MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 17, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:04 a.m. on Wednesday, April 17, 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 James A. Settelmeyer, Senate District No. 17
Senator Melanie Scheible, Assembly District No. 9

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tyler Turnipseed, Chief Game Warden, Division of Law Enforcement, Department of Wildlife
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Alex Tanchek, representing Nevada Cattleman's Association
Kyle J. Davis, representing Coalition for Nevada's Wildlife
John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
Megan Ortiz, Intern, American Civil Liberties Union of Nevada

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] We have three bills today. I will open the hearing on Senate Bill 221.

Senate Bill 221: Revises provisions governing warnings against trespassing. (BDR 15-17)

Senator James A. Settelmeyer, Senate District No. 17:
This bill has come before you once before. What Senate Bill 221 tries to address is a situation that is occurring in which individuals are, I believe knowingly, trespassing on private property and using a loophole within our laws to get away with it. Individuals will come onto cultivated property that is clearly private property—agricultural lands that are visibly plowed, leveled, and irrigated—and then say, We were not properly notified that this land is private property. There was a chain link fence, and we climbed over it, but it was not barbed wire. Since it is not barbed wire, it is not a legal fence, so we have the right to be on this cultivated land. People will come onto your land, kill animals on your land—thus hunting on your property without permission—and get away with it.

With me today, I have some Nevada Department of Wildlife (NDOW) directors who have run across this situation. One of them was up in the Elko area, and there was a cultivated field where they had cut the hay with a swather and put it into what is called a windrow. They had the hay laying in that form, and a person shot a deer on top of it. Of course, they called the police who then called NDOW. Then NDOW showed up and said, Well, where is

the sign on your fence saying this is private property? The landowner replied, Well, it was there until somebody shot it away. That sometimes happens. That, in essence, is the bill in a nutshell. I am willing to answer any questions.

Chairman Yeager:
Are there any questions for Senator Settelmeyer or for NDOW?

Assemblyman Daly:
I have heard some of the stories. Back in 2007, they allowed you to put orange paint on the fence. In the situation you are talking about, was the paint shot off too, or was there no fence? The important part of preventing trespassing is providing notice not to do it. Those are not my words; those are the words of [former Assemblyman] William Horne back in 2007 to [former Assemblyman] John Carpenter when he brought the bill about the orange paint. Providing the notice is what we need to have.

Now you would not need to have a fence; you would not need to have the paint; you would not need to have a sign; it would just need to be cultivated land. Then, you leave the definition of "cultivated land" as land "cleared of its natural vegetation," or it could be "fallow land," a "grove, pasture or trees." I am not sure you are providing more notice to stop people from trespassing. Clearly, the alfalfa being windrowed, as you were saying, would make it easy to determine. However, other times, it would not be easy. That is why the paint and the notice were there. Otherwise, the person could say he still did not know. I think less notice is going to be problematic.

Senator Settelmeyer:
I understand your concern. If you look at the section that is deleted, section 1, subsection 2(b), it deals with the orange paint. The concept of painting the tops of the posts orange was more of an issue in Elko, Ely, and some of those more remote areas. Down in my area, nobody does that. The problem they are running into is that, within a year or two, the orange paint fades into more of a pinkish color and then they have a legal argument that it is not proper notification because it is no longer orange. It was felt that by doing the intervals and having signs, it was better notification. Then, you still have an issue if somebody shoots off the sign. That was the discussion last session when the bill was voted on and passed out of this Committee.

I do believe there is accurate notice. If you feel the definition of "cultivated land" needs to change, I am more than willing to do whatever you wish in that respect. To me, it seems rather obvious that when you have farm machinery on a piece of property, that is not government land; that is clearly private property. To allow people to get away with trespassing and killing animals on someone else's land is improper.

The majority of hunters I have been running across nowadays are utilizing their phones. If you go to your phone, you can get a free application which pulls up everybody's private property lines. It gives you all the information you need, and most hunters are utilizing this

application to make sure they are not trespassing—at least the good ones. That is what this bill is about: getting the ones who are not good.

Assemblywoman Backus:
Basically, this would reduce it all the way down to simply having areas of cultivated land as a means of putting people on notice not to trespass. Is that correct?

Senator Settelmeyer:
Yes, the fact that it is cultivated land would put people on notice. It is a rebuttable presumption. Again, they could take it to court and argue that it actually was government land. It gives them that ability. It does not guarantee it, it just puts you on notice that there is now a rebuttable presumption that if you are on cultivated land—if you are looking at a piece of farm machinery plowing up a field—you are clearly on private property and you should probably think twice about trespassing. Possibly, you could contact the property owner and ask for permission. That would be the primary aspect of it. It does eliminate the orange paint because it has proven to be ineffective in some of the more rural areas. It still has the part in it about barbed wire fence and things of that nature.

Assemblywoman Backus:
Would you be okay with requiring two of these items, maybe some sort of other marking in addition? I am very sympathetic to this. I do some civil litigation, and trespassing can lead to other things: someone coming onto your land and getting injured, for example. I am thinking from more of a liability perspective. I want to make sure it is clear you are unwelcome. Would you be open to including a couple of these options as opposed to just limiting it down to the cultivated land?

Senator Settelmeyer:
If you look above, it is still there. We only deleted it in the context of, "Each side of all gates, cattle guards and openings that are designed to allow human ingress to the area." You still have to paint it if you do not have signs. All of it is still there. We deleted the parts in relation to the entrances, ingresses, and egresses to a particular property. In other words, you really do not need to paint the doors on your house to tell someone that if he goes through said door he is on private property. You still have to have it painted on your back gate, you still have to have it painted on the corners of your property, and you still have to have signs on those corners to indicate it is private property. The sections about making sure it is painted and appropriately signed are still there; we just eliminated the discussion of the intervals in between those. For a while, the intervals were problematic in some areas. We just copied the other section above. You still have to do it either by a sign or paint. It allows them that option of having both. In the past, the only real way to do it was through the paint. This allows for signs.

Assemblywoman Hansen:
In areas that are pretty rural, such as in my district, what if a person is on a lawful hunt and the animal gets into these properties? Certainly, we hope there is always a quick kill, but

sometimes there is not. What happens to the hunter who accesses the property to get the animal?

Senator Settelmeyer:
To my understanding, the law—in order to make sure the animal does not suffer needlessly—allows the hunter to go onto someone else's property without permission in order to acquire the game that is under contest. I will allow Mr. Turnipseed to elaborate.

Tyler Turnipseed, Chief Game Warden, Division of Law Enforcement, Department of Wildlife:
We do run into those circumstances sometimes in which a hunter shoots an animal, either on private property he or she had permission to be on or on public property, but then the animal hops a fence and ends up on private property the hunter does not have permission to be on. It is sort of a conflict of two laws: one being the basic trespass law whereby you need permission to enter, and the other being an obligation to follow up and not let your animal go to waste. In those sorts of conflicts, we usually expect the hunter to call us or the local sheriff's office. Certainly, we do not want to trump private property rights by saying they have an implied right to go on that property because there is a deer. Generally, in those cases, we can reach out to the landowner and tell him the situation and ask if it is okay if the person comes onto his property to retrieve the animal or whether he would rather have us come out and be there for that to try to mitigate the conflict between following up with your hunt and private property rights. We do not want to step on private property rights, so we try to moderate those conflicts.

Assemblywoman Hansen:
I do not always like to deal with hypotheticals, but I think this does happen. In some of these areas, you do not have good cellular service and cannot contact NDOW. If there is a problem between the landowner and the hunter, which law is going to prevail? Is the hunter now truly in trouble because he or she did not notify NDOW? We are juggling the two conflicting statutes.

Tyler Turnipseed:
If the person is not able to get ahold of us, we would expect them to go to the landowner, knock on the door, and politely ask, Hey, my deer is out in your field. I do not want it to go to waste. Would it be okay if I retrieved it? Ninety-nine percent of the time, they are going to reach an easy agreement. In the rare case the landowner puts his foot down and says, No, you are absolutely not welcome on my property, we would honor that landowner's wishes as to his or her private property.

Assemblywoman Peters:
My question is regarding the "checkerboard land" we have out in eastern Nevada and how tricky that can be to navigate when you are trying to access some hunting areas. How might the fencing of that land and access to the public lands be impacted by the postings related to this piece of legislation?

Senator Settelmeyer:
I used to have property in California directly in the middle of that checkerboard land. Basically, what that means is you cannot fence it. There is no real ability to fence a checkerboard in order to make it to the other piece of the checkerboard. You would not have that ability. In that respect, fences are only allowed to be put in with the permission and authorization of the Bureau of Land Management or the U.S. Forest Service. They do not allow signs to be put on there saying it is private property because it is not private property because of the checkerboard pattern. In that respect, I do not feel the bill interferes with that. If you are on government land, it is not capable of being restricted.

In fact, Senator Hansen had this discussion about blocking government property. There will be a bill coming that tries to replicate the federal law, which states that, as a private property owner, you cannot block access to public lands. We are trying to replicate the federal penalties in state law. In my experience, you do not see fences saying it is private property on the checkerboard properties. Again, if you look at that hunting map application, especially in Fernley, you can get a pretty good idea of how much of that whole community is a checkerboard pattern and what a nightmare that creates for the development of Fernley. I appreciate the question. I do not think it affects this bill in any way, shape, or form. Again, those are government lands, so you cannot prevent access.

Tyler Turnipseed:
We do get pulled into some of those conflicts on the checkerboard lands, especially around the Pequop Summit area in Elko County. When I was a warden in Winnemucca, I used to get those calls often along the Humboldt River corridor through Golconda and Winnemucca. Last session, there was a bill called the "corner crossing bill" [Assembly Bill 386 of the 79th Session]. It was not successful, but it dealt with crossing those checkerboard lands. Theoretically, you could step from public land to public land across a corner and never step on that private land. We have told landowners in the Pequop area that if someone is on foot crossing from corner to corner, we are not going to come out and enforce any trespass law. If they are driving across the private land, of course, we would get involved. If someone is on foot and stepping across a corner from public land to public land, we do not have an issue.

I know there are some bigger legal arguments about private airspace—the imaginary line that goes up from that fence line—but try not to get bogged down in those. This bill does not address that; it is more about the signage, the warning. I think the bill is two-pronged. In my opinion, it does two things. The first is that it simplifies the part about painting, signage, and orange post tops. That part is still in the bill. I always thought it was overcomplicated as far as if the land was used for herding, grazing, or agriculture, the interval of paint was one distance, whereas if it was not used for those purposes, the paint interval was a different distance. I always thought that was overcomplicated. The sportsmen we would talk to in the field did not necessarily understand it. The landowners we talked to in the field did not necessarily understand it. I think the bill simplifies that by simply making it one interval, regardless of whether the land is used for agricultural purposes or not.

The second prong of the bill is adding that term "cultivated land," which sort of speaks to the situations in which I get a call saying, Hey, a hunter shot a deer on my private property! Can you get out here? I go racing out and there is literally a dead deer on a freshly cut row of green alfalfa. Then you look around, and it was not properly posted by the exact requirements of NRS 207.200, so we are not able to prosecute that person even though, clearly, a reasonable human would say, Well, that is green, irrigated alfalfa amongst a million acres of creosote desert. That is private land. I think that is what the cultivated land piece does.

Assemblyman Daly:
I am hearing you, but I am also looking at the language of the bill. In section 1, subsection 1(b), it says a person is "guilty of a misdemeanor," and then it continues with, "The meaning of this subsection is not limited by subsections 2 and 4," which is where it describes what you can do. Then, in subsection 2, it says you are guilty of a misdemeanor if "A sufficient warning against trespassing, within the meaning of this section, is given by any of the following methods," so you only need to have one. When you say we still have paintings, signs, and all of that stuff, you are limiting it down. You do not need to have a fence; you do not need to have a sign; you do not need to have paint; it just has to be a field that is in use or is fallow. I am not seeing that we are giving more notice. I am just trying to get some clarification. The question is, do you only need to have one of those?

Additionally, you said earlier that someone can rebut that. You said there is a rebuttable presumption. I read that differently. In section 1, subsection 3, it says, "It is prima facie evidence of trespass for any person to be found on private or public property which is posted or fenced as provided in subsection 2 without lawful business with the owner or occupant of the property." So, if you are there, and the standard is no fence, no signs, no posts—it meets one of those other sections saying that it is just in use or potentially in use—you are going to be guilty because it is prima facie evidence. There is no rebuttable presumption. Can you clarify that?

Senator Settelmeyer:
The existing law is already that way where it has the choices. If it is agricultural land, you are already in the realm of painting it at 1,000-foot intervals with orange paint. You have that ability currently under law. Alternatively, you can choose to have "no trespassing" signs on it. That is the current law. In that respect, what we are taking away is the distinction between land that is used for agricultural or livestock purposes being a 1,000-foot interval and land that is not used for agriculture or livestock being a 200-foot interval. If land is not being used to graze livestock—I am getting more people who are getting into saving wild horses, and under our current law, we do not consider that to be grazing livestock—they are supposed to have their signs marked every 200 feet. What we are saying is, in those situations or situations where it is cultivated land, they should be allowed to follow the other law, which is 1,000 feet. We had so many people who did not understand the difference. It would not be appropriately signed because it is not every 200 feet, but they thought they only needed it every 1,000 feet. They are getting into these arguments, so we are trying to simplify the law and have everything go to one standard: 1,000 feet. The law gives you that

option of whether to paint or put up a sign. This would be adding an additional clarification that if it is cultivated land, you are on notice that it is private property. It does add an additional thing.

As for the concept of prima facie evidence, you always have the defenses of law. You are allowed to go into court and say it was not appropriately marked or it was not cultivated land. You always have those abilities to go in. To me, it does create a rebuttable presumption when you are talking to the NDOW person who shows up. I think Mr. Turnipseed can better answer the legal question.

Tyler Turnipseed:
The law, if you boil it all down, says the burden of proof is on us to prove a person was warned not to trespass. It basically says it is prima facie evidence that if you are found on that property after having been warned, you are guilty. The existing statute and the bill outline the various methods of warning people they are on private land. Section 1, subsection 2(e) is a verbal warning. Section 1, subsection 2(a) talks about painting the posts orange. The bill would simplify it to a 1,000-foot interval versus a 200-foot interval, combining those into one warning. Section 1, subsection 2(b) would be fencing the area. The "no trespassing" signs will become subsection 2(c).

The one we are hung up on is section 1, subsection 2(d), in which the very fact that the land is cultivated would suffice as a warning that it is private land. That is where we get to that example of a bright green, irrigated field amongst the desert. A reasonable person should understand that is private. That would serve as a warning that you are on private land as far as our burden of proof that they have been warned they are on private land based on section 1, subsection 2.

Assemblyman Daly:
The problem is section 1, subsection 2, paragraph (d). I understand you are taking out the distinction between land used for agriculture and land used for something else, whether or not 1,000 feet is the right number. If you go back and look at the 2007 bill, they bifurcated it rather than going all the way down. In some areas, they wanted the 200 feet, so maybe there is a compromise number between 200 and 1,000. One thousand feet is quite a distance. It is 500 feet away if you are dead in the middle. Then, if there is brush in the way, you may not be able to see it.

Then, in section 1, subsection 2(d), in which you could have no fencing, if it is a bright green, irrigated field with fresh windrowed alfalfa, it is pretty clear. However, if it is fallow with weeds growing up over it or next to a pasture or trees—not even an orchard, just a grove of trees—I do not think it is sufficient warning. It says a "grove, pasture or trees," so it could just be land with trees on it. That is my point. Then I have a problem with the 1,000 feet. Maybe we can find a compromise number.

Senator Settelmeyer:
I understand your concern. Again, I am more than willing to see whatever this Committee wants to put forth as reasonable. In that respect, though, it has to be presently planted with a crop. I understand the concept of the pasture, but again, these are irrigated pastures. Everybody who has travelled in California is very familiar with orchards where all the trees are clearly not put there by Mother Nature. When you run across trees that are planted in a direct line, a reasonable person should be on notice that Mother Nature probably did not do that. I would have no problem if you wish for more clarification with that. I do think there is merit in the idea of putting people on notice when they are clearly trespassing and not allowing them to wiggle around the law.

Chairman Yeager:
I do want to make a clarification. In section 1, subsection 3 of the bill, we talked about prima facie evidence. I do want to note, that section only applies if the land is posted or fenced as provided in section 1, subsection 2. The way I read that is, if someone were on cultivated land, just the fact he or she is there would not be prima facie evidence because it is not going to be posted or fenced.

Assemblyman Roberts:
Does this only apply for hunting when you are trespassing on cultivated land, or is it prima facie for all trespassing?

Tyler Turnipseed:
In my world, when I deal with NRS 207.200, it is always in the context of hunting, fishing, or trapping. I do understand there are some concerns in the room about more urban settings or when someone is dealing with a trespass at a bar or casino or something. Admittedly, that is not the world I operate in. I think the statute deals with any form of trespassing, not just hunting. It just happens that when I get the call, it is usually hunting, fishing, or trapping.

Assemblyman Roberts:
Nevada Revised Statutes 503.240 deals with hunting on private property. Is there any reason we could not put this language into that statute? Is it incumbent upon the language of normal trespassing to apply to hunting? I read the statute the way it is written. Maybe there is no room for it to be that way, but it might solve half the problem if you could do that. I know you have run the bill a few times before, and maybe there is just a technical problem for you to do that.

Tyler Turnipseed:
You are right. We ran the bill through in 2017 and got it to a point where it had some broad consensus with sportsmen, cattlemen, and farmers to where everybody agreed it had reached a middle ground. We have a separate statute that talks about making it illegal to hunt, fish, or trap on private land without permission. That statute refers back to NRS 207.200, the general trespass statute. *Nevada Revised Statutes* 503.240 says if it is properly marked pursuant to NRS 207.200, then you can pursue that hunting, fishing, or trapping trespass. That is an interesting distinction. I try to remind our wardens which law to charge under. If it is a basic

trespass, we would deal with NRS 207.200. If it is hunting, fishing, or trapping on private land without permission, we charge under NRS 503.240. It is a minor nuance, but it is significant enough that it is a wildlife charge so it carries demerits toward our license revocation system. The simple trespass under NRS 207.200 carries no demerits toward a hunting license. That is a difference between the two statutes, but NRS 503.240 refers back to NRS 207.200.

Assemblywoman Cohen:
I am concerned about the fallow land as well. I cannot tell you the last time I was on a farm. I understand the concept of crop rotation, but what does a fallow field look like? I understand it still has its infrastructure, but would someone who just comes across fallow land realize it is something that belongs to someone?

Senator Settelmeyer:
If it is fallow, it would not apply because it has to be presently planted with a crop. Fallow land means it is no longer in production, meaning they are not irrigating it anymore. It could be a situation where it was a field that now looks dead because it is not being taken care of. Weeds are staring to grow in it within a year. Within two years, it will be overgrown and look like any other native vegetation except for the height of the sagebrush. If it looks like everything around it, it is fallow and there is no notice. Cultivated means it is actively being used; it is presently planted with a crop and being irrigated. If a plow had come through and left the crop—it is just land that has literally been flipped over by a plow or a disk—that is fallow because it is not presently planted with a crop.

Assemblywoman Cohen:
I guess I am not following because if you go to the definition of cultivated land in section 1, subsection 5(a), it says, "or is fallow land as part of crop rotation."

Senator Settelmeyer:
You are correct. I am sorry, I messed that up. It does mean that, in the respect it has been turned over by machinery, you should be on notice. If it is not irrigated at all, though, you can tell. In other words, fallow is supposed to only be for a year or two at most, so there is a time frame with it. Maybe we do need to define in NRS the definition of what "fallow" would mean. Traditionally, in agriculture, you are not going to lose your money for more than a year. You need to earn your money because, otherwise, you are paying taxes to the county and not earning any money back.

Assemblywoman Cohen:
To be clear, if I, as someone who does not know where I am, go for a walk and I come across a field and there are no crops, but there is clearly an irrigation system, I should know it is someone's land and I would be trespassing if I go on the land. However, if I come across a piece of land where brush is starting to grow and Mother Nature is taking it back over, I am not trespassing?

Senator Settelmeyer:
In my opinion, you are correct because it is no longer being cultivated. The Bureau of Land Management and the Forest Service do not allow you to go out and unearth their properties and cultivate crops upon them.

Assemblywoman Cohen:
I guess I do have some concerns because trespassing is trespassing, but I think the way people consider trespassing is different. In the urban and suburban settings, we have people who put "no trespassing" signs on their house, and they are three feet away from their neighbor's house. They have tiny lots and they still have the signs up. It is almost as though that concept is different than if you are in a rural area and there are wide open spaces. I think we need to be careful and cognizant of that.

Senator Settelmeyer:
I have said it many times: if you have 0.3 acres, you have a lot of property rights; if you have 1,000 acres, it is sort of, No, you should let people cross your property. It is different and it is viewed differently. If I see individuals walking across property with a gun and I call the cops, they say, Are they doing any harm? Leave them alone. If you have 0.3 acres and you call and say there is someone walking in your front yard with a gun, they will say, We will be right there. The difference is interesting to me.

Assemblywoman Cohen:
On the other hand, if I go up to a guy with 0.3 acres and walk through his yard and knock on his door—even if he has a no trespassing sign—that is not really considered trespassing. However, if I go onto someone's land who has 1,000 acres and there is a no trespassing sign, that is trespassing.

Senator Settelmeyer:
I believe an individual would still have a right to drive down the driveway to the house and knock on the door. If they enter elsewhere on the property that had signs, yes, it would be trespassing. I would compare that to someone with a backyard. If you have a fence with a backyard and you have a "no trespassing sign" and someone breaks that barrier to go into the backyard, he is trespassing. Again, it is expected that individuals have the right to go to a front door. You basically have an invitation to go up to that door. Of course, if it says "No Solicitation," you are supposed to respect that and not solicit for business purposes.

Chairman Yeager:
I will open it up for testimony in support.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
A lot of our membership are the rural sheriffs, and this will certainly help them, so we support this bill.

Alex Tanchek, representing Nevada Cattleman's Association:
We also support this bill.

Kyle J. Davis, representing Coalition for Nevada's Wildlife:
We are here today in support of this bill. We appreciate Senator Settelmeyer's working with us on this issue, both this session and last session. The initial discussion about this was talking about the issue of fencing and talking about barbed wire fences and what might qualify as a fence that would serve as evidence you would be trespassing and what would not. That caused us a lot of concern because there are many barbed wire fences across Nevada with public lands on both sides. Those are range fences that are used for herding, but there is no private land component. That is how we ended up on this definition of cultivated land and using that as prima facie evidence.

Keep in mind that, in the vast majority of situations, when you are talking about the cultivated land that is contemplated in this bill, it likely is also surrounded by a barbed wire fence. We did not want to get into a situation where somebody out in the field hunting or hiking was having to evaluate whether a barbed wire fence was separating public from private or whether it was a range fence with public on both sides. That is how we ended up going with "cultivated land." If it is something as described in the previous testimony, somebody should be able to know they are on private land. Then, we do not have to get into a situation where we are talking about what a fence might look like. For those reasons, we are in support of this bill. We think it is a good step forward to make sure we do not have a situation where hunters are trespassing. We want to make sure they are staying on public land, which Nevada is lucky to have a lot of for enjoying these activities.

Chairman Yeager:
Is there anyone opposed? [There was no one.] Is there anyone here in neutral? [There was no one.] Senator Settelmeyer, do you have concluding remarks?

Senator Settelmeyer:
In talking to NDOW officials, they indicated that the first time somebody gets in trouble for trespassing, it is just a warning—unless, of course, they have taken game illegally on someone's property in which case it would be more than a warning. In that respect, they have never given somebody a ticket for trespassing the first time. That being said, if there are any amendments you need, I am more than willing to discuss it or have them done, as it is your discretion to do so. If fallow land is a problem, delete that. I just think if something is presently planted with a crop and being irrigated, you basically know you are trespassing.

Chairman Yeager:
I will now close the hearing on S.B. 221 and open the hearing on Senate Bill 274.

Senate Bill 274: Revises provisions relating to crimes. (BDR 15-1076)

Senator Melanie Scheible, Senate District No. 9:
Senate Bill 274 makes some very logical changes. I do not want to say "minor," but it is not an overhaul of our criminal justice system. Basically the issue S.B. 274 addresses is that in our current statutes, we have a variety of different laws that cover gun violence. Two of those are the discharge of firearms. The current penalty for discharging a firearm at, into, or

within an occupied structure, vehicle, vessel—that would include planes, trains, cars, boats, homes, buildings, et cetera—is a category B felony punishable by 1 to 6 years in prison. Under current law, discharging a firearm from a vehicle, vessel, plane, train, home, et cetera, is punishable by 2 to 15 years in prison. It is also a category B felony.

I had assumed this discrepancy was some kind of response to a proliferation of drive-by shootings in other communities. My research into the minutes of many, many Judiciary Committee hearings and floor votes did not reveal any kind of rhyme or reason to this discrepancy. I can say that, in practice, it does create a difficulty for those of us who practice criminal law because the crimes are actually very similar in nature. We do not see a lot of drive-by shootings in Nevada. We see a significant amount of gun violence in Nevada, but the difference between shooting into an occupied structure and shooting from an occupied structure does not seem to warrant a difference in the penalties. What this bill proposes to do is keep them both as category B felonies, but make them both punishable by 1 to 10 years in prison.

I want to give you a few examples of reasons why I think this bill is worthwhile and can benefit us. I had a case recently where two individuals were involved in something of a road rage incident. They pulled off to the side of the road, and the individual we were charging in that case fired the first shot from within his vehicle. He got out of his vehicle and continued to shoot at the other vehicle while standing on the sidewalk. The first shot he fired was from a vehicle, and that one was punishable by 2 to 15 years in prison. However, the subsequent three shots he fired once he got out of the vehicle were punishable by 1 to 6 years in prison. That just did not really make sense to me because it was all one act and all four of the bullets were aimed at a human being and all four of them carried the same likelihood of injuring that human being.

Another place where we see issues with this comes from incidents in which people are firing guns in doorways. It happens more often than we would like to believe, but my colleagues at the Clark County District Attorney's Office and I have had cases in which individuals are involved in an altercation, and when they are standing in a doorway, if they fire their weapon into the home or building, that is going to be punishable as a category B felony with 1 to 6 years in prison. However, if they fire the gun in the opposite direction, out of the structure toward somebody who is standing in the street, it would be punishable by 2 to 15 years in prison. Those discrepancies just do not make sense in our law.

There is obviously a philosophical question about whether or not these crimes are different, but I think what is important to note is that what we are seeing in practice is that neither one of these crimes is significantly more dangerous or common than the other and the discrepancy has become just that: a discrepancy without any kind of basis in public policy reasoning. This will clarify the law. This will help bring parity to these two different charges. I am happy to answer any questions you might have.

Assemblywoman Peters:
My question has to do with the stacking of these charges. In the case you were talking about where someone shoots from a car into a house, do those become individual charges that are then layered and add up to potentially 20 years or more? Is that how this works?

Senator Scheible:
Just as in every criminal case, every time you discharge a firearm, that is a separate count. You could have three counts of discharging a firearm into an occupied structure or vehicle plus two counts of discharging a firearm from a structure or vehicle. Then you would have an information or indictment with five counts on it. Whether or not those charges are stacked to have sentences that run consecutively rather than concurrently is a sentencing issue that comes after negotiations and/or a trial. Other laws apply to when sentences can be imposed consecutively. This does not address our sentencing structure or our sentencing statutes in that sense.

Chairman Yeager:
I will open it up for testimony in support.

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I am here in support of S.B. 274. It has never made much sense to district attorneys why these two seemingly similar acts are treated so differently. What this bill attempts to do is provide some consistency between these two similar crimes. I have done some research. Just for a point of reference, in California, discharging a firearm into a structure or vehicle is a felony punishable by 3, 5, or 7 years in prison. That is Title 8, Chapter 9 of *California Penal Code* Section 246. Discharging from a vehicle is similarly punished by the same 3-, 5-, or 7-year prison sentence. So in California, the crimes are treated similarly. Arizona also treats them similarly: around 5 years in prison. Both of these offenses in Arizona are a Class 2 felony. I think what this bill seeks to do is what other states have done by treating these two crimes with the same punishment. With that, I am more than happy to answer any questions.

Assemblyman Daly:
Not that we do not want to make this distinction—the bill is going in the right direction—but how do you, as law enforcement, handle this? Section 2, subsection 3, paragraph (c) says this section does not apply to "A person who discharges a firearm in a lawful manner." What does that include? Does that include self-defense situations in which someone may discharge a firearm, or is there another statute that covers that? I know we have "stand your ground" laws in this state and various things whereby you can defend yourself if you are legally entitled to be there. I know that does not really have to do with the bill; I am just curious how you handle that or if there is another statute that covers it.

Senator Scheible:
I can answer that. I think this is actually a pretty common phrasing in our gun statutes from what I have experienced. There are a variety of statutes that address when it is lawful to

discharge a firearm. That could be a law enforcement officer in the line of duty. That could be somebody who is acting in self-defense. That could be somebody who is in an indoor shooting range firing a gun inside a building. There is not one specific law that outlines when it is lawful to fire a gun or one specific law that specifies when it is unlawful to fire a gun, although, that would be a fun activity for us to undertake. The answer to your question is, there are numerous laws that would explain when it is lawful to discharge a firearm.

Assemblywoman Tolles:
I think this is more curiosity. You said this in the beginning, but the current law is, if I am standing out in the broad open—not under cover—and I shoot into a house or structure, it is less of a penalty. If I am in a structure, it is more of a penalty. I wonder if the basis for that is that I am actually hiding under cover in more of a SWAT-type position in which I could do more damage to others and that would be the intention of being behind a structure. I could potentially do more damage. I am not out in the open. I just wonder if you looked into whether that is why there was that difference.

John Jones:
I think, when you look at these situations, they can both present very serious situations. If you are standing out in front of a house where people are confined in a room and you discharge a weapon into it through the window, it can present a very serious situation. Along the lines of what you were talking about, you could be in a vehicle, discharging out of the vehicle onto a lawn, and you would have an easy way to escape in that situation. I think both of these situations can be equally serious, but I understand completely the point you are making.

Assemblywoman Tolles:
I guess I am just trying to understand. Maybe there really is a reason for a steeper penalty. If you are hiding in a SWAT-like position taking people out, I could see why that might be seen as more dangerous, and what we are doing is reducing that. That is my only point.

Assemblyman Edwards:
That question just prompted this one. Could the distinctions have been made because you would be firing from a concealed position in situations such as the Washington, D.C., shooters, in which they were shooting out of a car and murdering people at random, which showed a higher degree of maliciousness toward the other people? Is that possibly the reason why there was that distinction?

John Jones:
Potentially. When we were reviewing the statute, it did not become abundantly clear why this distinction was made. I can tell you, in speaking with the Gun Crimes Unit in the Clark County District Attorney's Office—which is 100 percent in support of making these changes to equalize the two penalties—that is not necessarily what they are seeing on the ground on a day-to-day basis.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We work very closely with the Gun Crimes Unit, and we are in support of having the two statutes be consistent.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
You will not see me come to the table very often supporting lesser penalties, but in this regard, we are 100 percent in support of this measure to bring consistency to the matter. To Assemblywoman Tolle's point, having been a SWAT operator for a number of years, those charges, when they are directed toward a team or an officer, are increased for attempted murder or for murder. This would be an underlying charge that would accompany the entire case.

Chairman Yeager:
Is there any testimony in opposition? [There was none.] Is there any neutral testimony? [There was none.] Senator Scheible, do you have any concluding remarks?

Senator Scheible:
I just want to touch on two points. The first is that I was similarly curious about the origins of this discrepancy, and I really did try to understand why these charges are not punished by the same penalties. First of all, I could not find a historical reason for it. I think more importantly, if there ever was a historical reason, we are not seeing it play out that way in reality. On the ground, so to speak, we are not seeing a lot of cases either from a law enforcement perspective or from the prosecutors' perspective that demonstrate that whatever reason there was initially still exists today.

The other thing I did want to note that I forgot to mention in my initial testimony is that all of these charges are a range. The punishment for a category B felony is up to 1 to 10 years in prison. Both of these charges are actually eligible for probation. Just because we are creating a certain statutory sentencing range does not mean anybody will automatically be sentenced to 1 to 10 years in prison, 1 to 5 years in prison, or 2 to 10 years in prison. They could actually still be granted probation. This is just saying those two crimes are both punishable by, possibly, 1 to 10 years in prison.

Chairman Yeager:
I will now close the hearing on S.B. 274 and open the hearing on Senate Bill 383.

Senate Bill 383: Revises provisions relating to sexual conduct between a law enforcement officer and a person in his or her custody. (BDR 3-113)

Senator Melanie Scheible, Senate District No. 9:
I am delighted to be here to present Senate Bill 383. I am not sure if you heard a similar bill or engaged in this conversation already, but I think the bill is relatively straightforward and is common sense. The bill says that in a civil case relating to an incident in which a law enforcement officer has sexual contact with somebody who is in his or her custody, there is

a rebuttable presumption that the contact was not consensual. It also says consent is not a defense to having engaged in sexual contact with somebody in the custody of a law enforcement officer. This does not change the criminal penalties; this does not create a new crime; this does not eliminate a crime. This simply applies to the civil case that may accompany any kind of criminal act or criminal case that occurs when a law enforcement officer has sexual contact with somebody in his or her custody. I think that sums it up.

Chairman Yeager:
We did hear a similar bill, Assembly Bill 349, in case anybody was wondering.

Assemblywoman Cohen:
I have a question about section 1, subsection 1, where it discusses that the person was "in the custody of the law enforcement officer." Does that include traffic stops? Also, if we change traffic violations into civil violations, is that still covered by this?

Senator Scheible:
A traffic stop would not result in somebody being taken into custody unless they were arrested. The moment an officer pulls somebody over would not be custodial to begin with, so even if we decriminalize traffic penalties, it would not have an effect on this bill. In order for this bill to apply to somebody in the case of a traffic stop, they would have to actually be taken into custody.

Assemblywoman Cohen:
I guess I am concerned because there is a power differential even for traffic stops. I believe we have heard news reports, not necessarily in Nevada, of people being stopped for traffic violations and then being forced into sexual encounters.

Senator Scheible:
I do not disagree that there is definitely a power differential. If a law enforcement officer is utilizing his or her position of authority when pulling somebody over in order to sexually harass or assault that person, it is entirely inappropriate. It is a criminal act. However, I do not think that would be covered by this bill because this bill does not address every power differential or every instance of misconduct under the color of law. This just applies to people who are actually in custody.

Assemblywoman Nguyen:
I know we have a similar bill, and I think we could easily merge the two of them because it did not include any of the civil action stuff. I know law enforcement had some concerns and this Committee had some concerns. We made some amendments to say, "currently detained," to avoid a situation in which someone perhaps met someone they detained later on and began a consensual relationship. I would just suggest doing that.

Senator Scheible:
That is an excellent point, thank you.

Chairman Yeager:
If I am not mistaken, I think one of the changes we made to that other bill was to say this would not be limited to the person being just in that particular officer's custody. We wanted to try to capture situations in which we would have an officer having sexual conduct with somebody who is in the agency's custody but maybe not necessarily in that individual officer's custody. I think we made that change. Assuming we did, I wanted to ask for your thoughts on that. I understand why we have the carve-out for parole and probation because that is not really custody as we generally think of it, but would you be willing to make that change so it would apply to the entire agency?

Senator Scheible:
Absolutely.

Chairman Yeager:
I will open it up for testimony in support.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:
We are here in support of S.B. 383. Law enforcement officers are held to a higher standard, so the penalty should be stiff if someone were to violate the public's trust. We are happy to come to the table in support of this today.

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

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are here in support of S.B. 383.

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

Tyler Turnipseed, Chief Game Warden, Division of Law Enforcement, Department of Wildlife:
Ditto.

Megan Ortiz, Intern, American Civil Liberties Union of Nevada:
Police officers have an enormous amount of power when interacting with and detaining civilians, and their decisions can sometimes put people behind bars for days, months, or years. Charging someone with a crime, even when he or she is not convicted, can impact a person's job prospects, housing status, and other criminal aspects of their lives. Anyone who has ever interacted with a police officer understands this lopsided power dynamic, and when police officers engage in sexual misconduct, they are taking advantage of this imbalance whether they know it or not.

Police sexual misconduct is also alarmingly common. A recent survey of over 700 cases of sexual misconduct by law enforcement personnel nationally showed that, on average, a police officer is caught in an act of sexual misconduct at least every five days. Another study found that in just one year, 618 officers were implicated in sexual misconduct, making it the second most commonly reported form of police misconduct after excessive use of force. This bill would be an essential step in increasing police accountability for sexual abuse and harassment of civilians. For that, we urge your support.

Chairman Yeager:
Is there any opposition testimony? [There was none.] Is there any neutral testimony? [There was none.] I will now close the hearing on S.B. 383. [(Exhibit C) was submitted but not discussed and will become part of the record.]

Is there anyone who would like to give public comment? [There was no one.] Committee members, as of right now, we do not have anything agendized. I do believe we will likely have a hearing tomorrow, so stay tuned for that. My guess is that it will probably be a 9:30 a.m. start time. We are just waiting to see what we might get on the floor today, so check your emails later, and I will make sure any information about that gets out. The same goes for Friday; we are just waiting right now to see if we get some Senate bills we can agendize.

Next week, we will be very busy on the floor most of the day on Monday and Tuesday, so that may cause us to cancel our Judiciary Committee meeting, but I will let you know for sure. For now, stay tuned. I hope everyone has a really great day. We will see you all tomorrow morning at some point. The meeting is adjourned [at 9:16 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lucas Glanzmann
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated April 16, 2019, to members of the Assembly Committee on Judiciary, including a proposed amendment to Senate Bill 383, submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.