledge the appreciation and comments from the public defender, the NACJ, and those who may be opposed to this bill. We remain open to working with those individuals.

I remember the unwritten rule when I was sitting in your chair that if I accept your amendment, that means you come up in neutral at a minimum, or that you come up in support, but you do not get to continue to oppose my bill if I accept your amendment. That unwritten rule has been displaced since I have become attorney general. What I have been tempted to do is to incorporate as much as possible from the opposing side to get an understanding about how best to balance these scales of justice.

As I have indicated to you, in the Attorney General's Office, our job is, in fact, justice. Justice for the victims but also justice is for those who are accused. What we are attempting to do here is to find the quintessential example of compromise. It may not be perfect. In fact, it sounds as though it is not perfect, but it is indeed an effort in that particular

direction. For example, the penalty issue that Assemblywoman Torres and others brought up resonates with me, and it is something worth considering in additional discussion.

What I would encourage this Committee to do is to please take it upon yourselves and let us know things we might be able to do—although not entirely satisfying what your concerns are, to at least put them in a place where we can put forth this bill—to protect these victims and survivors of domestic violence. It is an important bill. It is something that we all, I think, agree needs to be addressed, and we are looking to do so through A.B. 60. Thank you for your time and support.

[(Exhibit K) was submitted but not discussed and will become part of the record.]

Chairman Yeager:
I will close the hearing on A.B. 60. Is there anyone who would like to give public comment? [There was no one.] We are still waiting on three Committee bill introductions, so I am not going to adjourn at this time. We will recess and will likely have to do a behind the bar on the Assembly floor to introduce those last three bills. I do not want anyone to have the impression we are going to do any more bill hearings today, as that is not going to happen. So that we can continue to keep the meeting open, we will recess the meeting to the call of the Chair [at 11:31 a.m.].

[The meeting was called back to order at 5:45 p.m. behind the bar. Roll was taken.] We are here to take action on bill draft requests 13-164, 2-1106, and 11-1111.

BDR 13-164—Enacts provisions governing supported decision-making agreements. (Later introduced as Assembly Bill 480.)

BDR 2-1106—Revises provisions relating to creating a homestead. (Later introduced as Assembly Bill 481.)

BDR 11-1111—Revises provisions relating to governmental administration. (Later introduced as Assembly Bill 482.)

I am seeking a motion to introduce these Bill Draft Requests.

> ASSEMBLYWOMAN TORRES MOVED TO INTRODUCE BILL DRAFT REQUESTS 13-164, 2-1106, AND 11-1111.
>
> ASSEMBLYMAN FUMO SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMEN KRASNER AND TOLLES WERE ABSENT FOR THE VOTE.)

Thank you, Committee. We are in recess at the call of the Chair [at 5:46 p.m.]

We are adjourned [at 6:50 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
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 proposed amendment to Assembly Bill 19 presented by Jessica Adair, Chief of Staff, Office of the Attorney General.

Exhibit D is written testimony dated March 25, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, presented by Robert W. Lueck, Private Citizen, Las Vegas, in support of Assembly Bill 19.

Exhibit E is an article dated July 9, 2016, written by Robert W. Lueck in the *Las Vegas Review-Journal*, titled "Would a protective order have save [sic] woman and her children?"

Exhibit F is written testimony dated March 25, 2019, in neutral to Assembly Bill 19, presented by Mindy McKay, Acting Administrator, Records, Communications and Compliance Division, Department of Public Safety.

Exhibit G is a proposed amendment to Assembly Bill 19, dated March 22, 2019, submitted by the Nevada Attorneys for Criminal Justice.

Exhibit H is a proposed amendment to Assembly Bill 41 presented by Jessica Adair, Chief of Staff, Office of the Attorney General.

Exhibit I is a proposed amendment to Assembly Bill 60, presented by Jessica Adair, Chief of Staff, Office of the Attorney General.

Exhibit J is a proposed amendment to Assembly Bill 60 from the Nevada Attorneys for Criminal Justice, submitted by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit K is written testimony submitted by Dennis Fitzpatrick, Private Citizen, Henderson, Nevada, regarding Assembly Bill 60.