

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 6, 2019**

The Senate Committee on Judiciary was called to order by Vice Chair Dallas Harris at 8:08 a.m. on Wednesday, March 6, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nicolas Anthony, Committee Counsel  
Jenny Harbor, Committee Secretary

**OTHERS PRESENT:**

Mike Cathcart, City of Henderson  
Corey Solferino, Washoe County Sheriff's Office  
John T. Jones, Jr., Nevada District Attorneys Association  
Sarah Adler, Nevada Coalition to End Domestic and Sexual Violence  
Brian O'Callaghan, Las Vegas Metropolitan Police Department  
Ryan Black, City of Las Vegas  
John J. Piro, Deputy Public Defender, Office of the Public Defender,  
Clark County; Office of the Public Defender, Washoe County

VICE CHAIR HARRIS:

I will open the hearing on Senate Bill (S.B.) 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 (Senatorial District No. 6):

I am here to present S.B. 244. I will describe the impetus behind the idea of this bill and why it is critical for us to pass this piece of legislation.

Senate Bill 244 states if a court issues a stay away order—the court orders someone who is under the jurisdiction of that court to stay away from a victim or a place such as a residence or business—that individual must do so. A violation of that order is considered a misdemeanor.

This piece of legislation is necessary and critical when dealing with criminal cases and cases where someone has been ordered to stay away from a victim, a place of business, a residence of that victim or his or her family because it ensures the safety of the victim and the community.

It is incumbent upon this Body and the courts to have the jurisdiction to enforce these orders. Oftentimes, courts will impose these types of orders as a condition of release or as a condition of a resolved case in justice court, for example, where an individual needs to pay a fine as well as stay away from the victim. This ensures the safety of that victim.

However, when a court issues such a stay away order, contempt of court would be the only remedy. This is difficult for courts to enforce because contempt of court does not necessarily mean in every circumstance an individual violated a stay away order even when he or she has.

Senate Bill 244 brings clarity to the law, clarity for victims and clarity for the community in terms of ensuring when somebody is ordered to stay away from a victim, a place of residence or business, a safety component is involved. This bill also provides the means to enforce such an order. The enforceability of that provision is the crux of this issue.

SENATOR OHRENSCHALL:

My question has to do with the mechanics of this bill. If a victim has such an order in place and believes it has been violated, would he or she inform family court or law enforcement? How would the person who is protected by the order affect its enforcement?

SENATOR CANNIZZARO:

This, like any other crime prescribed within *Nevada Revised Statutes* (NRS), would be a matter of investigation for law enforcement.

As an example, there is no criminal penalty for a person who agrees to a stay away order from a victim as part of a plea—negotiations between the parties or perhaps the sentence of a court. If the victim were to come into contact with that individual, at best, the victim could attempt to contact law enforcement. However, law enforcement cannot utilize resources to investigate or act because there is no record of a stay away order. At most, that victim may contact someone he or she dealt with in the criminal process and say "This person was supposed to stay away from me and he or she did not." At that point, there is just a victim who has come to a court or a victim's advocate center to say contact with that individual took place without any sort of investigation or proof.

This piece of legislation is key in that it gives law enforcement the ability to investigate such a violation.

SENATOR PICKARD:

As a practitioner who works in this space from the private side, I know NRS 125.555 provides temporary protective orders against domestic violence which sets forth misdemeanor violations. There are protection orders against harassment in the workplace under NRS 33.350 and orders for protection of children under NRS 33.400. Particularly, under NRS 33.400, it is a gross misdemeanor if there is a violation of a temporary order and a misdemeanor if there is a violation of a permanent order.

Does S.B. 244 fill a gap? Is this also a doorway for permanent stay away orders?

SENATOR CANNIZZARO:

There are provisions in statute that provide for formal protective orders, and those would continue to exist. What this bill is meant to address is the ability for a court to impose a stay away order as part of a sentence. If such a stay away order is issued under statute, the only enforcement mechanism is the court finding a contempt of court when and if that violation is brought to the court's attention.

Often, those victims will still attempt to fulfill the requirements of the temporary protective order or believe they are getting a protective order when the court says to the accused, "Stay away from this person." In these cases, a protective order is never put in place. Because there is no temporary or extended protective order for either domestic violence or otherwise in place, there is no enforcement mechanism.

Courts do not grant a protective order unless someone goes through a separate process. This bill fills the gap where there is no protective order in place—such as a sanction from a court where someone is ordered by the court to stay away from a victim.

SENATOR PICKARD:

That makes sense to me. As to permanence, would this then create a permanent stay away order?

SENATOR CANNIZZARO:

No, this would operate the same way any other term of sentence imposed by a court operates, which is during the pendency of the case or for a period of time.

For example, we have cases where a stay away is in effect for the entirety of the time the case is open with the court. Once the remainder of the requirements are fulfilled, that case is closed and the stay away order is no longer in place.

SENATOR PICKARD:

Would this bill open the door for a court to order a permanent stay where an individual is never to have contact with a victim? We do not have one and I am hoping your answer is yes.

SENATOR CANNIZZARO:

Unfortunately, no. Courts have jurisdiction over individuals who are in front of it or for whom it has the jurisdiction to supervise or to deal with during the pendency of a case. For example, if someone is put on probation by a court, the court has the authority to modify—to supervise—that probation. Once that probation term is fulfilled, as with any other condition, a judge cannot come after that person years later and say "I know you were on probation for a period of time and that case is now closed, but you should have been doing 25 hours of community service every month." The jurisdiction of the court is limiting in that fashion.

In regard to stay away orders, there are temporary protective orders or, in certain circumstances, extended protective orders for the protection of the community. The jurisdiction of the courts and the way in which our system operates is not infinite in that regard.

SENATOR PICKARD:

Maybe we can look at a lifetime registration requirement or something similar in a different context.

MIKE CATHCART (City of Henderson):

This is an important bill and will be a useful tool for our courts. We support S.B. 244.

COREY SOLFERINO (Washoe County Sheriff's Office):

We support S.B. 244. It fills a gap to better protect victims and the public throughout the criminal processes.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

We support S.B. 244. To Senator Pickard's question, it does fill a gap. There are provisions in statute—maybe under the bail—which do provide a contempt hearing, but this would streamline the process when violations of stay away orders occur.

SARAH ADLER (Nevada Coalition to End Domestic and Sexual Violence):

Senate Bill 244 strengthens the voice of the courts and the protection of victims.

We are undersupplied in advocates in our State, so it is possible victims of domestic violence have not been able to seek the support of an advocacy organization in obtaining temporary or extended protection orders.

Sadly, these individuals have often been victims of criminal acts and are coming before criminal courts. Victims have opportunities for criminal judges to add stay away orders as additional layers of protection to temporary or extended protection orders. This bill will give some more teeth and some more impetus to protections of those victims.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):  
We support S.B. 244. It does fill a gap.

RYAN BLACK (City of Las Vegas):  
We agree with Mike Cathcarts's comments in that this gives our courts another tool for helping to protect victims. We support S.B. 244.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender,  
Clark County; Office of the Public Defender, Washoe County):  
We oppose S.B. 244.

This bill is not going to streamline the process. Prior to having criminal charges filed, a judge sets away pretrial conditions in misdemeanor cases or for bail conditions. If one of those pretrial conditions is a stay away order, the judge has the power for a contempt. All an alleged victim has to do in these cases is contact the district attorney's office. After the passage of S.J.R. No. 17 of the 78th Session, also known as Marsy's Law for Nevada, the district attorney's office should make every effort to stay in contact with alleged victims.

There will be injustices resulting from this bill. Senate Bill 244 creates a new crime and a new trial for the same charge. What happens if the person is found not guilty for the original charge? Is he or she going to have a misdemeanor for violating a stay away order that should have never been in place to begin with?

The district attorney's office has the power to utilize contempt if a person violates a stay away order during the pretrial conditions. All this bill does is create a new crime, a new trial and new bail conditions. As a result, that individual will be held in custody for 15 days at \$170 a day in Clark County.

If it is believed a person has violated a stay away order during the pendency of a pretrial period when a person is still presumed innocent, the district attorney can utilize the contempt and revoke bail. If the district attorney's office has a problem with judges not imposing that, it is an "elected judges" problem and not a need-to-create-a-new-crime problem.

Washoe County has a problem, and I have been informed that when a judge sets these conditions, he or she may not even see the defendant in person. Many times, if a defendant is released on a pretrial condition, the judge just checks the boxes on a piece of paper without that defendant being informed of this process.

In Clark County, the initial arraignment takes place in court where a person—with a district attorney and the representing attorney present—could be told face-to-face by a judge that he or she must stay away from said victim or location.

The contempt process is one way to enforce stay away orders, as are temporary and extended protection order processes. There are actually three levers in place to make sure somebody stays away from another person during the pendency of a case. This bill would create a fourth lever, creating a new crime and a new trial with new penalties which could work toward injustice if the person is found not guilty of the original charge.

SENATOR CANNIZZARO:

If a court asks someone to do something, it is not too much to ask that it be enforced. And putting something into statute—which is not a new penalty—and asking for a court to conduct a trial for proof beyond a reasonable doubt does not take away the rights of an individual faced with that potential charge versus a court making a finding of contempt.

There are issues with the contempt of court statute. Is contempt of court something that happens in the presence of the court or outside the presence of the court? That is the confusion.

Senate Bill 244 provides the clarity piece for courts to enforce these orders under the full force and effect of law. It is not a lot, regardless of the outcome of the underlying charge, to say "In the interim, before a case is resolved, stay away from this victim."

It is also not violative of individual rights when we say "We also recognize this is a new charge, is subject to beyond a reasonable doubt and will be properly investigated." In fact, it brings more assurances to what is happening with our courts when someone is faced with that allegation.

SENATOR HAMMOND:

My comments relate to Mr. Piro's argument that we are creating a new crime. Say a person has been accused of wrongdoing and has been asked to stay away from a victim. He or she violates that order, later goes back to trial and is found not guilty for the first offense—the underlying charge—but still has the stay away penalty. Would the accused not be in the same predicament if, during the same time this individual is waiting for his or her court date or trial, he or she violates a different law? We are asking someone not to commit additional crimes during the time he or she is being reviewed or on bail.

SENATOR CANNIZZARO:

That is a good point.

I would point out that somebody does not need to commit a crime in order for someone to get a protective order. Oftentimes in domestic violence situations, there may not be the reporting of a crime to law enforcement or a charge that is ultimately able to be pursued. Protective orders can exist independent of those situations.

Certain elements have to be met in order to obtain a protective order, such that it is for a legitimate purpose. Sometimes, actions—like harassment—may fall within the category of being a crime, may be prosecuted or may not quite fall into the level of a crime. Senate Bill 244 provides for protective orders to ensure victims' safety in these cases.



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VICE CHAIR HARRIS:

I will close the hearing on S.B. 244. The meeting is now adjourned at 8:30 a.m.

RESPECTFULLY SUBMITTED:

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Jenny Harbor,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	2		Attendance Roster