MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 16, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:19 a.m. on Tuesday, April 16, 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:

Senator Nicole J. Cannizzaro, Senate District No. 6

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
John T. Jones, Jr., representing Nevada District Attorneys Association
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Kristine Brewer, Attorney, Family Justice Project, Legal Aid Center of Southern Nevada
Elizabeth Ortenburger, Chief Executive Officer, SafeNest
Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence
Adam Cate, representing Nevada District Attorneys Association
David Cherry, Government Affairs Manager, City of Henderson

Chairman Yeager:
[Roll was called. Committee protocol and rules were explained.] We are now going to go to the agenda. As you can see, we have three bills on the agenda today. We will go in order, so I will open the hearing on Senate Bill 137.

Senate Bill 137: Revises the definition of the crime of robbery. (BDR 15-928)

Senator Nicole J. Cannizzaro, Senate District No. 6:
I am here to present Senate Bill 137. What this bill seeks to do is to change the definition of the crime of robbery as it exists in current Nevada law in order to address a recent decision handed down by the Ninth Circuit Court of Appeals in a case known as *United States v. Hans Vincent Edling* [895 F.3d 1153 (2018)]. In short the *Edling* decision did two things: it highlighted a flaw in our definition of the crime of robbery, and it made it impossible for a federal prosecutor to use a Nevada robbery conviction as a prior conviction—as what are known as qualifiers—for federal prosecutions. In order to fix these problems, we need to remove the phrase "or property" from our statutory definition of robbery. That is exactly what Senate Bill 137 does.

As you can see in section 1, subsection 1, our statute currently includes the possibility of force or violence or fear of injury being committed on a person or on that person's property in order to qualify as the crime of robbery. In other words, as the Ninth Circuit noted in its opinion, robbery under Nevada law may be accomplished by creating fear of injury to property alone. In *Edling*, the court argued that a robbery conviction in Nevada could not be used in a federal prosecution because Nevada's definition includes the threat to property alone, while the narrow federal definition of a crime of violence allows only for a threat to a person. Thus the court found that Nevada's definition does not meet the standard for a categorical crime of violence or for generic robbery, nor does it qualify as extortion under a list of enumerated offenses because in all of these instances, the wrongful use of force, fear, or threats must be directed against a person and not against property.

The court's opinion walks through all of the steps the court took in concluding that Nevada's definition of robbery is overly broad and does not meet the standard required for prosecution under federal law. That is because our law is imprecise. The court turned to the rule of lenity, which instructs that where a statute is ambiguous, courts should not interpret the statute so as to increase the penalty that it places on the defendant. In *Edling*, that meant that Nevada's statute did not meet the federal standard, thus the penalty provided under federal law was not allowed. By removing this ambiguity in the *Nevada Revised Statutes*, we will both improve the accuracy of our statute in relation to the crime that it actually defines, and we will align Nevada law more closely with federal law.

Assemblywoman Cohen:
Can you give us an example of what this means? What kind of crime are we talking about in this situation?

Senator Cannizzaro:
This would actually not change what we fundamentally know as the crime of robbery. Typically, when you think of robbery, it is when someone comes up to you and puts a gun in your face and tells you to give him all of the property that is in your pockets. That is a robbery. That is a threat of force or fear of injury to a person. The gun being put in your face, the demand for your property, and your turning over your cash is a robbery. If this bill were to go into effect, that would still be a robbery. The only thing this bill changes in the definition of robbery is it removes the words "or property." The best definition that we have been able to come up with—I have not seen any cases like that in my practice, but I am sure they exist—is if someone says he will shoot the windows out of your car if you do not give him your wallet and your cash. That would still be a robbery under the statute as it is currently written. If this bill were to go into effect, that particular crime could be a number of other things. It could be malicious injury to property, coercion, or, under certain circumstances where someone is using the threat of force in order to obtain property, it can be a threat against a piece of property in order to obtain property. It could fall within extortion. There are other crimes that are covered by that, but Nevada's robbery definition, as is typically known to be a robbery, would still remain intact under this bill.

The issue at the federal level is, if someone has a conviction for robbery under the federal system and commits a subsequent crime that he is prosecuted for, his prior convictions that qualify as crimes of violence—which we would typically think robbery is—would not qualify because Nevada's statute includes the words "or property." This would allow it to be considered a crime of violence under the federal qualifiers, and from a state law perspective, would not change what constitutes what we typically think of as a robbery.

Assemblyman Edwards:
Can you give us an example of where the phrase "or property" would have come into play and would have been used in prosecutions here in Nevada?

Senator Cannizzaro:
In my job as a prosecutor, I have never seen a case where someone has used the threat against property in order to obtain property, but I am sure it has happened. The best example that we have come up with is similar to the example I gave Assemblywoman Cohen. If someone were to say that he will shoot out all of the windows in your car if you do not give him your wallet, that would be a threat of force or violence against property in order to obtain property. That may be very simplistic. I have never seen a case where this has been done.

Assemblyman Roberts:
This question may be for you, but it may be for legal. I am thinking back over my career and I do not remember prosecuting anyone for this type of robbery for property. I was amazed that it was even in statute. When I learned the definition of robbery in the academy, I do not remember property being in there. Do we know when it was added? Was it added in the last few years?

Senator Cannizzaro:
I do not know when this would have been added. I do not believe it was recently. When we enact laws, there are certain words and phrases that are sometimes included even though we are not sure what the impact may be. I think the *Edling* decision is the first time a court has really looked at it and realized that we included "or property." I would reiterate that the crime of robbery is typically understood to be—and I think what we would all want robbery to be—when a person threatens another person in order to obtain property. I would defer to legal regarding when it was put into statute.

Bradley A. Wilkinson, Committee Counsel:
I cannot tell exactly. It looks like it may go all the way back to 1911.

Chairman Yeager:
I do not know if this is the genesis of the language, but under current Nevada law, and I am sure it was the same in 1911, pets and animals are considered property as well. That may be why it is in statute. Back in 1911, the state was different than it is now with our two urban centers.

Assemblywoman Nguyen:
In your day job, and I know you practice in the state system, I do not know if you have ever practiced in the federal system, do you know how the change in this definition will affect those individuals who are now in sentencing? If you do, can you explain it to the Committee?

Senator Cannizzaro:
I have never practiced in the federal courts. For any members on the Committee who may be able to, correct me if I misstep. My understanding of what this bill will do is that for individuals who are currently charged under the current statute and have a conviction for robbery, it would not qualify as a prior crime of violence for the purposes of federal sentencing. When someone commits a federal offense, if they have what are deemed as qualifiers based upon their prior criminal history, such as they have committed a prior crime of violence—which is where this comes into play—then they fall within a different sentencing scheme. In this particular case, and legal can correct me, if someone has a prior robbery conviction under the Nevada statute as it exists, that does not qualify as a qualifier under the federal system because they were convicted under the statute that includes the language "or property." However, going forward, if this bill were to go into effect and someone was convicted of robbery under the new proposed version of the statute, then subsequent to that conviction that person committed a federal crime for which he was prosecuted and convicted, that prior conviction for the robbery could be deemed a qualifying crime of violence for sentencing purposes in the federal system.

Chairman Yeager:
I do not see any additional questions at this time. We will open it up for testimony in support of Senate Bill 137, both here and in Las Vegas. I see no one in Las Vegas, so we will take testimony here.

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

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
We are also here in support.

John T. Jones, Jr., representing the Nevada District Attorneys Association:
We are in support of Senate Bill 137. There are a few things I would like to point out for the record. In polling Nevada prosecutors, we rarely charge individuals under the theory of robbery that is proposed to be removed from the statute. In fact, I know of no current instance in which we prosecuted someone under this theory, but I do not want to say never. It would be a rare occurrence. There are other theories of liability that we could use if this were to be removed.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We support this bill.

Chairman Yeager:
Is there any additional testimony in support? Seeing none, I will now take testimony in opposition to Senate Bill 137.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are here in opposition based on the rules of the Committee. We agree with removing "or property" from the definition of the robbery statute. However, the reason it is being removed is so we can punish people more harshly in the federal system. Because our definition was so broad, it did not allow us to harshly punish people.

If we are going to do that, what we suggest is that we add "specific intent" back into the definition of robbery. Prior to 1981, "specific intent" was part of the definition of robbery. The Nevada Supreme Court made a turn and said that the statute was silent, so they read it as a general intent crime even though, prior to that in common law, it was read as a specific intent crime.

For the sake of this hypothetical situation, I will use this illustration even though it would be a bad decision. We will say Mr. Delap and I get into a fight. Mr. Delap beats me up. When I am running away, I see that Mr. Delap has dropped his wallet. Thinking that I would get something out of the situation, I decide to take his wallet and run away. Prior to 1981, that would be a misdemeanor battery fight and a theft. Depending on the value of his wallet, it would either be petit larceny or grand larceny. Now, however, even though I started the fight with Mr. Delap not intending to steal his wallet, I would be charged under the harsher robbery penalty because robbery is considered a general intent crime. I had the general intent to do a crime, so now I am on the hook for the robbery as well, whereas I had the specific intent to get in a fight but just happened to steal the wallet on the way. What we would like to see added back into the definition of robbery is "specific intent." You specifically intended to take someone's property using fear or threat of force or violence.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We agree with the statements brought forth by Mr. Piro. To add a little to the legal concept of it and to ensure everyone is clear, when we talk about criminal law it requires an *actus reus* and a *mens rea*. *Actus reus* is the requisite act to the crime, and the *mens rea* is the mental elements to the crime. For the intent, you can break that down further. In common law, there are two different types of intent: general intent and specific intent. Currently, our robbery statute only requires general intent, which is that you only intended to commit an act which the law makes criminal. In Mr. Piro's example, that would be his engaging in the fight. That is the general intent part of that.

What we are asking for is specific intent: the individual has a desire to commit the act and an intent to achieve the specific results. We have case law in Nevada in *Leonard v. State* [17 P.3d 397 (2001)], which discusses what it means for this to be a general intent crime. You can simply take advantage of a terrifying situation that the defendant created when you

flee with the victim's property, which in itself creates the general intent to commit the offense.

Where I see this the most in my practice is with our young adults who are engaging in poor decision-making and getting into fights. When someone leaves a wallet or cell phone behind and another person takes the cell phone and leaves, that becomes robbery. Again, he could be convicted of a different crime, but instead we are charging him with the crime of robbery. What we would like to see is this statute ensuring that we are punishing those bad actors who had intent under the robbery statute.

I believe there is an exhibit that the Nevada Attorneys for Criminal Justice (NACJ) filed (Exhibit C). It is a letter from the first hearing in the Senate regarding this bill, and they explained it very thoroughly. They researched the different states that have the specific intent requirement, and we request that Nevada follow that.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
Mr. Piro and Ms. Bertschy said everything that I was going to say. We join them in opposing the bill, but with the amendment that deals with the specific intent issue, we would be happy to support the bill in that case.

Chairman Yeager:
It sounds like this particular amendment adds specific intent. This was something that was also raised in the Senate Committee on Judiciary hearing. Is that right?

John Piro:
That is correct.

Chairman Yeager:
I do not see the letter from the NACJ that was referenced. I guess it was in the Senate hearing, so if you want it on the record for this hearing, please provide it and we will make sure it is uploaded. That was going to be my other question regarding how many other states have a specific intent. If the letter addresses that, you do not have to address it.

John Piro:
Ms. Bondy did the research on that and 26 other states have a specific intent element. We will get the letter to the Committee. I do not think it was filed, but it was sent to the Committee members after the Senate hearing per Senator Pickard's request.

Chairman Yeager:
I do not see any more questions. Is there anyone else in opposition to Senate Bill 137? Seeing no one, is there anyone neutral? There is no neutral, so would the Senator like to make any concluding remarks?

Senator Cannizzaro:
Specific intent was discussed in the Senate with respect to S.B. 137. From our perspective, there does not seem to be a lot of opposition to removing the words "or property." This bill is very specific in its intent to get to the issue that was defined and articulated in the *Edling* case and was not designed to be an omnibus robbery bill.

Chairman Yeager:
I will now close the hearing on Senate Bill 137. At this time I will open the hearing on Senate Bill 218.

Senate Bill 218: Revises provisions relating to domestic violence. (BDR 3-316)

Senator Nicole J. Cannizzaro, Senate District No. 6:
I am here to present Senate Bill 218. This bill revises provisions regarding what factors a court may consider when deciding whether to grant a temporary or extended order for protection against domestic violence. It enhances a couple of penalty provisions for violating a protection order.

Before I take the Committee through the bill, I would like to begin by offering some general remarks about domestic violence. Domestic violence is a pervasive problem in this country affecting every demographic group: every race, age, gender, and sexual orientation. Of course, some populations—women in general, American Indian women, Native Alaskan women, the LGBTQ community, and persons with disabilities for example—are far more likely to suffer from domestic violence than others, but there is truly no one who can be certain they will not be touched by this deeply personal and awful form of violence. The National Coalition Against Domestic Violence reports that, in the United States, nearly 20 people per minute are physically abused by an intimate partner. One in four women and one in nine men experience intimate-partner violence in their lifetime. Intimate-partner violence accounts for about 15 percent of all violent crime. The statistics in Nevada are similar to, and in some cases worse than, the national average. The Nevada Coalition to END Domestic and Sexual Violence reported that intimate-partner violence in 2017 resulted in 15 women and 2 men being killed, 2 children being killed during one incident, 1 victim's parents being killed, and 6 male perpetrators committing suicide after attempting to commit or committing murder. That was just in 2017. The bulk of these crimes, over 70 percent, involved the use of a deadly weapon, most frequently a gun.

With this backdrop, I will briefly walk the Committee through the bill. Section 1 prohibits a court from considering factors other than whether the person requesting the temporary protection order (TPO) was a victim of domestic violence or the threat of domestic violence in deciding whether to issue the order. I would submit that there is no reason for a court to look outside the facts of the matter in making these decisions, as Nevada law is quite clear on what constitutes domestic violence or the threat thereof. Those should be the specific factors as delineated in statute that the court would consider when determining whether to issue a protection order.

For intentionally violating a temporary protection order, section 3 increases the penalty from a misdemeanor to a gross misdemeanor, and for violating an extended protection order (EPO), it increases from a misdemeanor to a category C felony. Regarding these changes, I would offer that domestic violence is a far more serious crime than our current penalty structure would indicate. We need to make it very clear that violating protection orders will not be tolerated and will carry severe consequences.

I understand this is a difficult conversation to have in the context of where in our criminal laws there needs to be some decreased penalties. I certainly believe there is a very real place for that discussion. However, I do not believe that discussion should take place regarding domestic violence or someone violating a protection order. Oftentimes these protection orders are the only thing we can offer to the victims to say that they will be safe. What we know about domestic violence is that it is not only the most dangerous call for our first responders, but it is also the most dangerous situation for the victim and the family members who are present. We have an obligation, as the Legislature, to ensure when we enact laws and say penalties are severe, there is good reason. That is exactly what Senate Bill 218 attempts to address.

Section 7 provides that a person who commits battery constituting domestic violence and who has been previously convicted of battery with a deadly weapon against someone who would qualify as a victim of domestic violence is guilty of a category B felony. This language is intended to add those persons who have previously committed domestic violence with a deadly weapon, and who then commit domestic violence a second time, to the list of offenders who are guilty of a category B felony.

Both sections 3 and 7 may seem familiar to members of this Committee who were here last session. Section 3, regarding increased penalties for the temporary and extended protection orders, was part of a bill from the 79th Session that I presented before this Committee. Unfortunately, those changes did not make it into the final bill. However, in section 7, the change to the crime of battery constituting domestic violence with use of a deadly weapon was one of the felonies that was inadvertently left out of the original bill from 2017. In 2017, we enacted changes to provide that, if someone commits various felonies constituting domestic violence and then subsequently commits domestic violence thereafter, they would also be subject to felony penalties. We included crimes such as battery by use of strangulation constituting domestic violence, or battery resulting in substantial bodily harm constituting domestic violence, but inadvertently left out perhaps one of the most serious of those types of felonies: battery with the use of a deadly weapon constituting domestic violence. Section 7, in some ways, is a cleanup of the bill that left it out of that section from 2017.

The remaining sections of the bill, sections 2 and 4 through 6, make conforming changes to the various sections of the *Nevada Revised Statutes*.

Domestic violence is a very serious and very dangerous crime, and it is incumbent upon us to take it seriously. I have worked diligently to address this during my short legislative career.

Assemblywoman Torres:
I am looking at section 1. You mentioned there are other factors that are currently used to determine whether a TPO is granted. Can you please give us more information on what those factors are for those of us who are not working with this bill?

Senator Cannizzaro:
We have someone from the Legal Aid Center of Southern Nevada who is willing to provide additional context for the changes that are contained in section 1. The way the courts determine whether to grant extended or temporary protection orders is to inquire into the legitimacy of the people requesting the orders and whether they are, for example, citizens of the United States. That is not covered in the current statute, nor are questions regarding family structure for those individuals. A protection order for domestic violence must be clearly articulated within statute, and courts should be considering whether domestic violence actually exists, whether there is currently an ongoing threat of danger to the victim, and whether a protection order is a means by which the individual can keep safe. We want to ensure that the Legislature's intent is very clear that those are the things that should be focused on and not other facts and circumstances that may present themselves during the course of the request for protection orders.

Assemblywoman Miller:
My concern is increasing the penalty up to a category C for violating the protection order. Does that mean in all instances it is just the actual violation of that TPO—going within so many feet or approaching the victim—or is it if there was a new crime committed or a new assault or battery?

Senator Cannizzaro:
We left it in Senate Bill 218 that it would have to be a violation. It says "intentionally violates" in section 5. We are talking about individuals who are subject to a restraining order and/or a temporary protection order. Under Senate Bill 218, it would be a violation of a temporary protection order. That could include going to a place of residence or a place of employment, all of which would be reflected in that particular protection order that he would have been served with. Since the protection orders are physically served on someone, there should be no concern over his being aware that he is violating a protection order. He would be aware of what the law and the penalty are in those situations. They are given specific directives as to what, when, how, and where they can go. It would constitute going within so many feet of a particular restrained residence. If it is a temporary protection order in nature, then that violation would be a gross misdemeanor. For violations of the extended protection order—which means the applicant went back to court and demonstrated a need for a longer protection order—that has been served, it was clearly articulated to the individual that if he violates it, that will be a felony.

I understand that these can seem like harsh penalties, but when someone is actually served with a protection order, they are well aware of what they can and cannot do, and what the penalties are. The abusers knowing what those penalties are is the one thing that we can offer victims to say they will be safe, and that, if the order is violated and they do not feel

safe, there will be an appropriate response by law enforcement to ensure they are protected. It would be any type of violation, but we want to make sure it is an intentional violation and not just an accident. Obviously, to the extent that there are charges, there would be a factual inquiry by the judge, the parties, and potentially a jury. If someone accidentally comes into contact with someone at a grocery store or such, they would not be a felon all of a sudden. There is more consideration than that.

Assemblywoman Peters:
I do not work in this field, so can you give me some examples or a list of what is considered a deadly weapon under our law?

Senator Cannizzaro:
As I mentioned, more often than not in these cases we are talking about a firearm. The definition of a deadly weapon could be a number of things. There are specific, enumerated items within our statutes that constitute a deadly weapon that would include things like knives, guns, and similar types of items. Part of our definition of deadly weapon says, if an object is used in a manner that is designed to cause substantial bodily harm, injury, or death, then it could be considered a deadly weapon under certain circumstances. We can have a conversation about deadly weapons, but in this particular bill, when domestic violence was included along with the litany of other domestic violence-related felonies, this particular felony was left off the list. That is the reason for it being included in this bill.

Assemblywoman Cohen:
I am very concerned about the invited violators. I think it is a real issue, and I believe it happens all the time. I understand that defendants are told what their requirements are and what they can and cannot do, but oftentimes at the hearing they are scared and nervous, and then their attorney rushes off to go to the next hearing. A lot of times people do not read their paperwork. We also know that invited violations happen, and I do not want to see someone get a higher penalty because they did something they should not have done, but it was not done with criminal intent; they were invited by the person who got the TPO. Would you please address that and how we can make sure we are not giving them the higher penalties.

Senator Cannizzaro:
From the onset, protection orders served a very legitimate place in our law. There is no law we can write that will accommodate every complication that occurs, especially when intimate partners or family members are involved, and sometimes that gets complicated. The invited violator is a good example of when that can get complicated. Because there is an invited violator, we should not say to other victims that we are not taking this seriously. The bill attempts to address that by indicating that it is an intentional violation of the protection order. We want to ensure there are protections against the idea that it is for invited violators or that it would be accidental in nature. At some point, however, we have to say to individuals who are served with protection orders that it is incumbent to know that there are things they cannot do. My intention with this bill is to take those folks who are intentionally violating these orders very seriously.

Assemblywoman Cohen:
I would ask that you consider making it clearer in the language. I understand what you are saying, that it is intentional, but I think a prosecutor could argue that even if you are invited to violate, it is still an intentional act on the part of the defendant. This should not include invited violators.

Assemblywoman Torres:
I am concerned about this piece of legislation. It is my understanding that when you receive a TPO, it is for something you have done wrong. You have not yet been charged with a crime or been convicted. This makes the penalties harsher for violating the TPO than for the crime that you originally committed. Is there justification for that? To me, this does not make sense.

Senator Cannizzaro:
This particular bill only applies to protection orders in the context of domestic violence. When a court is issuing those orders, there has to be some demonstrative evidence of a domestic violence situation. You are correct that this does not require that the individual be charged and convicted of domestic violence. One of the things that differentiates these circumstances is that it is for domestic violence, and not that your neighbor is continuing to annoy and harass you so you get a restraining order to keep him away. The victim is not someone who is just asking for a restraining order because there is a dispute between parents at a school. This is when a court finds that there is evidence of domestic violence or when there are charges of domestic violence. You are correct that they do not have to be convicted of domestic violence to be the subject of a TPO. Where there is evidence of domestic violence such that a court is issuing a protection order, it is not too much to ask that the individual who is served with it abides by the terms and conditions.

Assemblywoman Torres:
Are TPOs ever issued and then it is determined that the individual is not going to be convicted of that crime?

Senator Cannizzaro:
Yes, absolutely. They do not have to be charged with a crime. There could be evidence of domestic violence that was never reported. Oftentimes, in domestic violence cases, it goes unreported for a long time. If it is not reported, they have to bring evidence to court to ask for a protection order. There could be no conviction of domestic violence.

Assemblywoman Miller:
The point was made that the prosecutors have to make sure this is understood. My question pertains to the case where the victim says that they should try counseling or some faith-based programming or something to try to make it work. This is not judgment, but we know that sometimes this happens. In that case, legally, that person has violated the restraining order and would be subject to the category C. Would the victim have the ability to say that they took the action together? We know that domestic violence is not always straightforward. It can be messy and complicated. In those cases, would the victim be able to say that she does

not want the person to be charged because she is the one who initiated it? Would she be able to petition on their behalf?

Senator Cannizzaro:
First, both temporary protection orders and extended orders of protection are not issued ad infinitum. That is to say that just because a protection order exists in one circumstance does not mean it cannot be terminated. If it is temporary in nature and the victim does not seek an extended order of protection, it expires. Extended orders of protection expire. Certainly there are instances where those can be rescinded. Just because a protection order was issued does not mean that sometime in the future there cannot be contact and that it would be a violation and subject to a felony.

For a violation of the temporary protection order, it is a gross misdemeanor under this bill. For the extended order of protection, a violation would be a category C felony. In the hypothetical that you posed, there are issues in trying to prove there was an intentional violation of the protection order.

Assemblywoman Nguyen:
I have some concerns about the proposed enhanced penalties for violations of TPOs. Those are judicial decisions. To an extent, I can understand why you might have enhanced penalties for violations of EPOs because at that point, the person who is in violation has had access to a formal hearing where he has been able to defend himself. Is that something you considered in your initial discussions regarding people who have formal protections?

Senator Cannizzaro:
That was not a specific discussion that we had. One of the issues is that even with a TPO, it is a very short time span from when the incident causing the TPO happened to when they are in court. Telling a victim that this piece of paper is going to keep her safe because it will be a misdemeanor if he violates it is insufficient. What was considered was the issuance of TPOs, which are very limited in scope and in the length of time they are in effect. We are not making any category C felonies under Senate Bill 218 for the violation of a TPO for the reasons that you have articulated. The conversation of leaving TPOs as is and then seeking the enhanced penalty just for the EPO was not a specific conversation that was had. Some of those questions are reflected in the language that is before you.

Chairman Yeager:
Looking at section 7 of the bill and the language change on page 7, this is essentially battery domestic violence with a deadly weapon being an enhancement for a future prosecution. I want to get your intent on the record because the digest—which I know is not part of the bill—was confusing. On page 7, is it your intent that someone would have to actually be convicted of battery domestic violence or use of a deadly weapon in a judgment of conviction for that enhancement to apply? The reason I ask is so that everyone can follow, because the digest at the beginning of the bill suggests that a regular conviction just for battery with a deadly weapon that did not have the domestic violence element in the

judgment of conviction might also qualify as an enhancement. I want to get your intent on the record.

Senator Cannizzaro:
You bring up an excellent point. Yes, that would be my intent with respect to section 7. Last session we included a number of other felony domestic violence-related crimes as enhancements. Under Senate Bill 218, my intention is—and I think the language that is in the bill reflects it—if someone is first convicted of battery constituting domestic violence with use of a deadly weapon so that it includes both the weapon and the domestic violence elements, and then subsequently is convicted of a battery domestic violence, that is when the enhancement would apply. It would have to be battery with use of a deadly weapon constituting domestic violence, not simply battery with use of a deadly weapon.

Chairman Yeager:
Are there any additional questions? Seeing none, I will open it up for testimony in support. Please come forward.

Kristine Brewer, Attorney, Family Justice Project, Legal Aid Center of Southern Nevada:
What we want to do is focus on the victim of domestic violence. I have practiced in this area for about 15 years. Oftentimes, when we go to a protection order hearing, the adverse party focuses on the victim's immigration status. They focus on smearing their behavior to try to get a leg up in custody or exclusive possession of the marital home. They try to take the focus off of what really happened. Did domestic violence happen? Was there an assault or a battery within the home? Did the adverse party burn the house? Did the adverse party destroy property, like a mirror? Did the adverse party rip the cabinets out of the kitchen to try to scare the victim? These are acts of domestic violence. Maybe they threatened to kill the family pet, or killed the family pet. What this bill does is put the focus on domestic violence and take it away from being a smear campaign against the victim, which is very critical.

I want to address another issue that was brought up. Protection orders can be narrowly tailored and can give some flexibility for applicants and adverse parties who are co-parenting so they can go to a visitation exchange. That is not a violation of the protection order, so they can co-parent through electronic means, by text or email. There are protections in place so families can live their lives, and they can have the protection that they so desperately need. We want to focus on the evidence of domestic violence rather than aspersions on the victims.

Elizabeth Ortenburger, Chief Executive Officer, SafeNest:
We treat over 20,000 victims of domestic violence every year. We see over 2,000 victims of domestic violence through the court system, and TPOs are a large part of the work that we do. When a victim comes before a judge, it is imperative that only the domestic violence and details related to the domestic violence are taken into account. We see batterers try to smear victims and use implicit bias every single day against victims who are simply seeking a protection order. Providing clarity for judges creates safety for victims. Increasing the

penalties as this bill describes simply helps remove batterers who are escalating toward lethality. That is important for saving lives in the second-highest state for domestic violence homicides in the country. Removing categories as they escalate is what we see in places that are eliminating homicides successfully.

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

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

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
I am also here in support.

Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence:
We know that domestic violence can be lethal and life-threatening. Survivors seeking orders of protection should know that their safety is paramount, and that their perpetrators will be held accountable for their actions. When individuals are seeking protection orders, they are doing so because they genuinely fear for their lives and need some kind of relief in order to seek safety. Orders of protection must be taken seriously and be seriously enforced. For that reason, we support Senate Bill 218.

Adam Cate, representing Nevada District Attorneys Association:
I am in support of Senate Bill 218. I just have a couple of statistics. Since 1996, Nevada has been in the top ten states in the country for women murdered by men every year, except for five years. We have been ranked No. 1 five times in those years. There are a lot of women being murdered by men in the state of Nevada. In 2016, every woman who was murdered by a man was murdered by someone she knew, and 60 percent of those women were murdered by either their boyfriend or their husband. It is clear that domestic violence is the leading cause of homicides of women in Nevada.

The Nevada District Attorneys Association is in support of increased penalties for violations of both TPOs and EPOs. Senator Cannizzaro pointed out the one thing that I want to focus on. In my practice as a prosecutor, I see people who are invited home and subsequently violate these orders. That happens a lot with TPOs. This is an incremental increase in the penalty for those violations from a misdemeanor to a gross misdemeanor. The category C felony is for a violation of an EPO and, at that point, there has been a decision made to proceed and to have a hearing where due process is provided to the person whom the order is sought against. It is very clear to them that they are supposed to stay away from this person and that this person does not wish to have any contact with them. It is not a heat-of-the-night decision, but a lot of TPOs are filed very soon after an alleged act of domestic violence occurs. This is not that situation. There has now been time to cool off, and this is a calm,

cool decision to seek this extended order that says she does not wish to have any contact with that individual.

I anticipate you will hear that this increased penalty is to send more people to prison. I would argue that these are dangerous individuals who knowingly violate an extended order for protection. They pose a threat to these victims, and these are the types of people for whom we should be increasing the penalties.

With regard to section 7, I know this is a type of cleanup and adds in something that was left out in the last session, but I think it is extremely important. I do not think this will be a large driver of prison growth either. It is very rare to find someone who has been convicted of domestic battery with a deadly weapon who goes on to commit another domestic battery. It potentially saves lives.

In research regarding domestic violence and in my experience as a prosecutor, we talked about escalation and the lethality factors. These types of situations do not start out with someone grabbing a gun and threatening his wife. It starts out with arguments, and then arguments become more verbal and more physical. There can be punching, biting, and kicking. Once someone has come to the point where he is willing to use a deadly weapon against his domestic partner, that is a huge red flag for the future of that relationship or any relationship in which the abuser is involved. If they are willing to do it once, they are willing to do it again. Any domestic battery that they commit in the future should be taken extremely seriously. We support Senate Bill 218.

Chairman Yeager:
Are there any questions? [There were none.] Is there anyone else in support of the bill? I do not see anyone else, so we will take opposition testimony.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
We oppose this bill. I want to highlight two things. The first is, on substance, we believe this is very harsh, especially in the case of invited violators, or people who have not been convicted of a crime. With the invited violator, many times it is a couple with a restraining order. They reconcile but do not bother to go back and rescind the order because they have to take off of work and have to pay a lawyer. People just do not do it, so the restraining order remains in effect. The couple is later driving somewhere, they get pulled over, and the adverse party gets arrested. Right now it is just a hassle because it is a misdemeanor. When it becomes a category C felony, people will be in jail for 1-5 years for having a broken taillight or something. I agree there is a problem, but Senate Bill 218 is not the way to solve it.

On a process level, Senate Bill 218 is duplicative of Assembly Bill 19. Assembly Bill 19 was passed out of this Committee on Friday. It also deals with the issue of enhanced penalties for violations of protection orders. Senate Bill 218 is more draconian about it. I would note that Assembly Bill 19 is the product of a lot of hard negotiations between defense attorneys and the Office of the Attorney General. That is a consensus product that

everyone can agree addresses the problem and that we can live with. Senate Bill 218 is not the product of that kind of consensus. On a process level, you should not pass this bill. You should stick with the one you already passed.

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

The statistics that we heard are chilling. It is not something that Nevada should be proud of, that we have issues with domestic violence. However, we do not believe this bill provides the solution to moving our state forward and to getting away from the issue of domestic violence. You have heard us sit at this table several times and discuss our proposals. What we really need to do is look at the counseling services that we provide to those who are accused and those who are convicted of domestic violence. We must make sure we are providing them with evidence-based programming to ensure they are taking steps forward to get out of their situation, to learn from what is going on, and to figure out how to stop their pattern of behavior. What TPOs are designed to do is to tell the offender to stop whatever conduct they are doing and that it is inappropriate. The goal is to ensure they receive that message and that they stop engaging in that behavior. A majority of the TPOs are not followed by an extended protection order because victims sometimes decide not to show up to court or the pattern of conduct has stopped.

Regarding section 1, we are concerned with requiring the court to consider only the acts of domestic violence. If this were to be rephrased in a way that allows the court discretion, we would believe it is appropriate. This is very similar to areas of criminal law where the court can hear other factors to determine what is relevant and then rule off of what they decide is pertinent. We hold our judges to a different standard than we do jurors because we expect judges to be able to process that information, gather what they need to make the best decision possible, and to go forward. Sometimes when individuals are requesting a TPO, they have an advocate with them, but most likely they do not. Sometimes they have an attorney with them, but most likely not. We are dealing with pro per litigants who are in a terrifying situation talking about acts that they believe are acts of violence. What I am concerned about with this section is that we are going to actually provide almost a chilling effect. If a judge has to say stop talking because he cannot consider this, and that you cannot tell him about that, we are telling these individuals not to go into their story or to explain what is going on. The same thing happens when it becomes an extended protection order and the accused gets to finally say what is going on. He has 30 or 45 days before he has the hearing when he gets to explain to the court all of the factors that he believes are important. Again, if the court says he cannot consider something and he cannot talk about it, it tells the individual that his voice is not heard and that what he has to say does not matter. The court did not get it right because he was not allowed to explain the situation. I am concerned with the way it is worded. We will have individuals who are not allowed to express the things that are really important about their lives, about their situations, about their family situations and kids, or about the schools they may have to stay away from because of the way this is worded.

We have worked very hard on section 3 with the Attorney General who understands the need for the temporary restraining order to stay as a misdemeanor and for increasing the penalty

for a violation of the extended order to a gross misdemeanor. We believe that is appropriate rather than having it a felony. These individuals are people who have not been convicted of a crime. During the extended order process, they have a judge tell them that this is the order and you cannot have any contact with the victim. We understand the need for the increased penalty, but not the need for it to be a category C penalty. I do not have any information that proves the category C would provide any deterrents. What we have found, and what we have discussed, is that the deterrence factor is not something that comes from having a felony hanging over your head if you contact that person. It is more that they cannot continue in this behavior, and let us get you help.

There has been some confusion about the standard for these protection orders. It is just to the satisfaction of the court—from specific facts on a verified application—that an act of domestic violence has occurred, or there exists a threat of domestic violence. The person may not have been accused or charged with a crime, and he has certainly not been convicted of a crime when some of these temporary orders are applied for.

I want to go back to section 1. In criminal law, when someone is accused of a crime, he can go forward with the criminal complaint, or he can be indicted at a grand jury. To me, this is very similar to the grand jury testimony because the defense attorney is not there and the defendant does not present his testimony. Part of that is to ensure his rights are being maintained. The district attorney presents the evidence that is favorable to them. That is one of the reasons we believe it is appropriate to craft that language differently and to allow the judge the discretion to make the best decision possible to ensure the order encompasses those facts and circumstances specifically.

I want to add to the question regarding deadly weapons. We have had a lot of discussions on that in the Senate as well. A deadly weapon could be—and has been considered by district attorneys in charging offenses—firearms, cigarettes, rocks, ground, pillows, shoelaces, and things of that nature. Those are also considered deadly weapons.

Assemblywoman Cohen:
Getting back to the factors, can you give us an example of what would be an appropriate factor outside of the actual domestic violence?

Kendra Bertschy:
I am struggling with how to word this. They are the factors of the actual act of domestic violence, but if you limit it to those, you limit what led up to that alleged act. You potentially limit whatever circumstances could be considered in terms of the property that is excluded. I am struggling to craft what I am thinking. It needs to be left to the discretion of the judge to decide what is relevant and what he should base his decision on.

Assemblywoman Cohen:
When I read this, I did not think about this as a party seeking a TPO—as you said, they often do not have counsel—testifying, and just throwing it all out there. I did not take it that the

judge would say to stop telling him something, but I took it that the judge would not consider that as part of the analysis. Do you read that differently?

Kendra Bertschy:
That is the way I am reading it. That is how I think it will be applied in the TPO setting as well as in the EPO setting.

Assemblywoman Cohen:
As I mentioned, I have a concern about the invited violator. Have you seen other states' legislation that may address that issue?

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We have not researched that. We have always just talked about how it is used as a sword and shield here. As you explained, the inviting conduct is part of the problem, and we believe it becomes a strict liability crime in our state. That is something we should look at for sure.

We are opposing this bill for a number of reasons that my colleagues have made clear. Part of the problem with the section 1 issue is that we say we do not trust judges to see through all of the garbage and smear campaigns. Then we say that we trust them enough to make the judgment that a TPO or EPO is warranted. That attaches criminal penalties there. It is important for the Committee to know that there is no jury there and, oftentimes, as you have heard, people are not represented by counsel. As far as the increased penalties go, we have increased penalties numerous times for these types of crimes and domestic violence-related crimes.

Last session, we enhanced the "once-a felon-always-a felon." We created a new crime, and yet we are still No. 1. If the sponsors had come to us and said that they had data that said we could correct this problem if we did this, we would be sitting in the back of the room and not opposing this, but we keep coming to the table with no data and no evidence that we are stopping the problem. We are continuing with the same solution of increasing penalties and trying to incarcerate our way out of the problem. I get it that going in front of a fiscal committee is not fun. I am afraid of Assemblywoman Carlton, and I would not want to be in the fiscal committee. That being said, if we are going to talk about really solving this problem, perhaps it would be wise to dedicate some of our money to studying the effectiveness and efficacy of domestic violence batterers' treatment programs, why people violate these things, what the issues are that lead up to this, and how we can make corrections for those issues. We do not do that; we keep coming here with enhanced penalties.

That is part of our problem. There was a lot of discussion about intent. We are only going to capture people who are intending to violate these EPOs. If you are invited home and you go over there, it is your intent to violate the protection order. That is going to be enough to lock you into a category C felony or a new crime. We did increase these penalties after measured discussions on the Assembly bill that passed out of here. The penalties here, with no data backing up that this will actually change part of our problems, are not warranted. We would

like to see that we are going to spend the interim studying domestic violence and our programs, and to come back next session with solutions that actually make a difference and take us out of No. 1 in this area.

Chairman Yeager:
Are there any additional questions for the three who testified in opposition? I do not see any. Is there anyone else in opposition to Senate Bill 218? I see no one, so is there anyone neutral on the bill, either here or in southern Nevada? I do not see anyone, so are there any concluding remarks?

Senator Cannizzaro:
I do not think anything about this bill asks for anything more than to tell victims that they deserve some protection under the law when they have been a victim of domestic violence. That is what this bill asks for.

I would also note a couple of things about these sections. First, section 1 is designed to say that the factors that we have already delineated in statute should be what the judge is focused on. There should not be outside influence that has nothing to do with whether the merits and elements of a protection order are met. We do this in many, many circumstances. In criminal cases, not every piece of evidence is admissible and allowed in for the consideration of the jury, nor is every piece of evidence allowed in these particular cases, and they should not be. We have delineated that in statute. What Senate Bill 218 is seeking to do is to say that you cannot look at some of these other things when you are granting or denying a TPO. If sufficient evidence has not been submitted to the court for the establishment of the relationship and the ongoing threat, the court has full discretion to grant or deny those protection orders, and nothing about this bill takes away that discretion from the court.

With respect to the changes for the protection orders, I understand there is a place to say that increased penalties are not sufficient, but when someone is handed a piece of paper that is supposed to keep the victim safe—that says if you violate the terms of that piece of paper there is a penalty—this is a very different situation than punishing other folks in a much harsher way than they should be.

For the changes to the deadly weapon statute, last session we did pass very similar language for crimes that are lesser in some circumstances than battery with use of a deadly weapon as a result of domestic violence, and any enhancements under this particular bill would require conviction for both the battery constituting domestic violence with a deadly weapon and the subsequent battery constituting domestic violence. That is a very specific and narrow circumstance in which this bill would apply. I am happy to have any conversations with anyone who would like to talk about these issues.

Chairman Yeager:
I will now close the hearing on Senate Bill 218. Moving along on our agenda, we are now going to open the hearing on Senate Bill 244.

Senate Bill 244: Provides a criminal penalty for violation of a stay away order issued by a court. (BDR 15-924)

Senator Nicole J. Cannizzaro, Senate District No. 6:
What Senate Bill 244 does is it places into law the enforcement of stay-away orders much in the same vein as a protection order issued in certain circumstances as part of a sentencing by a court. They may be asked to stay away from victims or stay away from a particular place. In practice, what this would look like is a judge saying that because of a negotiation, someone has to pay a fine and may be ordered to stay away from a particular place or person. However, when the stay-away orders are violated, the court potentially has the opportunity to consider contempt. The way the criminal contempt statutes are written is that contempt of court is often thought of—and many courts are treating it as such—as a situation wherein a court may only deem it contempt of court when the conduct occurs within the presence of the court. I am sure the Committee can see that there may be situations, and this is notable, when a stay-away order may be put into place, but the violations do not occur within the presence of the court so they are hard to enforce. What this bill does is add a misdemeanor violation of those stay-away orders.

[Assemblywoman Cohen assumed the Chair.]

I would like to add to the presentation that when someone is issued an order to stay away, it is typically done with the person there and through the court. That is what this particular bill is focused on. These are stay-away orders that are issued by a judge to a person to stay away from a particular person or place. It would be a misdemeanor violation in these particular circumstances. It gives an enforcement mechanism to the court for stay-away order enforcement. That is an important piece when victims appear in court. The victims are told the person will stay away from them, that it is a safety valve, and that there is actually a mechanism with which it can be enforced.

Assemblywoman Nguyen:
This is something that I see on a daily basis, especially in my municipal court practice. My concern is that right now if there is a violation of the stay-away order, the court imposes it as a condition of a sentence. It is either agreed upon by the defendant or it is ordered by the court. If they are in violation, even on a misdemeanor charge, they are currently subject to whatever their underlying sentence is, and potentially contempt of court. Is that correct?

[Assemblyman Yeager reassumed the Chair.]

Senator Cannizzaro:
Potentially, yes. It could be if that is the way the court is enforcing it. What Senate Bill 244 seeks to do is to ensure there is an enforcement mechanism. You are correct. They could be subject to an underlying sentence.

Assemblywoman Nguyen:
A lot of times current practice is that a stay-away order will be imposed, but it happens mostly when people have children in common, and there is an existing district family court order out there. I have concerns that this does not account for that. I would not want someone to be in violation and to be committing a new misdemeanor charge when there is an existing district court order that allows for visitation. I realize there are some programs and applications that families use to communicate when there are domestic issues between them. I have concerns that it is not addressed in this. Would you please address that?

Senator Cannizzaro:
I think that is an issue. When issuing a stay-away order, that should be part of the parameters of that particular order by that particular judge. For example, if someone tells mom that she cannot have contact with, and must stay away from, dad, but they have an ongoing district court order that they can be in contact with one another, it is incumbent upon the judge to say that they cannot have contact except within the context of what is allowed by the family court. Nothing about Senate Bill 244 gives specific directives to courts as to the parameters for those orders. Sometimes it is just to stay away from the McDonald's on Charleston Boulevard. Sometimes it is broader than that, like stay away from this particular person in general. When stay-away orders are issued, oftentimes there are individualized restrictions accounting for the district court orders. That problem exists irrespective of Senate Bill 244.

Assemblywoman Backus:
My question goes along with Assemblywoman Nguyen's comments. From the practitioner's side in family court, the words "stay-away order" are loosely used in early orders. I am concerned that it sounds like it makes more sense on the family court order than it being utilized via civil contempt statutes. It is usually encompassed in a normal order. I am afraid, from what you just said to Assemblywoman Nguyen, that this new law would encompass family court orders that could be inclusive because we dub them as stay-away orders. Is my understanding correct?

Senator Cannizzaro:
If a court is issuing a stay-away order, under Senate Bill 244, whether it is in family court context or criminal court context, if it is dubbed a stay-away order and it is issued by the court, it would be required, but violations of those would fall within the parameters of this bill. Obviously there are parts of this that would require it to be more specific than something along the lines of what you have suggested.

Assemblywoman Backus:
That is what is confusing. Sometimes there could be a stand-alone, stay-away order that gets issued after a temporary protection order (TPO) hearing instead of an extended order when the parties agree to a stay-away order. My concern is that existing orders that are now in place that may be dubbed a final child custody order may have a hidden stay-away order. What I am taking from this is that it would not fall within this. It is going to be the stand-alone, stay-away order. Would this be retroactively applied to all existing stay-away orders if there is a violation?

Senator Cannizzaro:
With respect to the first thing you said, yes, this is intended to get to stand-alone, stay-away orders. Things that are part of other agreements between parties in courts would not be reflected in this, but I would be happy to work to ensure that is abundantly clear in this bill. The intent is to get to those stand-alone, stay-away orders.

On your second point, I do not think there is anything in this bill that would prohibit it from being enforced as a stay-away order that has been issued, but I would defer to legal counsel's opinion. There is not a specific indication in the language of this bill for that.

Bradley A. Wilkinson, Committee Counsel:
The bill does not state specifically how this would apply or if it would be retroactive to orders that have already been issued. It seems to me that, if there is an order out there already that meets this criteria, the criminal penalty would apply to a violation, but that could be clarified if there is some desire to do so.

Assemblywoman Cohen:
Following up on what Assemblywoman Backus asked, I did not even know there was a stay-away order outside of family court. I thought that was something we made up. Usually, it is at the beginning of a case. There are no grounds for a TPO but the parties may need to cool off and stay away from each other. In criminal court, we are talking about the example of, stay away from the McDonald's on Charleston Boulevard. The order is to physically stay away from a place as opposed to a person. Is that correct?

Senator Cannizzaro:
It seems that we have also made this up in criminal court. It can apply to a person or a place. By way of an example, I have frequently experienced this when someone pleads to a misdemeanor in negotiations and, as part of that, they are ordered to pay a fine and stay away from a particular person or place. It could be either way. What this is designed to do is just give the enforcement mechanism for either of those things, whichever is included in that particular stay-away order.

Assemblywoman Cohen:
This puts into statute the concept of the stay-away order.

Senator Cannizzaro:
That is correct.

Assemblywoman Cohen:
I am still a little confused, but that is okay.

Chairman Yeager:
Are there any other questions from Committee members? [There were none.] I have a question that you touched on a little. The way I read the bill, the stay-away order is to stay away from the victim or any place specifically mentioned, which I take would also be for the

victim. For instance, if someone stole something at a McDonald's, he may be ordered to stay away from there. Another example that I can think of is that it is not unusual in Clark County for those who are convicted of soliciting prostitution or trespassing to be given what is called an "order out," which is basically an order from the court saying they cannot go anywhere in the resort corridor. I do not know if they still do it, but they used to give you a map that showed the Las Vegas Strip and Fremont Street downtown and where they could not go. That is a different scenario because there is a victim, but not in the sense that there would actually be just one location or one person. My question is, does this bill intend to cover the scenario where a court does an "order out" for something like that, or would it not apply in those circumstances?

Senator Cannizzaro:
Reading through section 2, Senate Bill 244 does have in it an order to stay away from a home, school, business, or place of employment of the victim. I think in cases of solicitation, there is not a victim, so under my reading of it, that would not apply. The order-out would be a separate function of the court. That is not the intent, and I do not read the language such that it would include that.

Assemblywoman Nguyen:
If I am not mistaken, the order-out that you are referring to is statutory. When people are given an order-out to stay out of areas like the Las Vegas Strip or the resort corridor, they are given an actual form and are put on notice. Not only do they have to sign it, it has a map of the areas where they cannot go. There are inquiries as to whether they live, work, or have a reason to be in that area. There are different check boxes for them to mark. I think it is statutory.

As a follow-up, I have some concerns about the stay-away order. I do not know if I want to call it vague, but I have concerns about the family court implications, as well as creating another misdemeanor charge for something I believe is already covered under their existing suspended sentence or contempt of court or in the example of a business. They could be trespassed, and that is another misdemeanor charge.

Chairman Yeager:
I do not see any additional questions. At this time, I will open it up for testimony in support of Senate Bill 244. It does not look like there is anyone left in Las Vegas. If I am wrong, please go to the table. For now, we will take testimony from Carson City.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here in support of anything that protects victims. If Mr. Piro beat up Mr. Delap and took his wallet, and he received a stay-away protection order, having that criminal penalty would be a benefit for Mr. Delap. We are here in support.

John T. Jones, Jr., representing the Nevada District Attorneys Association:
We are in support of Senate Bill 244. I appreciate some of the comments made today, but I want to point out that not all contempt is equal. That being said, it is always important for someone to follow the judge's orders. When a judge orders an individual to stay away from the victim, that is extremely important. When we, as district attorneys, look back at someone's past, we may look at scope and see that there is a criminal contempt citation on there where a judge has found the individual in contempt, but it does not tell us why. It could be for not paying a fee or a fine in that case. What I want to know is if an individual has violated a stay-away order of a victim; that is important. That is going to tell me how they are going to act in this case. In that instance, I think this bill provides extra protections for victims and lets us know if an individual is unlikely to follow an order of a court.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We support Senate Bill 244.

David Cherry, Government Affairs Manager, City of Henderson:
I want to say that no-contact orders are an important way that courts can prevent victims from being subjected to harassment, intimidation, and threats. This legislation will strengthen the ability to enforce these orders. Also, Senate Bill 244 gives our city attorney's office the ability to file a formal complaint rather than relying on a show-cause hearing where an individual is charged under criminal contempt statutes. We believe this would be a better process for our city attorney's office and would help protect victims of crimes.

Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence:
Senate Bill 244 strengthens the voice of the courts and the protection of victims. Not all survivors may seek safety through a temporary or extended protection order, but in a court proceeding they may issue a stay-away order and require an individual to stay away from that victim. This bill will give more teeth to stay-away orders and will make the statement that safety of victims and their right to live free from the threats of their abuser are of paramount importance.

Chairman Yeager:
I do not see any questions. Is there anyone else in support of Senate Bill 244? Seeing no one else in support, let us take opposition testimony.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We opposed this on the Senate side, and we are here to oppose it today. There has been talk in this Committee about the pretrial, stay-away orders. One of the ways this would function as an injustice is if you get the pretrial, stay-away order and then you are found not guilty on your underlying charge, but you still have the stay-away order and now it is a new crime. Now you have a crime that would not have existed in the first place had this new law not gone into effect. As you have heard, there are contempt orders and, basically, all the district attorney needs to do is contact the judge and have a hearing to see if this has actually

happened. At one time we did this in my practice. We had a person who was finishing his requirements, but the victim contacted the district attorney and we had a hearing. We went to the hearing, and the judge found that my client did not violate the stay-away order. That does happen. It seems like in one sense, the Nevada District Attorneys Association wants to say that we will trust judges when it comes to TPOs and EPOs, but we do not trust them when it comes to contempt orders and things like that. There is a conflict there.

There are three levers that they already have. They have the contempt lever, the temporary protection order lever, and the extended protection order lever that they can use to enforce these types of issues. This would just create a fourth lever, which creates a new crime and a new trial, a new bail hearing, and everything that goes along with that. We do not believe this new crime is necessary, especially when you have the contempt hearing. Under Marsy's Law, the district attorney should actually be more accessible to victims in handling these issues much faster.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We oppose this bill for the reasons stated by Mr. Piro. This is adding another tool in the district attorney's toolbox. They already have plenty of tools. There are several mechanisms already in place that we believe adequately protect the victims. We are mostly concerned with the case of the accused, someone who has been arrested and put on pretrial release. When they are still in custody and awaiting their trial, they could be placed on a stay-away order. We heard discussions that this is typically done in front of the court. This may also be done by a judge prior to a defendant even entering the courtroom. They could receive a piece of paper saying they are not allowed to see the victim. It is just a box that is checked. Sometimes it is filled out, and sometimes it is not.

There may be competing orders as indicated. There may be a family court case already where they are supposed to have some contact with the child and to have visitation. It is already difficult, and we want to make sure things are as clear as possible. Right now, this just adds the possibility of stacking charges when this could be handled in other veins already.

If a defendant is going to commit an offense like this—of contacting a victim pending their sentencing—they are going to be sentenced accordingly. The judge can consider that when sentencing, and they all have the potential of increased penalties. We are concerned how this could be used and, if this passes, I hope the courts really take a look at this in their current practice when individuals are released to ensure the victims are provided with adequate notice.

Chairman Yeager:
In your experience, and obviously this bill has not been enacted yet, what is happening right now when someone has a stay-away order as part of a sentence? We will say they have a suspended jail sentence and are told to do community service, to take some classes, to pay a fine, and to stay away from the victim. If there is an allegation that the stay-away order has

been violated in some fashion, how does the court determine whether there actually is a violation, and what is the standard of proof?

John Piro:
When I see a stay-away order, it is generally given to homeless people to stay out of the Las Vegas Strip corridor. If they get a new arrest on the Strip corridor, and they come back in front of the judge, the judge may say that they violated the stay-away order and that they were picked up on the Strip, so he will impose the suspended sentence in this case. Then they would have a second charge for that: trespassing or whatever happened on the Strip.

Chairman Yeager:
If this bill were to be enacted, we would now be talking about the violation of the stay-away order being a separate crime. Do you see that as changing the calculus that a judge would make? If we have someone who is under a suspended sentence and they have a stay-away order, the judge still has to deal with how to address the suspended sentence versus how to address the new misdemeanor charge. Do you have any idea how that would work? Would the court's decision on the underlying sentence have to wait for the new misdemeanor charge to be resolved? Do you have some thoughts on how this may work in the actual world if we were to enact this bill?

John Piro:
I think it would create extra processes in that sense. I would say to the judge that we now have a new misdemeanor charge that this person has not been found guilty of, so you cannot impose extra time for violating the stay-away order without a finding of guilty on the new charge.

Chairman Yeager:
Are there any additional questions for Mr. Piro or Ms. Bertschy? I do not see any questions. Is there anyone else opposed to Senate Bill 244? Seeing no one, is there anyone neutral? Seeing no one, we will close neutral testimony and ask the sponsor for any concluding remarks.

Senator Cannizzaro:
I will continue working with whomever on the language in this bill to ensure it does what it is intended to do, which is to provide an enforcement mechanism for these common stay-away orders. The ones that are to be addressed in this bill are the ones where we are asking folks to stay away from a place of employment, a business, or a residence where a victim is involved. It is intending to be specific for those particular instances, but, again, I am happy to continue with those conversations.

Chairman Yeager:
I will now close the hearing on Senate Bill 244. Now would be the time for any public comment. Is there any public comment here in Carson City or in Las Vegas? I do not see any public comment, so I will close public comment. Is there anything from Committee members this morning? Seeing nothing from the Committee, as the lay of the land, we do

have a meeting tomorrow at 8 a.m. We have three bills. One of the reasons we will start at 8 a.m. is that we have an earlier floor session tomorrow due to Alumni Day. I want to make sure we have adequate time to get through the three bills tomorrow. As of now, that is all we have scheduled, so we are waiting to see what we might get from the Senate to be able to potentially schedule more bills this week and early next week. Stay tuned, and we will have a better idea what the rest of this week and next week looks like.

With that being said, I hope everyone has a fantastic day, and we will see you all at 8 a.m. tomorrow. The meeting is adjourned [at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated February 19, 2019, to the Senate Committee on Judiciary, authored by Alanna Bondy, representing Nevada Attorneys for Criminal Justice, in opposition to Senate Bill 137, including research on different states and the specific intent requirement.