

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
March 7, 2019**

The Senate Committee on Judiciary was called to order by Vice Chair Dallas Harris at 8:06 a.m. on Thursday, March 7, 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
Eileen Church, Committee Secretary

OTHERS PRESENT:

Liz Ortenburger, SafeNest
Kristine Brewer, Legal Aid Center of Southern Nevada
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Corey Solferino, Washoe County Sheriff's Office
Jennifer Noble, Nevada District Attorneys Association
Marlene Lockard, Nevada Women's Lobby; Domestic Violence Resource Center
Susan Meuschke, Nevada Coalition to End Domestic and Sexual Violence
Bailey Bortolin, Washoe Legal Services

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Alanna Bondy, Nevada Attorneys for Criminal Justice
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,
Washoe County
John J. Piro, Deputy Public Defender, Office of the Public Defender,
Clark County
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court

VICE CHAIR HARRIS:

I will open the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 218.

SENATE BILL 218: Revises provisions relating to domestic violence.
(BDR 3-316)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

Senate Bill 218 revises provisions regarding factors a court may consider when deciding whether to grant a temporary or extended order for protection (TPO) against domestic violence and enhances penalty provisions for violating a TPO.

Domestic violence is a pervasive problem in this Country affecting every demographic group, race, age, gender and sexual orientation. Some populations are more likely to suffer from domestic violence than others. They include American Indian and Alaskan Native women, lesbian, gay, bisexual, transgender, questioning and persons with a disability.

The National Coalition Against Domestic Violence reports 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 severe intimate partner violence in their lifetimes. Intimate partner violence accounts for about 15 percent of all violent crimes.

The statistics in Nevada are similar and in some instances, worse than the national average. The Nevada Coalition to End Domestic and Sexual Violence reported intimate partner violence in 2017 resulted in 15 women and 2 men being killed. Two children were killed during one incident, a victim's parents were killed and six male perpetrators committed suicide after attempting or committing murder. Over 70 percent of these crimes involve the use of a deadly weapon.

Section 1 prohibits a court from considering factors other than whether the act or threat of domestic violence satisfies the requirements of *Nevada Revised Statutes* (NRS) 33.018 without considering any other factor when determining to grant the temporary or extended order.

Section 3 increases the penalty for intentionally violating a TPO from a misdemeanor to a gross misdemeanor and for violating an extended order from a misdemeanor to a Category C felony.

Section 7 provides a person who commits battery constituting domestic violence and who has previously been 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 similar to language for other types of enhancements when someone is a repeat domestic abuser. The language is intended to add persons who previously committed domestic violence with a deadly weapon and who commit domestic violence a second time to the list of offenders who are guilty of a Category B felony.

Last Session, we passed legislation that included similar language for other crimes surrounding domestic violence, i.e., battery constituting domestic violence by strangulation. Someone who is committing felonious domestic violence crimes of a severe and dangerous nature should be held accountable when they continue to engage in such actions and put the victim, who is typically the same individual, in a dangerous situation for yet another time.

The remaining sections of the bill, section 2 and sections 4 through 6, make conforming changes to various sections of NRS.

There are things we can do to address violent crimes in our community. We must prosecute and hold perpetrators accountable.

VICE CHAIR HARRIS:

What other factors will courts consider when issuing these temporary or extended orders?

SENATOR CANNIZZARO:

The courts were considering other factors such as a perpetrator's status in the Country. When someone comes before a court to ask for a TPO, the courts

should only consider whether there is evidence of a domestic violence relationship and if the victim is in need of protection.

SENATOR SCHEIBLE:

I am confused with section 7, subsection 3, paragraph (b). What is this section supposed to do? Should we read it as a battery which constitutes domestic violence and not charged as domestic violence? It seems like a battery already charged as domestic violence with the use of a deadly weapon would have been a felony and fall under section 7, subsection 3, paragraph (a).

SENATOR CANNIZZARO:

This particular portion of NRS relates to domestic violence offenses becoming eligible for enhancement. Once an individual has two prior convictions for battery constituting domestic violence, which are both misdemeanors, the third offense would be charged as a felony. Any subsequent offense under Nevada law would also be a felony. One of the additions we made last Session to that statute was battery constituting domestic violence by strangulation would be a felony. If you were to subsequently commit a battery constituting domestic violence, which would usually be a misdemeanor that would be charged as a felony. What was unintentionally left out of Senate Bill No. 361 of the 79th Session was domestic violence with use of a deadly weapon. If you commit battery with use of a deadly weapon constituting domestic violence, it would be a misdemeanor. Under these provisions, it would be charged as a felony if you have a prior conviction.

SENATOR SCHEIBLE:

We are including all of the prior convictions for battery, domestic violence, battery constituting domestic violence by strangulation and battery constituting domestic violence with a deadly weapon. What about battery constituting domestic violence resulting in substantial bodily harm?

SENATOR CANNIZZARO:

I would defer to Legal Counsel as this is one of the provisions that was left out last Session. When we are considering legislation that makes sense and brings continuity in our statutes, this should have been included.

SENATOR PICKARD:

I want to talk about the intent of the bill. Under NRS 33.020, we are leaving intact the language that says "the court may grant a temporary or extended

order." Are we limiting what the court considers in terms of the active domestic violence just to the factors of NRS 33.018 subsection 1, paragraph (e)? Everything that could transpire between two people will typically fall under NRS 33.018 subsection 1, paragraph (e). My experience has been the courts will generally look at NRS 33.018, determine whether the act occurred, then have the discretion to decide what they are going to do with it—whether they are going to issue the temporary or extended order. As I read this, the intent is not to change that discretion. Is that accurate?

SENATOR CANNIZZARO:

That is correct. This is not meant to limit the courts' ability to grant or deny an order. The courts would still be permitted to consider the relationship of the parties in front of them, the dangerous nature and the acts that would constitute domestic violence. This is meant to say outside of the context of the facts and circumstances that are clearly delineated within statute relating to that instance, the external factors should not be considered. We are not asking the courts to go out and engage in instances where they are going to consider things that are not No. 1. They do not speak to the dangerous nature of the relationship, they do not speak to whether or not that relationship or those acts have occurred and they do not speak to whether a protective order is going to be a means by which we are going to say this individual has some protection in the law. Courts still have absolute discretion.

SENATOR PICKARD:

In many of my cases, the TPO is violated and goes back before the TPO master, and the adverse party has rarely considered what the penalties are going to be. Last Session, we were trying to back away from the more severe penalties. Is it the intent of the bill that by making penalties stronger it is going to deter violations? What is driving the enhancement of these penalties?

SENATOR CANNIZZARO:

What is driving this is the dangerous nature of these circumstances. It is not a salient argument to say because the perpetrator did not read what the actual penalty was, we should never consider whether penalties are too lenient or too strict. That is not a defense nor is it the basis for us to make policy decisions.

This bill and those increased penalties are meant to provide protection for the victim in statute and also consider the dangerous nature for the victims, the other family members in the household and law enforcement. If there is a

sufficient basis to say there is a domestic violence relationship and we are going to grant a protective order, a violation of the protective order should be taken seriously.

SENATOR PICKARD:

I like making sure that we are making this the forefront of the decision—did this act occur and take appropriate steps.

SENATOR OHRENSCHALL:

The penalty is a gross misdemeanor for a violation of the order or injunction. As a prosecutor, are you seeing courts following through when a batterer violates the order? Are the courts imposing the gross misdemeanor and giving the batterer jail time?

SENATOR CANNIZZARO:

I do not have specific data. I merely have what I would refer to as the anecdotal testimony that I can offer to the Committee. I am happy to try to get some additional statistics from our courts with respect to what the outcomes are for these cases.

There is a different way in which we treat misdemeanor offenses versus gross misdemeanor offenses or felony offenses. Nothing about this, changing it from a misdemeanor to a gross misdemeanor or gross misdemeanor to a felony, prohibits the discretion of the prosecutor and the defense attorney in negotiating different situations.

SENATOR SCHEIBLE:

Prosecutors and advocates have conversations with victims about making decisions to involve law enforcement or to open up a new case. We know some victims do not press charges or report incidents of abuse. This legislation would give victims a bit more gravitas behind those complaints. It changes the calculus for a victim and makes him or her more likely to report. Is this something that was considered in this legislation, or am I looking beyond the scope of what this is supposed to address?

SENATOR CANNIZZARO:

It is difficult to be in a situation where you are being abused in your home by someone that you know, love, trust, care for and then decide to come forward and involve law enforcement. That is not an easy decision.

SENATOR PICKARD:

Law enforcement always takes these things seriously. Officers are trying to determine if they need to act and if there is sufficient evidence to arrest because they are trying to make sure everybody is safe. In instances where they do not have enough evidence to make an arrest, it does not mean the case does not move forward. I have many cases where law enforcement did not make an arrest at the time, took the evidence and then the victim filed for a TPO and ended up getting the TPO because there was sufficient evidence to satisfy the court that the act occurred. Is there a component we should consider to make it easier for law enforcement to make an arrest? Law enforcement has to have some physical evidence that the altercation occurred before officers can separate the parties. Is there some component we could add to make it easier for law enforcement to get those parties separated?

SENATOR CANNIZZARO:

Law enforcement's job is to respond to situations. When officers are making arrests, it is not a determination whether or not there is physical evidence, it is a determination of probable cause. Probable cause does not always mean a case moves forward in a particular fashion because, as we know in the criminal context, when law enforcement is making an arrest, the burden of proof is different. It is beyond a reasonable doubt. It is not satisfaction to the court in granting or denying a TPO. It is important to recognize those burdens of proof are different, and that is why there are cases where beyond a reasonable doubt might not exist. If there is not proof beyond a reasonable doubt, that person should not be convicted of a crime. Sometimes there may be a situation where someone does need an order for someone to stay away from him or her because there is evidence of an abusive relationship. Temporary and extended protective orders deal in that context. Trying to delineate something other than probable cause for law enforcement to take individuals into custody or to separate them may not pass constitutional muster. Law enforcement does its best to ensure when officers leave a situation, regardless of whether there is an arrest made, a safety component is addressed.

Southern Nevada SafeNest deals with a lot of domestic violence victims and provides resources for them. How do we develop a safety plan for someone where an arrest was not made and he or she really does need protection? Law enforcement in southern Nevada has been working to develop relationships so that places like SafeNest can step in and provide an intermediary response and safety plan and those next steps for individuals who need more of that, even

though there was not an arrest or conviction. Those are some solutions that we can look at outside of the legislative context. I would be hesitant to write something into the law where law enforcement was taking people into custody for something less than probable cause.

SENATOR PICKARD:

I did not mean to imply officers would arrest the individual unless there was probable cause. My understanding is that SafeNest can only take individuals on a referral basis, and those referrals are usually pretty rare unless an arrest has been made.

LIZ ORTENBURGER (SafeNest):

We are the largest and most comprehensive domestic violence agency in the State. We serve over 25,000 victims a year, which includes batterers, victims and children who are affected by domestic violence. We only serve Clark County.

Nevada ranks No. 2 for domestic violence homicides every single year. Anything our Legislature can do, like S.B. 218, so courts can focus on the critical lethal elements and provide protection to victims and consequences to batterers is a win.

In 2018, Las Vegas Metropolitan Police Department (LVMPD) responded to 72,000 domestic violence phone calls—911 calls. Eighty-five hundred TPOs were filed in Clark County and 35 percent or 3,050 were denied. In many cases, they were denied for arbitrary reasons which have already been discussed. The information in S.B. 218 will help judges cut through a lot of the arbitrary information that comes in. If you ever sat in TPO Court and saw a batterer come in with an entourage and an attorney and the victim comes in oftentimes by the side of a SafeNest advocate, it can be heartbreaking. Senate Bill 218 provides focus and consequences within the TPO process. We have no restrictions on service. We serve anybody who comes through our doors. Only 10 percent of our victims are referrals from LVMPD. There is a large category of victims out there who do not go through LVMPD and are seeking services like SafeNest to find safety.

KRISTINE BREWER (Legal Aid Center of Southern Nevada):

Sometimes when a victim goes to court to seek a TPO, we see the adverse party and the adverse party's attorney focus on things that do not address the

physical violence. They look at how the victim may gain an upper hand in litigation that might have to do with a divorce, custody or with a pending immigration case rather than addressing what is going on—the act of physical violence and domestic violence that has occurred. They make the victim a victim again. The victim's voice is not heard, and these batterers can sway the court. The victim needs protection. We need to focus on the evidence and not on the batterers. This is what this legislation is set to accomplish.

We do not want Nevada to be No. 1 in homicides as an act of domestic violence. We want to reach zero. This bill will help us have a zero tolerance for any domestic violence in Nevada and protect those who live within its borders.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

Domestic violence is a top priority for LVMPD. It is one of the toughest crimes to be proactive on because these crimes occur behind closed doors in the privacy of peoples' homes, and it is difficult for law enforcement to identify and try to prevent.

In our northwest area command, we set up a pilot program that has been successful. We have service providers in the vehicle with officers when responding to domestic violence calls. People are reluctant to talk to law enforcement about problems of this nature and how they have been victimized. When you have service providers with the officer, they are able to have a conversation with the victim and help them get services. As a result of this pilot program in the northwest area command, we have seen a significant drop in our domestic violence related homicides and domestic violence calls in general.

We handle about 70,000 to 75,000 domestic violence calls a year—that is hundreds of calls a day coming into our call center. We support enhanced penalties for these kinds of crimes. Our Sheriff's Civil Bureau received over 9,000 TPO requests last year for service, and often the perpetrators are served in jail before they are released. We also engage with our faith-based community when it comes to domestic violence to get out there and knock on doors and help people who may need to get out of these situations and be plugged into resources.

On our website <<https://www.lvmpd.com>> we have an extensive list of resources that are available to victims of domestic violence. We support S.B. 218.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):

We support S.B. 218. *Nevada Revised Statutes* 33.010 covers law enforcement service of a protection order. In NRS 33.070, subsection 2, paragraph (a), it states law enforcement officers shall inform the adverse party of the specific terms and conditions of the order. We explain that we have to arrest based on a violation of the order when we have probable cause. We detail out the specifics in the order so they know what the penalties are for violating. We support S.B. 218.

COREY SOLFERINO (Washoe County Sheriff's Office):

Domestic violence calls are the most dangerous calls law enforcement responds to on a daily basis.

In 2018, there were 200 arrests for domestic batteries in Washoe County, which does not include Reno or Sparks. Of those 200 arrests, 196 involved incidents where the aggressor used his or her hands, fists or feet to attack the victim. Of those 196 incidents, 5 of them used a blunt object, 2 of them a handgun, 6 of them other weapons and 2 unknown weapons. In northern Nevada—a week before the start of this Legislative Session—there was an incident in Spanish Springs where an altercation took place and caused a several hour standoff and barricade where we dispatched crisis negotiators to the scene to try to resolve the situation peacefully. A man threatened his wife and children with a handgun and barricaded himself as law enforcement arrived on scene and attempted to use our crisis negotiation team to have him peacefully surrender. Shots were fired at our officers on the perimeter, and the suspect ultimately took his life. That situation could have gone a lot worse.

SENATOR HANSEN:

My question is for Mr. Callaway. You mentioned you have seen a significant drop in domestic violence-related homicides and domestic violence calls. What we are doing here is enhancing penalties after the fact. If your program is as successful as you are suggesting, is there really a need for enhanced penalties? What we are doing here is creating an additional layer of penalties. Is the lack of penalties allowing people to violate these orders, and is that why we have this bill?

MR. CALLAWAY:

In the world of traffic, they use a term called the "3 Es"—engineering, education and enforcement—to reduce traffic fatalities. The same theory applies

here. We have programs on the front end where we try to get people resources and get them out of a situation. We have preventive measures that we use, but you also need an enforcement component. The people we are talking about are people who a judge has said, "Stay away from this person. You are ordered to stay away from this person." This individual is defying that and showing up and trying to intimidate the victim further. In my opinion as a law enforcement officer, stricter penalties can help us resolve that and hold people who are defying a judge's order accountable.

SENATOR HANSEN:

Your opinion is that the law is weak and if you had your final "E" component, this additional penalty would reduce domestic violence? Our laws are inadequate in your opinion, or are the laws simply not severe enough to act as a deterrent?

MR. CALLAWAY:

Enhanced penalties are appropriate for individuals who blatantly violate a judge's order and intimidate victims of domestic violence.

MR. SPRATLEY:

A violation of a TPO is a misdemeanor crime. When I have served these orders, the recipient thinks it is more like a traffic ticket. Increasing penalties will hopefully make individuals realize they may lose their guns and possibly their livelihoods for a year. The stricter penalty is appropriate.

JENNIFER NOBLE (Nevada District Attorneys Association):

Domestic violence is an epidemic in this Country and in this State. It is absolutely critical the justice system recognizes the violation of these temporary and extended orders are serious crimes that can lead to the death of victims. Increased penalties are necessary to give these orders some teeth. Otherwise, it is just a misdemeanor and it could be punished in a variety of ways. To make these more than just a piece of paper to protect the victim, it is necessary to attach some real penalties to these crimes. If someone is willing to violate a protective order, it is reasonable to assume he or she is dangerous.

The addition of battery with a deadly weapon to the list of domestic violence offenses eligible for felony enhancement under the law is entirely appropriate and absolutely necessary to hold perpetrators accountable for these serious crimes that can result in death.

MARLENE LOCKARD (Nevada Women's Lobby; Domestic Violence Resource Center):

The Domestic Violence Resource Center provides wraparound services to victims of domestic violence, emergency shelter services and transitional housing services. Our advocates help victims fill out the TPO paperwork and go to court with the victims.

This bill will send a strong message to potential abusers. We are No. 1 and something has to be done to help prevent and protect the women and some men in this State from this violence.

SUSAN MEUSCHKE (Nevada Coalition to End Domestic and Sexual Violence):

We support S.B. 218. Orders for protection against domestic violence along with our mandatory arrest statute around domestic battery was instituted in 1985. Over the intervening 33 years, the issue of domestic violence has grown in awareness and understanding of the severity, difficulty and complexity of the issues.

In 1985 it was not a crime and there was no protection. It did not really happen in our community. We now understand how serious it is. We understand the lethal consequences of domestic violence, and we understand the need to make sure there are resources available in our criminal and civil justice system that can assist and provide safety for survivors and hold perpetrators accountable.

BAILEY BORTOLIN (Washoe Legal Services):

Washoe Legal Services and Volunteer Attorneys of Rural Nevada also assist victims of domestic violence. This bill will make important changes for victims all over Nevada. We need to refocus the conversation to what has happened and ensure we are providing victims with justice.

ALANNA BONDY (Nevada Attorneys for Criminal Justice):

We oppose S.B. 218, particularly the portions of the bill that deal with increased penalties for violating a TPO ([Exhibit C](#)). We do not have any particular opposition to the language in the bill that changes what the court should consider when granting a TPO.

We oppose this bill because, as a general matter, our State should attempt to move away from harsh, unnecessary prison time for offenses and toward a

more evidence-based and cost-effective model of dealing with the problems underlying crime.

There is no evidence that increased penalties deter crime. This bill dramatically increases the penalty for violating an extended protection order against domestic violence. While this is a misdemeanor with a maximum sentence of six months in jail, this bill would make it a Category C felony with a maximum of five years in prison. This is a grossly disproportionate jump and would lead to additional costs in terms of prison, parole and probation. Making this a Category C felony is out of line with the severity of the offense. A protection order can be violated by many kinds of behavior that are not intrinsically criminal, such as an unwanted phone call. These are not good behaviors in the context of a protective order and having them as a misdemeanor offense is appropriate to encourage respect for the order. There is no rational argument that these should lead to five years in prison, and yet this is what that bill contemplates.

The most problematic violations of a restraining order are already crimes which can lead to their own independent prosecution such as stalking, harassment and further domestic violence. These are all independent offenses with independent jail time and it does not make sense to stack these punishments.

The punishment contemplated by S.B. 218 is disproportionate to the crime and therefore we are opposing the bill.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):

We oppose S.B. 218. We oppose section 1, which states "A court shall only consider whether the act of domestic violence or the threat thereof satisfies the requirements"

Our concern is this bill is taking away judicial discretion. A TPO is an ex parte order, so only one side gets to present the story of what is going on. That is why the court should be allowed to consider other factors to make sure that this is not being abused. Domestic violence is an important issue. The bill is not going toward preventing domestic violence. What we have heard is that potentially adding more resources to victims in the front end does help and benefit victims of domestic violence and leads to a deterrent. That is where we believe the resources should be spent. What is important is if someone is

convicted of a domestic battery offense, he or she has to go to treatment. What are offenders learning in a treatment program? If they violate the extended protection order at that point, then something is not working. That is where our focus needs to be—what we are providing to the victims and the abusers to make sure this does not occur again.

Already in the law, we have strict requirements for when someone is convicted of a domestic battery offense, what rights he or she loses and the impact it has. It is a mandatory arrest. More importantly, the district attorney cannot negotiate away a domestic battery offense and just say it is a battery. We already have in the law that if perpetrators continue, it is "once a felon, always a felon." Nevada has already taken domestic violence seriously. There is something else that needs to be done, and unfortunately, I disagree with increasing penalties. We really need to focus on putting victims first, making sure resources are being provided to them and then educating the defendants to make sure the crime does not continue.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):

Of particular concern is section 1 basically encouraging a race to the courthouse to get a TPO. I have seen TPOs used as leverage in custody cases. It is concerning that we would take away a judge's discretion to look at the whole picture of what is going on.

Maybe we should look at the efficacy of our treatment programs. What are the recidivism rates there? We do not know, we do not track and we have no idea. We just keep saying if we increase criminal penalties, things are going to change.

The TPO process creates a strict liability crime. If the victim called you and set you up, you are done. These are the concerns we have with the TPO and the extended protection order process. I am not saying we do not have a problem with domestic violence here, because we do. Perhaps we are not utilizing the right solutions because we just keep using increased penalties to solve our problems. We have not as a State been able to incarcerate ourselves out of this problem. Maybe it is time for different solutions rather than just increasing penalties.

VICE CHAIR HARRIS:

Have you represented people who have committed domestic violence and been in the situation where they then violate the TPO? What are some of the common reasons they violate the TPO?

MR. PIRO:

Generally, lines of communication keep getting reopened between people. Our clients are not always the ones that open those lines of communication. These cases generally involve two people who probably should not be communicating with each other because it has not been working out. There are some clients that do need a message, and generally those clients get jail time when that happens.

MS. BERTSCHY:

I have seen this happen during a custody exchange where you have a custody order saying you need to work with each other and you must contact this individual to facilitate the custody exchange. Contact is made and that is a violation of the TPO or extended protection order.

VICE CHAIR HARRIS:

Is it not the purpose of the protective order to place the burden upon the person who has a protective order to not contact the other person? How do we stress to people who have a TPO that even if the person contacts you, it is your responsibility to not respond? It is my understanding the whole purpose is to place the burden of lack of contact upon one party, and I am concerned the party can be goaded back into contact and be goaded into committing a misdemeanor just because the other person who originally put the TPO on him or her sent a text message. How do we convey this is so serious that he or she should then turn away and not respond? Is that not currently done well in our law?

MR. PIRO:

It is not done well at all. Part of the concern is there is no defense for violation of the TPO. Relationship dynamics are messy. If anybody feels threatened, that is a serious problem. If there were some kind of affirmative defense and if we are going to increase these penalties, at least then we could have a jury trial. We do not have jury trials for domestic violence in Nevada. We have two misdemeanor trials in front of a judge. No jury weighs out all the facts for a battery misdemeanor first or a battery misdemeanor second. It is one person

making the decision. That is part of the concern when we are looking at—we are not having juries of peers weigh in on something that eventually will lead to a felony.

SENATOR PICKARD:

As someone who has considered bringing legislation to create a defense for the invitation of the violation, I have backed off because I am concerned about the chilling affect that would have. That would be a horrible mistake. We are talking about individuals who may not fully understand the ramifications of the violation. I personally weigh toward the idea of if you have a court tell you, "Thou shalt not make contact," that should be the test.

I want to go back to the focus going simply to NRS 33.018, the factors set forth as to whether the act occurred. As I confirmed with our Majority Leader, this does not affect the discretion of the court whether that order should issue. This additional language simply says we do not look beyond the academic. Did the event occur or not? As I understand the language and the interpretations of criminal law, we have to be explicit, we have to put people on notice with the law. Is it not appropriate that we focus on what is in the law? Why should we go beyond the enumerated events that constitute a violation of the law when considering whether domestic violence has occurred?

MS. BERTSCHY:

I am always concerned when there is an indication the court shall not consider. What we hear in criminal courts is to understand the full context of what has occurred, sometimes res gestae information needs to be provided to the court for a jury to fully get the picture of the situation. Any time the court is told it cannot consider something, it could be detrimental.

It is the factors set forth the court should be focusing on and especially in determining whether to issue a temporary or extended protection order. There may be an instance where other information should be brought forward to give the court the full context.

SENATOR PICKARD:

We are talking about whether a court shall consider only the acts enumerated in the statute, not whether the court is going to issue the order based on the broader context. What I hear you saying is we should narrow the court's view to a determination whether the act occurred to those events that are

enumerated in the statute. The issuance of the order should consider the broader context. Am I understanding you correctly?

MS. BERTSCHY:

If I am understanding you correctly, I believe so. It is the "shall only" language that I take issue with.

SENATOR HANSEN:

I have a question on penalties. We are trying to reduce the amount of people going to prison. Is there any evidence other states have enhanced these sorts of penalties to a felony level so there was a reduction in breaking the TPOs? Is there a difference between a temporary restraining order and a temporary protective order?

MS. BERTSCHY:

I have not found any statistics to show increasing the penalties has lowered the violations of TPOs. There is no difference between a protective order and restraining order. It is named differently in other states.

SENATOR HANSEN:

When Mr. Callaway was testifying, he mentioned LVMPD has a program that has dramatically dropped the amount of recidivism in domestic violence situations. Does Washoe County have something similar?

MS. BERTSCHY:

I would have to defer to Mr. Solferino from the Washoe County Sheriff's Office to respond. I am unaware of any programs like that.

SENATOR HANSEN:

If our goal here is to reduce that sort of behavior, and there is no evidence the penalty side of it has done so, and LVMPD has a program that has been doing so, that would be the logical spot we would try to focus on. My goal is always to reduce the problems, not simply throw more people in prison.

MR. PIRO:

That is our goal too. We live in the community, and we do not want people abusing or terrorizing their partners. We do want to see a drop in this, we do want to see Nevada get off the list of being No. 1 in these areas. The Advisory Commission on the Administration of Justice report states that Nevada

continues to increase the length of sentences and has not reduced recidivism. This just seems like another law that hits on that same note—increased penalties with no recidivism results. We should be looking at our treatment programs and putting our money there to reduce this problem.

SENATOR HANSEN:

Mr. Anthony—restraining versus protection, are they interchangeable terms?

NICOLAS ANTHONY (Committee Counsel):

Typically, Nevada law uses the term restraining order in other areas of the law such as to preserve property rights, etc. In this particular instance, it is a temporary or extended protection order because it goes to protecting a person.

BEN GRAHAM (Administrative Office of the Courts, Nevada Supreme Court):

Domestic violence is the most dangerous area of the law for the partners, courts and attorneys. When you talk about a victim getting killed, frequently the violator gets killed too. We have talked about jury trials and misdemeanors. Misdemeanors in this State are only six months. The Supreme Court of the United States has said a jury trial is not mandatory for six-month penalties. If it is a gross misdemeanor, that is your year in jail and then you would be entitled to a jury trial.

SENATOR CANNIZZARO:

This bill is not intended to solve the entire problem. This is a multifaceted approach. We know there are treatment options that are helpful and are working. When those are partnered with law enforcement, it can be effective. We should support those programs. We should find ways in which to integrate those into our community to help with the recidivism issue. However, it is also incumbent to recognize that there are people who are not going to go into those programs. There are victims who need the full force and effect of a bill like this to be protected.

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VICE CHAIR HARRIS:

I will close the hearing on S.B. 218 and adjourn this meeting at 9:26 a.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 218	C	2	Alanna Bondy / Nevada Attorneys for Criminal Justice	Letter of Opposition