

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-First Session
March 10, 2021**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:01 a.m. on Wednesday, March 10, 2021, held Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager



Kalin Ingstad, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Nicole Rourke, Director of Government and Public Affairs, City of Henderson
Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson
Richard Glasson, Justice of the Peace, Tahoe Justice Court; and representing Nevada Judges of Limited Jurisdiction
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Carlene Helbert, Deputy City Attorney, Las Vegas City Attorney's Office
Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Arielle Edwards, Government Affairs Specialist, City of North Las Vegas
Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City of Reno
Liz Ortenburger, Chief Executive Officer, SafeNest
Michael Pariente, Attorney, Nevada Attorneys for Criminal Justice
Randi Thompson, representing Nevada Firearms Coalition Political Action Committee
Daniel Reid, Western Regional Director, National Rifle Association-Institute for Legislative Action
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada
Erica Souza-Llamas, Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chairman Yeager:

[Roll was called. Committee rules and protocols explained.]

We just have one bill on the agenda today. At this time, I am going to open up the hearing on Assembly Bill 42. Assembly Bill 42 makes various changes relating to criminal law and criminal procedure. Before I hand the presentation over, I will let members and members of the public know that there is a proposed amendment brought by the sponsor of the bill [[Exhibit C](#)]. Members, you should have received that a couple of days ago, but it is on the Nevada Electronic Legislative Information System. It can be accessed there for members of the Committee and members of the public.

We have a few folks with us on Zoom today to present. Our main presenters are from the City of Henderson. They are the sponsor of A.B. 42. I will welcome Ms. Rourke and Mr. Schifalacqua from the City of Henderson to present the bill. I know we also have Judge Richard Glasson on with us as well as Ms. Souza-Llamas from the Department of Public Safety, Records Division. We will let the City of Henderson present, and then I am sure we will have some questions for the presenters on Zoom. Welcome to the Assembly Committee on Judiciary, and when you are ready please proceed.

Assembly Bill 42: Makes various changes relating to criminal law and criminal procedure. (BDR 14-371)

Nicole Rourke, Director of Government and Public Affairs, City of Henderson:

First, we would like to thank Chairman Yeager and Vice Chairwoman Nguyen for all the time you have spent with us on this bill, and all the members for meeting with us to let us explain a relatively complex process bill. We appreciate your time and effort. We will have a presentation today. We will walk you through the bill as well as walk you through the amendment that has been posted [[Exhibit C](#)]. With that, I am going to turn it over to Mr. Schifalacqua.

Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson:

Thanks to the Chairman and Vice Chairwoman and the Committee for hearing this important bill. Assembly Bill 42 represents a pathway forward; a pathway forward for how we handle the many cases of domestic violence in our state and in our courtrooms. Prior to 2019, there was never a constitutional right to a jury trial for a misdemeanor in the state of Nevada. On average, the Henderson City Attorney's Office prosecutes and files about 1,000 cases of battery domestic violence every year in the Henderson Municipal Court; that is 1,000 victims of abuse [page 2, [Exhibit D](#)]. We take a lot of pride in that. We work hard on them, and we try to represent the voice of the victim and justice in these courtrooms and try to provide the victim with a level of safety and security moving forward.

Prior to 2019, all of those cases in all of our municipal courts and in our justice courts, were heard by a judge. If someone wants a trial, that trial is heard by a judge and not by a jury. In fact, as recently as 2014, our Nevada Supreme Court said there was no constitutional right to a jury trial for battery domestic violence. While it is a serious offense, it does not require a jury trial under the Sixth Amendment. That all changed in 2019 in the *Andersen v. The Eighth Judicial District Court*, 135 Nev. 321 (2019) case [[Exhibit E](#)]. What changed in the Supreme Court's mind from 2014—when they said you do not get a jury trial for battery domestic violence—to 2019? What they said was it was the change in legislation in this body's 2015 Session.

Nevada Revised Statutes (NRS) 202.360 is our gun prohibition law in the State of Nevada [page 3, [Exhibit D](#)]. It lists various folks who are not allowed to possess firearms: felons, the mentally ill, those convicted of stalking, extended protected orders, fugitives from justice. The Legislature added misdemeanor domestic violence. Our Supreme Court said, While we said in 2014 this did not get you a jury trial, now it does; now it rises to the level of a serious

offense under the Sixth Amendment because your Second Amendment rights are affected, and that noted the Legislature's intention to make this a serious offense. We had never had this in the State of Nevada prior to this decision. While the decision was very straightforward and the reasoning makes sense, it did raise many more questions than it actually had answered.

First of all, are municipal courts allowed to conduct the jury trials [page 4]? As you know, typically cities get their power and their authorities from either a state statute, a charter, or the *Nevada Constitution*. None of those expressly say that the municipal court can comply, although *Andersen* was a Supreme Court case, it was constitutionally based, and it was a municipal court case.

Do we have time to make some infrastructure changes? There are not jury boxes by and large in our municipal courts throughout the state, and there is good reason for that, and that is because there was never any statutory or constitutional right to a jury trial. They are not really built for juries. What rules do we follow? We want to make sure we are doing this consistently across the state, so we do not have different jurisdictions doing different rules. What rules do we follow? These were big questions. As far as the first one: Are we allowed to conduct a jury trial to comply with the Sixth Amendment? My position has always been, Yes.

I have been pointing to this case, and I have been arguing this case in every court room that I have been in front of on this topic: a 1995 case out of the Supreme Court of our state, *Donahue v. City of Sparks*, 111 Nev. 1281, 1283, 903 P.2d 225, 226 (1995) [page 5]. A Sparks Municipal Court judge ordered a jury trial for a DUI. There was no constitutional or statutory right to do so, but that judge did it. The supreme courts, as well as the municipal courts, really do not have that authority to just discretionarily do that unless it is required by the state or the federal *Constitution*. My argument has been, "Well that is exactly what we have in *Andersen*—a constitutional rule that you must comply with: a due process right." That argument has been successful throughout the district courts that we have argued this in front of.

These are three cases [page 6], here in the Eighth Judicial District Court: two Henderson cases from the Henderson Municipal Court and one from the Las Vegas Municipal Court—three different judges, three different district court departments, but the same ruling throughout. Obviously, the cities can comply with this ruling. You are operating a court. You have to provide a level of due process, and this is what the *Constitution* says now is that level of due process for certain battery domestic violence cases. To be clear, this is not statewide. While you expect a supreme court to take this up, there has been no ruling yet, and I would not expect a ruling during your legislative session due to the briefing schedules. Clearly, we believe we can. That has not stopped the challenges we have gotten. We have gotten challenge after challenge after challenge to our authority to be able to provide a jury. That has caused problems because we need to make the investment to be able to accomplish this, and all these challenges have made that very difficult.

Even if we do have the authority—which I think constitutionally we do—our Supreme Court has said that even if we order a jury trial for a misdemeanor at some point, you really cannot do these without statewide rules. This is a 1988 case: *Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 634–35, 748 P.2d 494, 501–02 (1987) [page 7]. It said simply that. It was in this case—analyzing a DUI—where a DUI gets a jury trial. They answered, No. They also said, even if we order this, you are going to have to wait for the Legislature. It talked about how you summons a jury and the rules of procedure. It talked about how a decision requiring trials in the municipal courts could not be implemented until those procedures were developed. The Legislature which meets once every two years is not presently in session to fill the void.

We had a question: Where does this all leave us? It is September 2019. A legislative session had just ended. We are being challenged about our very authority to provide the jury trial right that is in litigation. Our Supreme Court says you really cannot start this without legislation and clear rules. There was a whole lot of daylight between September 12, 2019—the date of the *Andersen* decision—and March 10, 2021. Domestic violence, as you know, does not stop. It will not wait for our legislative session. It will not wait for a Supreme Court rule. Victims of domestic violence have a constitutional right to speedy justice, and sending these cases somewhere else or dismissing all these cases in hopes of somebody else who would take care of our problem was never an option. We had a duty to these victims, and we could not turn our back on them. These are our cases and this was our responsibility. What could we do?

We found a solution, and it was temporary. We enacted, in the City of Henderson, as well as other cities, an ordinance prohibiting domestic violence [page 8, [Exhibit D](#)]. Cities have the authority, as you know, to make their own ordinances and crimes. That is what happened. Why would this help us? It only helped us temporarily, but the law is that an ordinance does not prohibit somebody from having a firearm, and therefore there is no accompanying jury trial right. This allowed us to continue to prosecute. It allowed us to continue to fight for victims, but it was temporary in nature. It was something where we always wanted to get to a point where we are in front of this body.

This is a big problem [page 9]. We have never done this in Nevada, but it is not impossible. We are not going to give up. What is this bill? This bill would provide clear language that the municipalities can comply with the *Andersen* decision. We have the discretion to be able to conduct the jury trials. To be clear, this is permissive. It does not force a city to start constructing and hiring personnel. We certainly would in our city due to the volume of cases we had, but perhaps a very small city would want their county district attorney to handle it instead. It would provide that. It would provide the rules for the municipalities. *Nevada Revised Statutes* Chapter 175 is our jury trial rules in the state of Nevada. It would insert us in there, so we know exactly what rules we are following, so we are doing this consistently throughout the state. It would also provide some clarity on the federal definition of domestic violence that is listed in NRS 202.360. We knew exactly who was entitled to a jury trial and who was not. We are providing the appropriate level of due process in our court system.

If I could walk you through the bill, I would appreciate it. Section 1 says if there is a felony and a misdemeanor domestic violence charge together, then you would do one jury trial, not two [page 10]. We do not want victims of violent crime to have to testify more than they absolutely need to. If there was a case of a kidnapping or a sexual assault or a battery with a deadly weapon, and part of those facts also included battery domestic violence, that case could be tried as a whole at the district court level in front of a jury; not a trial in the justice court in front of a jury, a misdemeanor, and then a trial in the district court on the felony. If it is the same incident, it should be heard together. That would provide a level of certain appropriate due process to a defendant but also protect the victim's right of not having to testify unnecessarily.

Section 2 of the bill cleans up some language regarding whether a defendant needs to ask for a jury trial; whether he or she needs to request a jury trial or demand a jury trial. There is a section in there that refers to that—that is a little bit more with some civil law—and so we are saying, if you have a constitutional right to a jury trial, you do not have to file a demand anymore. In other words, if your Second Amendment rights are affected, then you have that right to a jury trial; you do not have to ask the court. It would be automatic, just like how a felony offense would be.

Section 3 adds municipal court to the jury size that is already present in the NRS. It just adds the word, "municipal court" along with "justice court." Sections 4 and 5 clean up some language [page 11]. Instead of "district attorney" or "state," now we will have city attorneys prosecuting this offense. It is going to say, "prosecuting attorney"—just a little more generalized.

Section 6 expands those who can provide a jury deliberation room. You have to provide a jury deliberation room for a jury, as you know. Our statute right now says that is the duty of the sheriff of the county. We are adding the chief of police. Practically, that is usually just done by somebody in the courthouse building. We do not have them go over to the police department, but that is how the law reads right now. Section 7 permits the municipal courts to use sound recording equipment to record the jury trials as long as the reports have a record of it.

Sections 8, 14, and 15 are the municipality sections of our NRS [page 12]. *Nevada Revised Statutes* Chapter 5 deals with municipal courts. *Nevada Revised Statutes* Chapter 266 are those cities that are incorporated under the general laws of our state. *Nevada Revised Statutes* Chapter 268 are the ones that are incorporated under charters or incorporated throughout our state. It is consistent throughout; it simply says that a municipality can comply with the *Nevada Constitution* and allow a jury trial. Those are just the authority sections.

Section 9 deals with who we send the jury summons to, based on population [page 13]. If you have a large city above the population cap, you can send it out to your city residents. If you do not have a significant population in your city, you can send it countywide so you are not sending summons out to the same people over and over again in a smaller area. Also,

the city can contract with another court's jury commissioner for services, if that person were entered into a contract.

Section 10 permits the chief of police to serve summonses [page 14]. It says the sheriff does that in that section, but we are just adding chief of police; that is consistent with cities. Functionally, as you know, a jury commissioner is the one who mails these out. It has the effect of law enforcement so people do not ignore their jury summonses, but we are just adding some city terms into that. Section 11 is the compensation for jurors. As you know, you get paid to be a juror; it is \$40 a day. Nobody gets rich doing this, but we would pay at the same rate that is in the statute. Section 16 just has some basic conforming language regarding jury selection.

Nevada Revised Statutes 200.485 is our battery domestic violence law, in conjunction with NRS 33.010 and NRS 33.018. Section 12 codifies the *Andersen* decision. It says, if you are charged with this law and with this offense and your gun rights are affected, you are entitled to a jury trial for this offense [page 15].

Section 13 amends the definition of NRS 202.360 [page 16]. It clarifies language to ensure we are dealing with convictions from our and other jurisdictions and includes same or substantially similar conduct. That is consistent with others part of NRS 202.360, including stalking. Other places may call battery domestic violence by a different name. They call it domestic battery or things like that, but as long as the elements are the same, it would be equivalent, as well as stalking, in the statute.

We do have a few amendments [page 17, [Exhibit D](#)]. We have been working with a very large group to try to accomplish this. There is no doubt this type of an undertaking does affect a lot of people: cities, counties, prosecutors, defense attorneys, courts, victim advocacy groups. We have been reaching out to many and have had a lot of discussions. We made sure that this works for everybody that it can work for going forward. Section 3 talks about how many jurors you need for a misdemeanor jury trial. The law right now says six. We are just saying a minimum of six. There is a little flexibility there in case a court ever ruled that you needed more jurors for this type of a process, but six would be the goal.

We worked on section 4 with some Las Vegas justice court judges who have heard a couple of these jury trials since *Andersen* went into effect. When you have a six-person jury, and you have four peremptory challenges, it gets to be tough to pick a jury because you are picking so many people: four on each side. If you get four on each side, the amendment would be for a felony or a gross misdemeanor, and that would remain the same. There are two on each side for a misdemeanor. Keep in mind, you always get an extra strike for the alternate juror. Sections 6 and 10 just insert the word, "chief marshal." This was done at the request of the City of Reno, who would have their chief marshal do some of these functions, perhaps providing the jury deliberation room as well as providing who can send out the jury summonses.

We worked, in section 13, on the definition in NRS 202.360 [page 18]. *Nevada Revised Statutes* 202.360 is our gun prohibition law, and it lists the different individuals who are prohibited possessors in our state. This is where, in 2015, the Legislature inserted "misdemeanor crime of domestic violence." We wanted to be a lot clearer on who this encompassed—who was in and who was out. There is some ambiguity about that when we are referencing a federal definition and not our own state definition. We wanted to be clear that we are talking about battery domestic violence, and it must be that offense: battery domestic violence. That is what *Andersen* talked about. That is the offense that someone would be a prohibited possessor, that is the offense somebody would get a jury trial for, not other offenses. We also talked about who would be against the person's spouse or former spouse. That is the same. There are no changes there to the current definition in federal law. "Dating relationship" is defined in Nevada law. There is a definition of that. That has been on the books and tested. If a defendant and the victim had a child in common, that is also the same as the federal definition, or the child-parent relationship, going either way. The reason we need to change this definition is because of the ambiguity. Remember, with *Andersen*, you only get the jury trial right if upon conviction the person would be prohibited from having a firearm. It would not be for every offense. That is where the federal definition of domestic violence has not really worked for us or for anyone.

There was a case in 2009 from our U.S. Supreme Court, called *U.S. v. Hayes*, 555 U.S. 415 (2009) [page 19]. It is pretty dense, and it talks about a bunch of grammatical rules, but what it really said was that you could be charged with an offense—for example, battery—and as long as the underlying relationship would qualify—for instance, you are married or that you had a child in common—even though that was not charged as that offense, even though it was not pled as that offense, and even though the person was not convicted of that offense, that would actually make you a prohibited possessor under federal law. Unfortunately, the federal definition has, in a way, broadened the prohibited possessor statute to crimes that no one ever thought about: battery, assault, coercion, and anything with a forceful type of an element, with an underlying or qualifying relationship. We want to be very clear who we are providing this jury trial right to, who we are not, and who is a prohibited possessor. It is not our intent to include folks charged with simple battery or a simple assault.

As a prosecutor, sometimes you use discretion on those cases of not charging somebody with our domestic violence law, perhaps, due to the severity of the incident or what they undertook on their own as far as counseling. Maybe you do not think those penalties are needed, and so you charge them with the lesser offense. What we do not want is that person to be a prohibited possessor because that was never the intent of anybody. That is the problem with the federal definition. It is going way beyond *Andersen*, and it is causing confusion in our courts.

Here is the difference between the federal definition that we rely on right now and what we would change it to [page 20]. "Spouses" and "former spouses" would be the same. "Child in common" would be the same. Right now, the federal definition of "parent striking child" would qualify, but not "child striking parent." This would go both ways. The federal definition says this, and this is where it leads to confusion as well; it says that if you are

similarly situated to one of those relationships—a spouse, a parent, or a guardian—there is some case law on that. They talk about cohabitating for a period of time. Perhaps they share expenses or there are expectations of monogamy or something more akin to a spousal relationship—certainly, something that has gone on like more of a long-term relationship or living together for a decent period of time. That would be similarly situated.

That is what has been problematic. This is typically referred to in the federal law as the "boyfriend loophole." It does not include a normal dating relationship, and many times these relationships are where we see a high level of violence. Currently under our state law, which uses the federal definition, it would not include many dating relationships. You would have scenarios where someone is a husband abusing a wife, and that could be prohibited, but not a boyfriend abusing a girlfriend. That is certainly a policy issue, and we think it should be changed. We need to remember that our Nevada law is broader than the federal law, and so a dating relationship qualifies as a domestic battery in the state of Nevada.

Here is where the issue comes in. We need to know who to provide this jury trial to [page 21, [Exhibit D](#)]. We need to know that from the arraignment when somebody pleads not guilty to an offense so we can make sure we give them whatever process is due to them. The federal definition does not do that. When a police officer arrests somebody for domestic violence, they are dealing with a very volatile situation. They are trying to calm people down and may be trying to tend to injuries. They are going to learn if they are in a relationship. They are not going to know all of those factors about whether or not this is akin to a spousal relationship. They are going to arrest for domestic violence, appropriately so, under our law. I do not know how we are going to determine—if we leave the federal law as our definition in the state of Nevada—who is entitled to the jury trial and who is not. They are really tied to one another in a sense. You do not get the jury trial unless the Second Amendment rights are violated, so we need to know who is in and who is out. We need to know that from the get-go. These are the problems with the federal definition:

1. It is encapsulating crimes outside of *Andersen*—that is how it has been interpreted by our U.S. Supreme Court; and
2. We are excluding some dating relationships, but we do not know where the line is.

The federal definition could always change; Congress can always change that. If we defer to their definition, we could wind up with something maybe we are not happy with. That was the reason for that amendment; to provide some clarity of who we are providing this right to.

Lastly, we had an amendment that was requested by Judge Glasson—I believe he is on the Zoom call—and some other judges in the smaller townships. This was something akin to what we did with the cities. If you are in a smaller township, you could send your jury summonses countywide if you do not have a population base to support the jury summonses continuing to go to the same people.

I wanted to thank you. I am open for any questions. This bill represents how we can move forward with handling domestic violence in our court system in our state.

Chairman Yeager:

Before we go to questions, I wanted to take an opportunity to recognize Judge Glasson and ask if there was anything he wanted to add on that very last amendment that was just presented.

Richard Glasson, Justice of the Peace, Tahoe Justice Court; and representing Nevada Judges of Limited Jurisdiction:

This amendment is somewhat necessary for some of our outlying rural townships that might be in a county with a larger population, such as Douglas County or Washoe County, specifically the Tahoe Justice Court and the Incline Village Justice Court, where we are going to be going back to a very small pool of jurors in these jurisdictions where we might have a high population of tourists and guests, but not a large population for jury pools. The current law anticipates this. For example, in Clark County, in Mesquite or Laughlin, those judges can draw countywide. We do not have that same ability in counties such as Elko County with the Carlin township or the Wells township, as well as Douglas County and Washoe County. This allows a net to be thrown so we are not pulling the same people in ridiculously often. I have six jury trials on hold and a population in my township of under 2,000 people. I think this is a necessary amendment. The summoning of juries for criminal actions in justice court is conducted in the same way as we do in civil, and civil is where we would be changing that particular statute. I am available for questions, if I can help with anything else.

Chairman Yeager:

I know we are going to have questions from members. I just want to ask a couple of Mr. Schifalacqua. The first one is about section 13 of your amendment [page 3, [Exhibit C](#)]. You indicated that the original language, as it exists now, refers back to the federal statute. The original bill, A.B. 42, was going to simply reference our state domestic violence law. Then, in the amendment, we essentially have a carve-out to say we are not going to include all of what is domestic violence in the state of Nevada, but we are going to specify which parts of the domestic violence statutes should be included in the prohibited persons statute. I just wondered if you could walk me through the thought process—I think we have four different items in the amendment in section 13—of the inclusion of those four and why you believe that those are the right ones to identify as prohibitors for firearms.

Marc Schifalacqua:

As you know, in our Nevada law, really any relationship by blood or marriage would qualify as a domestic relationship as far as a domestic violence charge. We were trying to balance a few things. Understanding that the Second Amendment is a big deal, it is a big deal to take away, we want to make sure we are targeted as much as we can be. We know that folks who are abusers who have access to firearms are more dangerous to their victims, and so we were looking at relationships where we see the highest level of violence. That is why we tried to target these. There may be very good reasons why we incorporate all relationships by blood

and marriage in our domestic violence laws but as far as where we see the highest level of violence, it would be these relationships.

Chairman Yeager:

The second question I have may be a little technical. Before I get there, I should add to the Committee that we did add the *Andersen* case as an exhibit on the Nevada Electronic Legislative Information System (NELIS). If anyone is interested in reading the court opinion, it is up there now. It is not terribly long, so it is relatively easy to get through. If you are interested in diving a little bit more into that opinion, it is up there. As indicated, that opinion came out right after we finished our last legislative session in 2019.

The next question I have for the City of Henderson is this: If we have somebody who is already a prohibited person—let us say we have somebody who is convicted of a felony, so under our laws they would not be allowed to possess a firearm—if they are now charged with a domestic violence offense that would fit under one of the categories in your amendment in section 13, would they still get a jury trial under either your reading of *Andersen* or under the court practice; or since they are prohibited already, they are not going to lose a right that they have already lost so they would not get a jury trial under that circumstance?

Marc Schifalacqua:

That has not been litigated yet, and I would not say the bill directly addresses that question. As you know, the reasoning in *Andersen* was if you are going to lose your Second Amendment right, then you are entitled to a higher-level of due process. You make a good point about if you are already a felon, and you cannot have it anyway. This bill does not address that. I think that would have to be addressed by the court if that was brought up, but I do not know how a court would rule on that.

Chairman Yeager:

The bill does not really speak to that. Maybe we will just have to get some further guidance from our Nevada Supreme Court, at some point, on that particular question. I do not doubt that it will be litigated in some fashion. Thank you for that. I know we have a number of questions.

Assemblywoman Nguyen:

I really do appreciate you guys, over the past year, talking about this. Since the *Andersen* decision came out in the fall of 2019, we have been having some ongoing conversations about how we will do this. I am going to start with some of the easier questions that are more technical questions regarding preemption. I know that across the country, for misdemeanor jury trials, they often use venires of six-member juries. Is there any reason why you came up with the number of peremptory challenges that you were including in that?

Marc Schifalacqua:

Yes. As you know, with a 12-person jury that you would have for all your non-life felony offenses, each side gets four peremptory challenges. If you are cutting the jury size in half to six, we are cutting the peremptory challenges by half as well; so two instead of four. That

was with some conversation with the Las Vegas Justice Court judges, just to make the jury trial process somewhat more efficient.

Chairman Yeager:

I will just jump in for one second, if I could. Because we have members on the Committee who are new to the Committee and perhaps are not attorneys, I just wanted to explain the difference between the challenges that we are speaking of. If any of you have watched court dramas on TV, if a potential juror has a bias, they can be removed for cause. You can challenge that juror and say they cannot be fair and impartial, and that would be a for cause challenge. When we talk about peremptory challenges, each side gets to remove a juror for whatever reason they want to, with some exceptions. You cannot remove a juror based on race, or sex, or protected categories, but if you are just getting a bad feeling from a juror or you do not think they like your client, you can remove them. When we are talking about these peremptory challenges, those are essentially the challenges that the attorneys can make or the parties can make without any cause whatsoever. I just wanted to explain that in case it was not clear.

Again, I reiterate that we should probably be getting continuing legal education credits for these hearings, but we will still work on that. Thank you for that indulgence.

Assemblywoman Nguyen:

At least for the people who did not go to law school, could it count as the first year of law school? I appreciate that. I know there have been some amendments, and there were more peremptory challenges. After your conversations with the justice court—which actually starting instituting misdemeanor jury trials after the *Andersen* decision—did some of that reasoning come from their experiences?

Marc Schifalacqua:

Yes, it exactly was. They said that trying to seat a six-person jury with four strikes on each plus one always for the alternate, the jury selection process almost went longer than the trial itself.

Assemblywoman Nguyen:

You mentioned that in the City of Henderson you see approximately 1,000 battery domestic violence cases that you are prosecuting. Are you familiar with any of the statistics for some of the other jurisdictions, whether it is the City of Las Vegas, City of North Las Vegas, City of Reno, City of Sparks, or any of these other jurisdictions?

Marc Schifalacqua:

I am familiar with the larger cities in Clark County. Between the three major cities in Clark County—Henderson, North Las Vegas, and Las Vegas—there are approximately 7,000 a year. For reference, that is actually more, just with those three cities, than the Clark County District Attorney's Office handles with the public defender in the justice courts. We actually have a higher volume in the cities than they do in the county.

Assemblywoman Nguyen:

It is my understanding in reading the language, it enables jurisdictions like yours to be able to have those jury trials, and if you have a smaller or rural jurisdiction, would they be able to use jury services from another jurisdiction; or would they be able to send their cases to a corresponding or a local justice court? How does that work?

Marc Schifalacqua:

The language here is permissive. I think the prosecutor who is going to file the charge just has to know that if somebody's Second Amendment rights are going to be affected by the conviction, wherever you are filing that offense, that person is going to be entitled to a jury trial. A city like Henderson, which has a large volume of these cases, would build the apparatus and do this here, but it may not make sense to do this in a very small city where there are 4 or 5 a year, opposed to 1,000. In that case, the prosecutor could refer those cases to their county district attorney to file in the justice court. This does not force a city to do it if it does not make sense, and it may not make sense for every city.

Assemblywoman Nguyen:

Section 13 has to do with NRS 202.360. That is specifying what counts as a domestic violence conviction or what the prosecutor's office, like a felony prosecutor, can charge someone with felony possession of a firearm by a prohibited person. That is correct, right?

Marc Schifalacqua:

Yes.

Assemblywoman Nguyen:

Under this definition what types of crimes would be excluded now that were previously included but would not be now for purposes of a battery domestic violence conviction that also corresponds to losing your Second Amendment right? Who did we take out?

Marc Schifalacqua:

With the current definition, because of how our U.S. Supreme Court has interpreted this, any type of a violent crime like a battery assault or coercion that has the elements of force or violence—a simple coercion, a simple assault, a simply battery—is currently included under our federal definition that we referred to in our state law. That would not be the case moving forward. We are trying to limit this to battery constituting domestic violence. That is who would be prohibited—and they meet one of these categories—and that is who would be entitled to a jury trial.

Assemblywoman Nguyen:

So this would exclude brothers-in-law or uncles or nephews or those types of relationships. Is that correct?

Marc Schifalacqua:

Yes, it would. That is why we were trying to be targeted. Nevada laws are pretty expansive on what a domestic relationship is. As far as the Second Amendment issue and the prohibition, we are narrowing that to just a few relationships.

Assemblywoman Nguyen:

This would include people who are not included in that federal definition. Is that correct?

Marc Schifalacqua:

It would include certain dating relationships that are not included in the federal definition.

Assemblywoman Nguyen:

Was the intent in including that to capture that intimate partner violence that you are hoping to prevent or deter as a prosecutor?

Marc Schifalacqua:

Yes. It is twofold. One is the practical reason of trying to determine who gets the jury trial and who does not from the start of the case, and you are not always going to know if that individual is similarly situated to a spouse from a police report or a witness statement. The second part is that we do see a high level of violence in intimate relationships but perhaps those folks are not living as spouses or cohabitating for a long period of time. Yes, it was to capture those types of relationships where we do see a high level of violence.

Assemblywoman Nguyen:

I know in light of the *Andersen* decision, there was confusion amongst many of the municipal court jurisdictions or other jurisdictions that did not have the resources or capability to conduct jury trials, and also did not think they had the authority under existing case law to do so as well. Many of those jurisdictions, including the City of Henderson, passed ordinances. I appreciate the fact that you guys, as a city, chose to bring this and authorize it; at the time, there was some concern because the city ordinance argument was that it does not affect your Second Amendment rights because we are not increasing penalties and we are not following the rest of the state law and federal law in that area. Would you continue to charge under that City of Henderson ordinance, or would you now revert back to the NRS?

Marc Schifalacqua:

The ordinance was the Band-Aid, but it was not the cure to this problem. This is the cure to the problem. Going forward, either way you would charge it, you would be entitled to a jury trial. The reason why I say that is the amendment to NRS 202.360 says a violation of our state law or any jurisdiction that has a similar law, and we have a similar law. Either way you would go, you would be entitled to the jury trial going forward.

Assemblywoman Nguyen:

Chairman, thank you for your indulgence. Usually I am on the other end with Mr. Schifalacqua, so it is fun to be able to cross-examine him. I appreciate your indulgence in answering those questions and allowing me to ask them.

Chairman Yeager:

Thank you for your work on this issue. I know you have had a lot of conversations with municipal courts over the interim to try to get a solution here. I was one of those people after the *Andersen* decision came up that was calling for a special session to address this problem, and I think perhaps we did the right thing. We took a little bit more time to figure out what the solution should be rather than jumping into a special session, and Vice Chairwoman, I appreciate your work on that issue.

Assemblywoman Kasama:

Thank you for that great presentation by the City of Henderson. The way you walked through the sections and the changes is probably one of the best presentations I have seen for bills that have come up. It really helped to clarify the important changes you are looking for, and I can certainly understand this catch-22 where the *Andersen* decision is requiring you to do something, but there is nothing in the books to help you do that. It certainly seems like needed legislation. My question is in section 13 with the federal definition, and then we are going to this definition which is more specific, but it seems like it also broadens it a little bit with the dating relationship, which the federal definition does not seem to do. Would that increase your caseload and overburden the city? It seems like you are trying to make this narrow so that you can handle these cases. Unless I am not understanding this correctly, it seems to me that this would perhaps expand the caseloads. I am trying to understand that a little bit better.

Marc Schifalacqua:

That is a great question. It expands and it contracts, so in the end it may be a wash. You are absolutely right that this will capture a dating relationship that may not be captured in our current definition in federal law. Going back to that one case I cited, we are also deleting some cases that we may have had to try in front of a jury: a simple battery and a simple assault because of the way that federal definition has been interpreted. It expands on one end and it contracts on the other.

Assemblyman Wheeler:

I have looked at this every way I can possibly look at this thing. I kind of like a lot of this bill. I think the first part of the bill is pretty good. I do have a huge problem with some of it, as well, that would definitely have me voting against this bill in its current form. One of those problems is under this particular section if we change it. I think I saw a thing on the news last night that Nevada is now fifth or sixth or seventh on people moving into the state. A lot of people are coming from other states. We also, obviously, have the biggest tourist population anywhere in the world. People coming into this state who are either tourists or are moving here—people who have been law-abiding citizens up until that time when they come in—say they made a plea five or ten years ago to a misdemeanor just to shut off the

case so they knew they would not lose their gun rights, et cetera. I am wondering how many law-abiding gun owners—they have already passed a background check to come in here, but this is on the books and all of a sudden when they cross that state line and since we are not using *United States Code* anymore—how many of them become felons for illegal possession of a firearm? Do we have any numbers of that? What are we going to do with these people?

Marc Schifalacqua:

That would depend on if the person were already prohibited under federal law, which would apply to the whole United States, obviously. If it was a spousal battery in another state, moving here is not going to change that. If the question is if they battered a girlfriend in another state and that was not illegal there as far as a gun prohibition, and they moved to Nevada, and it was under this change—I understand the concern. I would also say about 30 states have laws that are more restrictive than the federal statute, and so that is not a unique issue; that would occur in many states where people would move to, or many states that have looked at this do not have this federal definition.

Assemblyman Wheeler:

The way I read this, anyone now who is convicted of misdemeanor battery, their gun rights are taken away. If they are convicted of misdemeanor battery in Tupelo, Mississippi, and moved to Nevada or just come here for the SHOT [Shooting, Hunting, Outdoor Trade] Show, and we have reciprocity on a concealed carry or whatever, but they are carrying a firearm or possessing a firearm, then they would be a prohibited person, as far as carrying, coming into the state. It seems like it would really expand who is prohibited due to prior misdemeanor convictions for domestic battery.

Marc Schifalacqua:

The intent here is just, to be clear, to limit the gun prohibition to battery constituting domestic violence. That would have to be charged that way and convicted that way. I do appreciate the comment.

Assemblyman Wheeler:

I see what the intent is, but I also see what the law says. I think if we pass this, we will have a whole lot of people who are going to be prohibited carriers all of a sudden.

Assemblyman O'Neill:

I guess I am channeling—separated by yards and concrete—Mr. Wheeler's thought pattern. I appreciate the intent in the first part of the bill. I want to talk about retroactivity of this and unintended consequences, possibly, particularly in law enforcement. Several years ago, when federal prohibitors came out, my agency along with numerous other agencies had to discharge police officers because they were not allowed to carry firearms anymore. Years prior, they had pled guilty to a misdemeanor offense and now were prohibitors and could no longer carry, so they lost their jobs and had to go do something else. I am looking at this law; does that happen again? You were talking about city ordinances. An officer had pled guilty to a battery; with the city ordinance, he could keep his job, but now in retroactivity he would lose the job with the passage of this, even with the amendment in there. Would you

respond to that? It is somewhat along with Mr. Wheeler's statement about unintended consequences with people coming in, and in their home state they were allowed, but they come here and it is not allowed.

Marc Schifalacqua:

It is not our intent to make this retroactive. I understand the concern. If we can go back to the 1996 Lautenberg Amendment [to the Gun Control Act of 1968], which is the federal law that said, if you have a misdemeanor conviction or certain misdemeanor convictions, you cannot have a gun. Obviously, there are people who, before that law was enacted, had a misdemeanor domestic conviction, and then the federal law was passed. That was not unconstitutional at that point, and it has never been found unconstitutional, as far as an ex post facto law. That being said, that is not our intent with the bill here. If there is any potential amendatory language that would make that any clearer than it already is, I would be happy to consider that. That is not the intent here. The intent is to go forward, not backward.

Assemblyman O'Neill:

I appreciate that offer. I think we will work on that. I want to make sure—not being an attorney, but completing my first semester of law school—that if this law passed with the amendment, people who have pled guilty, thinking that they would not lose their right to bear arms but do lose them, could they come forward and ask for a jury trial?

Marc Schifalacqua:

Typically, how retroactivity works, is if there is a new law or a new case that comes out, it usually applies to cases that are open, not closed. If the person had already pled guilty, had been sentenced, and everything was over, then it would not be resurrected from the dead. It would really just apply to cases that are pending or open that have not been resolved.

Assemblyman O'Neill:

I want to make sure there is no retroactivity applied in this law.

Marc Schifalacqua:

That is our intent. It is to go forward.

Assemblyman O'Neill:

I appreciate that. I may think of something else, but for now, I appreciate the time.

Assemblywoman Hansen:

It is a lot to take in on a morning meeting, but I appreciate some of the dilemma that you are up against. I do have some concerns. I was curious, aside from Henderson, do you have other municipalities that are supporting this legislation?

Marc Schifalacqua:

Yes, I believe our representative from the Las Vegas City Attorney's Office is on the line to offer their support. I believe the City of Reno will be on the line to offer their support.

I believe the Clark County District Attorney's Office, representing the Nevada District Attorneys Association, will be on the phone offering their support.

Assemblywoman Summers-Armstrong:

I am hearing concerns about retroactivity and rights for gun owners, but since you are the attorney who is actively participating in these domestic violence misdemeanor situations, could you speak to us about a couple of things? Are there any other places in the United States—and someone actually mentioned possibly Mississippi—where if someone is convicted, they would lose their right to bear arms if they are convicted as a domestic violence situation? Can you confirm that, or can you just give us a small list of other places where this is currently in law?

Marc Schifalacqua:

Yes, of course. The federal law applies to everybody, so if there was a misdemeanor crime of domestic violence between spouses, former spouses, child-in-common, or similarly situated to those relationships, those people would be prohibited throughout the country. Many states go further and provide additional protections that are above and beyond the federal definition. There are approximately 30 states that offer those types of protections, and many of which offer the protections for dating relationships. A state can always define who is prohibited in a different way than federal government. As far as examples, I do have a list, and I would certainly be happy to share that with you after.

Assemblywoman Summers-Armstrong:

I think it would be important if you would list a few of those here so that people can see that we are not extraordinary in this situation. Then, I will have a follow-up.

Marc Schifalacqua:

Arizona, California, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, and Utah are some of the states.

Assemblywoman Summers-Armstrong:

Thank you for that. This is your space, and you understand this area from a prosecutorial perspective much better than those of us sitting on this Committee who are not trying to go to law school. From a civilian perspective, when you see folks who are involved in domestic violence, do you know any of the statistics about possible death? What are the things that you are seeing on the other side of this issue, when guns are in play, when we are talking about domestic violence?

Marc Schifalacqua:

I believe Nevada ranks in the top five throughout the country of the number of domestic-related homicides, and certainly, the vast majority of those are by gun violence. We are one of the worst throughout the country. More than half of all intimate partner homicides are done by dating partners, so that is why we believe that one provision is

important for Nevada law. The states that have gone further than the federal law have seen a 16 percent reduction in their gun violence or gun homicides between people in domestic relationships. That is another reason we see it as important. To be clear, not everybody who is charged with battery domestic violence is going to kill somebody or anything like that. That is just where experience comes in, trying to reach out to victims early to get the background if this was a one-time thing where people were drinking too much and things got out of hand, and maybe some counseling is okay going forward. Maybe that individual does not need to be a prohibited person. But we do see the other side of that penny as well, and those are folks who are in a consistent cycle of violence and cannot get out and things are ratcheting up.

Assemblywoman Hansen:

What about somebody who committed a crime decades ago but not an offense that would make them a prohibited possessor? If we pass this law, would they automatically become a prohibited possessor, and they could face a felony charge because they currently possess a firearm that they even maybe passed a background check for in the past? Those are some of the concerns I have about some of the sections of this; although overall, I get the intent.

Marc Schifalacqua:

That is a valid concern. In our state, at one point we enacted the law that if you are a felon, you cannot have a gun, and somebody was prosecuted later on. Somebody was not prohibited, and then they were the next day. That does not violate the *Constitution* to prosecute that person in that manner, but that is really not the intent of the bill. That is why I certainly am open to any amendatory language to make sure that would not be the case here. This would be going forward.

Assemblywoman Cohen:

My question is probably not for the presenters. I do not think you have this information, but I understand Mr. Jones is on the phone for the Clark County District Attorney's Office. I do not know if you are going to have this information currently, but if you can get us information about how the *Andersen* decision has affected other courts in Clark County; for instance, I know that with some of my domestic cases, the custody case has been on hold since *Andersen* because there was a domestic violence allegation in Henderson, and we are waiting for that trial. That case has kind of lingered for the domestic situation for well more than a year now. Can you get us some general information about that? I am not exactly sure if this is affecting any other civil cases, but any place where you can tell us how Clark County is affected, I would appreciate that.

Chairman Yeager:

Thank you, Assemblywoman Cohen. I believe we will have Mr. Jones on the phone at some point in this meeting. Mr. Jones, if you are out there and you are listening, if you are able to address that in your testimony, that would be most welcome, and if not, if you could get that information for us.

Assemblywoman Nguyen:

I have a couple of questions about section 13, subsection 1, paragraph (a), subparagraph (iv), of that expanded or clarifying definition [page 3, [Exhibit C](#)]; it is the "child or parent of one another." Did you take that language from somewhere? I find it unclear who that applies to. Can you expand on what that subparagraph (iv) applies to? Why is it not included in the federal definition? Why does it need to be put in here? Are you open to having language that is a little clearer in what that defines?

Marc Schifalacqua:

Yes, absolutely. Right now, in the federal law it is a little odd. It includes, in the definition of domestic violence, a parent battering a child, assuming they are both adults. It does not go the other way: child hitting parent. We have seen a lot more child-parent relationships with people moving in together and living with one another during the pandemic. I have seen an increase in domestic-related crime with the parent-child relationship, both adults. That is what was looked to be captured there. That being said, we are open to any amendatory language to make sure that is clearer.

Assemblyman Orentlicher:

I would just appreciate some clarification on this retroactivity concern. It seems to me that is not something that is going to be created by this bill. It is already in NRS 202.360, that if you have been convicted in another state of a crime of domestic violence, there is already prohibited possession. In your discussion about narrowing the scope of crimes that applies to, it would seem to limit the retroactivity concern rather than expand it. Could you just say a little more about that?

Marc Schifalacqua:

Yes. Somebody in a different state who commits the crime of domestic violence, as long as it is one of the qualifying relationships, it is prohibited there, and they are going to be prohibited here no matter how we change this definition. As far as the other times they could be prohibited, federally—if they had a simple battery or simple assault with a qualifying relationship, that is true—they would be prohibited federally but not under our state law. We are trying to limit this to the *Andersen* decision and the crime of battery domestic violence, solely.

Assemblyman Orentlicher:

From what you are saying, for those who are concerned about retroactivity, you are giving some protection rather than creating new problems.

Marc Schifalacqua:

Yes, that is our intent.

Assemblyman Wheeler:

In the 2019 Session and in the 2021 Session, we have been working a lot on criminal justice reform and trying to make things a little fairer. With this bill, it seems we are expanding the definition of people who are breaking the law, basically, and we are going to be adding more

people to these criminal roles. I am wondering, given all the criminal justice reform and the focus on racial injustice, et cetera, how is this going to affect the communities of color in Nevada when we see that most of the domestic violence cases seem to happen there? Do we have any numbers on if this will inordinately affect those communities?

Marc Schifalacqua:

I do not know if it would inordinately affect the communities. I think the reality is—nowadays, as opposed to when the domestic violence laws were originally written in the mid-90s—frankly, fewer and fewer people throughout racial categories get married. More people are in a non-married type of relationship, and I think that goes through any racial community. I do not know, and I would not think it would affect one group much differently than others. I do not have any numbers to answer your question directly.

Chairman Yeager:

I would just say in response to that—it has been awhile since I have practiced in criminal court—that domestic violence was certainly one of those crimes, for the clients that I represented, that came from all walks of life and all backgrounds. I do not know if I can agree that most of those happen in certain communities. It was one of those crimes, much like driving under the influence, that seems to really span the gamut of our communities, at least in Clark County. I appreciate the question, but I think I would disagree with the premise of the question.

Assemblyman Wheeler:

Maybe I said it incorrectly. What I am saying is, I do not know the numbers, but what we have heard throughout this session and last session is that communities of colors are inordinately affected by some of these laws. That is what I was getting at: let us find out before we proceed on this if that happens to be the case.

Chairman Yeager:

I appreciate that, Assemblyman Wheeler. I do agree with you that the criminal justice system, as a whole, does disproportionately impact, particularly, communities of color. I would just note that in my experience, domestic violence and DUIs are the two that I think are the exceptions to that general rule. Again, I can only speak for Clark County in my limited experience. I think that the question is a relevant one, but I do not know whether we have statistics on that or not. Mr. Schifalacqua, if you do have any of that kind of information—I am sure you do not have it with you now—but would welcome you to present that to the Committee at a later date.

I would like to move on to testimony. There may be more questions out there, and I appreciate that, and I would ask anyone else with questions to follow up. There are a lot of questions about the retroactivity piece. I do not want to go too far down that rabbit hole today because we have a lot of folks who would like to be heard on this bill in testimony. I want to thank the City of Henderson and Judge Glasson for being here to present. I will ask you if you are able to sit tight, and we will come back to give you concluding remarks once

we get through the testimony on the bill. At this time, I am going to open it up for testimony in support of A.B. 42.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

We are here in support of A.B. 42. I want to start off by thanking Nicole Rourke and Marc Schifalacqua and the City of Henderson team for bringing this bill and keeping us updated on its progress. Mr. Schifalacqua is correct. Three large municipalities in southern Nevada handle more domestic violence cases than the Clark County District Attorney's Office, and thus, we support their efforts to clarify the law with regard to these jurisdictions and how they handle these trials. Instances of domestic violence that occur within municipalities are best handled by those municipalities. Mr. Schifalacqua also did a great job articulating the problems with using the current federal definition in the firearm prohibited person statute. We support the provisions of this bill that move away from the federal definition of domestic violence and closer to the state version. Finally, we support section 1 of the bill, which consolidates any misdemeanor domestic violence to the underlying felony case for purposes of trial. This makes sense from a victim standpoint and from a judicial economy standpoint.

To answer Assemblywoman Cohen's question, between September 2019, when the *Andersen* decision came down, and the first part of 2020, the justice partners worked hard to get a system in place for misdemeanor jury trials. We contracted with the district court jury services just to get this system in place. Unfortunately, right as we got the process off the ground, the COVID-19 pandemic hit. Much like felony trials, the misdemeanor trials were on hold for a greater part of 2020 and a few weeks of this year. A little over a month ago, we began at least summoning juries again. We hope to get the program off the ground soon. It is my understanding, in between the various Governor's orders with respect to pauses, we were able to get a handful of misdemeanor jury trials done to completion. If you have any questions about how we handle these cases, I would be more than happy to meet with you on an individual basis. Again, I wanted to say that the district attorneys are here in support of A.B. 42.

Chairman Yeager:

Before we go to the next caller, can we just pause for a brief second? I overlooked Ms. Helbert on Zoom who did want to testify in support. I am going to go to her next to provide her testimony, and then we will go back to the phone line. I am sorry for overlooking you, and please go ahead with your testimony.

Carlene Helbert, Deputy City Attorney, Las Vegas City Attorney's Office:

I am testifying in support of A.B. 42. Just so the Committee is aware, our jurisdiction is the largest municipality in the state. We have about 3,500 to 5,000 battery domestic violence referrals each year. Two of our courts have held that they do not have the authority to conduct jury trials, which puts us at a standstill. We are essentially waiting for a Nevada Supreme Court ruling to tell us that we can do jury trials so that we can begin charging under

the state statute. What is problematic with that is that the *Andersen* decision that got us here took four years to get from filing until a decision. Four years with our numbers is almost 20,000 victims who do not get the protection of our state statute. Even if it goes to the Supreme Court, there is a risk that they can rule that it is the legislators' authority to give us the ability to conduct jury trials. Then we are left waiting, like this last session, for you to convene again for us to discuss it. It is very important that you guys fix it within a matter of weeks, which we have been holding off for several years.

I just wanted to give some context for prosecuting these cases in the interim that makes it extremely difficult. As this Committee might be aware, battery domestic violence is mandatory arrests and mandatory prosecution crimes, which means, oftentimes when these cases go to trial, victims and defendants are still together. I have had victims arrive with their abusers, sit in court with them, get up, take the stand, testify to the abuse as their defendant is sitting in court, then get up, get in the car, and go home with that person. As a prosecutor, I have to watch this person leave with somebody who has committed violence against them, knowing that they are going to a house that has firearms in it. I have to think to myself, Is that victim actually safer for having gone through this process? I think with the implementation of A.B. 42, I can answer, "Yes, they are safer for having gone through this process," but without it, I am left unsure. I am even more afraid for their safety. That is not even including victims who actually have left their offenders and who are afraid of retribution. We sit and we put together a safety plan with them, but I have to tell them that right now, because of the split of authority in law, the defendant gets to keep his guns even if he is convicted.

I want to thank Henderson for putting this bill together. I look forward to working with them to amend the effective date. I do think that it needs to be pushed up upon passage, and I would like to welcome you all to reach out to me regarding your retroactivity concerns. I think there is some specific language that can be included about being afforded a jury trial right for it to be essentially effective. Please feel free to reach out to our office.

Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:

We are here today in strong support of A.B. 42. We appreciate the City of Henderson collaborating with other jurisdictions to bring this bill in response to the *Andersen* ruling. We are in favor of A.B. 42, as it establishes in state statute that municipal courts have the authority to conduct jury trials. This will ensure that all municipal courts are able to hold domestic violence offenders accountable through jury trials. It is imperative that domestic violence offenders, when convicted, lose their right to bear or purchase firearms because of the risk to domestic violence victim survivors. We know that offenders having access to firearms increases victim survivors' risk of homicide by 500 percent. This bill will make sure that there is uniformity in the processing of domestic violence cases in all municipal courts throughout the state.

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

We are here in support of A.B. 42. Thank you.

Arielle Edwards, Government Affairs Specialist, City of North Las Vegas:

I am testifying in support of A.B. 42. I would like to thank the bill sponsor for working with the city, and we support the amendment that has been proposed. Assembly Bill 42 gives additional clarity to the NRS as it pertains to prosecuting battery domestic violence cases. As we understand A.B. 42, if the City of North Las Vegas wants to continue prosecuting battery domestic violence cases, then jury trials will be required unless waived by the defendant. With that being said, I would like to state for the record that the City of North Las Vegas has submitted a fiscal note regarding Assembly Bill 42. The fiscal impact would be substantial due to the need for retrofit and expansion of our municipal courts to house these cases, and we support the effective date for passage in the bill to accommodate these cases. We would like to thank the City of Henderson for working with us, and we look forward to continued conversations regarding this piece of legislation. Thank you so much for your time.

Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City of Reno:

We are here in support of A.B. 42 with the amendment presented by the City of Henderson. We want to thank the bill sponsor for working with us to resolve a minor operational issue we had related to the role of the police chief versus the chief marshal in our local system. The Reno Municipal Court has already converted one of its courtrooms to accommodate the needs of jury trials, and this legislation allows us to continue our partnership with the Second Judicial District Court on jury summons. The City of Reno will be able to operate in compliance with this legislation and recent case law. Thank you again to the City of Henderson for working with us and for the opportunity to provide testimony today.

Liz Ortenburger, Chief Executive Officer, SafeNest:

Thank you to the Committee, Chairman Yeager, and the City of Henderson for bringing this bill forward. SafeNest works with victims, batterers, and children affected by domestic violence and has done so since 1977. In addition to our comprehensive services, we work directly with the district attorney's office and have two advocates placed in Las Vegas Justice Court. SafeNest serves over 25,000 victims of domestic violence every year. As you heard from Serena with the Nevada Coalition to End Domestic and Sexual Violence, studies show domestic violence is much more likely to become deadly when there is a gun in the home; in fact, it is up to 500 percent more likely to become deadly. It is important to remember that the gun is not only a tool for homicide, but it is also a tool for intimidation and control. We hear from victims about guns being placed in their mouths in order for them to take care of what a batterer is looking for. We hear stories of guns being pointed at the family pet or at a child in order to gain control in the relationship. The three largest municipalities in Clark County, which carry 85 percent of the domestic violence cases for the state, have had to create a loophole in which firearms are not being confiscated from convicted batterers. This leaves not only victims of domestic violence but also police at an increased risk for homicide.

In 2017, the National Law Enforcement Officers Memorial stated that domestic violence is the most dangerous call an officer will go on, with 136 officers being killed as opposed to 80 who were killed in drug-related arrests. While SafeNest understands the municipalities' need to continue to operate since the Supreme Court decision in 2019, on behalf of the 24 victims

murdered by domestic violence with 16 of those, including a one-year-old little boy at the hands of a gun including domestic violence, it is time to fix the loophole and make both victims and police safer.

Chairman Yeager:

I am going to close supportive testimony. Before we move on to opposition, I wanted to let the Committee know that I have been in discussion with our legal counsel, Mr. Wilkinson, who is busy drafting bills but also trying to keep tabs on what we are doing here in the Committee. I just wanted to point the Committee, if you have the original bill in front of you of A.B. 42, to the end of the bill in section 17. That section addresses the retroactivity question in the bill. Essentially, what it says is that the amendatory provisions of this bill only apply if an offense was committed after the effective date of the bill, which currently stands at January 1, 2022; or if the offense was committed before that date but was pending or unresolved. From our legal counsel, the concerns that were raised about potential retroactivity are taken care of in section 17, and I think that does align with the City of Henderson's intent that the bill just be applied going forward. I wanted to note that for the record, and if anybody does have follow-up questions about that section, feel free to come see me, or we can visit with Mr. Wilkinson when he has a moment to come up for air from drafting bills. Hopefully, that is helpful in terms of the retroactivity question. At this time, I am going to open opposition testimony.

Michael Pariente, Attorney, Nevada Attorneys for Criminal Justice:

I want to thank the members of this Committee. We oppose A.B. 42. It is still not a complete expansion of jury trials for battery domestic violence offenses in municipal courts throughout the state. It is unacceptable that municipal courts in smaller jurisdictions may opt out. Either this bill needs to be amended to state that any court hearing battery domestic violence trials must provide for a jury trial, or all misdemeanor battery domestic violence counts must be filed in justice court. We believe it should not be discretionary for municipal courts to choose to not have a jury trial or not.

The amendment also attempts to clean up language removing 18 *United States Code* § 921(a)(33), but even the way that they have listed the four categories of who would be covered by the battery domestic violence statute and the relationships that would get a jury trial needs to be cleaned up; specifically, the language related to the parent and child, which is section 13, subsection 1, paragraph (a), subparagraph (iv). The amendments do not address our concerns that procedures for criminal trials for misdemeanors must be identical to those for district court trials. We reiterate that the right to trial by jury attaches to the charge of battery constituting domestic violence. The jury trial right should not be withdrawn based upon the status of the defendant. In fact, the *Andersen* decision never addressed the status of the defendant, only that Mr. Andersen was entitled to a jury trial because the offense was indeed serious. There is an amendment that proposes that jurors are from the entire county, rather than municipal boundaries. If the municipal district has a small population, we are concerned that may serve to eliminate diversity of jurors.

Also, we are not in agreement with the number of peremptory challenges and alternate jurors being proposed in the amendment and would prefer 12 jurors. Although the language says a minimum of six jurors, it is certainly better than a misdemeanor jury, which has six jurors. We continue to take no position about consolidating battery domestic violence charges in district court with felonies and gross misdemeanors. We believe that a defendant charged with battery domestic violence should not have to demand a jury trial. Defendants do not have to demand a jury trial for gross misdemeanors or for felonies.

Finally, 12 jurors should be required instead of 6. A defendant in a civil case who is being sued for more than \$15,000 has the right to an eight-person jury, though he or she is not facing incarceration, not facing a criminal conviction, nor facing the loss of a constitutional right, yet a person charged with battery domestic violence faces up to 6 months in jail and the life-long loss of a constitutional right. Again, a person facing battery domestic violence only gets six people to hear that on their jury. Thank you for your time.

Randi Thompson, representing Nevada Firearms Coalition Political Action Committee:

On behalf of tens of thousands of law-abiding firearm owners in Nevada, I am speaking in opposition to A.B. 42. I have provided a brief written statement for the record [[Exhibit F](#)], and I would like to state a few concerns. First, let me state that we want to protect the rights of victims of domestic violence, and we understand the intent of this bill. Thank you, Mr. Chairman, for the clarification on section 17 related to retroactivity. That is helpful, and that is a big concern of ours. I am happy to hear that, and I look forward to having that discussion a little bit more. Regarding the change in section 13, we are still concerned that the types of disqualifying misdemeanor crimes should be limited to those within an element of physical force or the threat of use of a deadly weapon, not offenses that have no element of force or violence such as trespassing. The Nevada Supreme Court has made it clear that people accused of misdemeanor domestic violence should have the right to a jury trial if their Second Amendment rights are in question. We stand by the intent of this law to allow due process if your Second Amendment rights are threatened, and you are entitled to a jury trial. We appreciate the opportunity to present our concerns and are willing to work with the sponsors to find a way to what appears to be truly a budget issue for municipalities to provide jury trials, but we support the intent, and we look forward to working with the sponsor. Thank you, Mr. Chairman and Committee members, for your service to our state.

Chairman Yeager:

Thank you for your testimony, Ms. Thompson. I will note for Committee members that the letter that was referenced in the opposition testimony can be found on NELIS. That is a letter in opposition from the Nevada Firearms Coalition.

Daniel Reid, Western Regional Director, National Rifle Association-Institute for Legislative Action:

I appreciate the Committee and the proponents of this bill through the robust conversation. We have been working with the City of Henderson and trying to get to some agreeable language; however, our opposition to A.B. 42 still stems from section 13, both in the original bill in the expansion of the prohibited categories as well as in the amendment; we still feel

this goes beyond the federal law. The federal law is important because it provides consistency. There are clear elements as far as what is both domestic and violent to be at a lifetime prohibition for firearms. We will continue to work with the sponsors and continue to have concerns about what this could do, especially for many people who may come to visit the state. I understand that this bill is limited in retroactivity, looking forward for crimes that would meet under section 13; however, the federal law does continue to look backwards. With that, we are in opposition, but we will continue to work with the sponsors.

Chairman Yeager:

Thank you for your testimony, Mr. Reid. I will note for Committee members that there is also a letter in opposition from the National Rifle Association that can be found on NELIS [[Exhibit G](#)].

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

We have always believed that the right to a jury trial for any crime or deprivation of liberty is important because liberty is our most sacrosanct thing that we have. Municipal courts should be allowed to have jury trials because the justice that you get in one part of the city should not be different than the justice that you get in another part of the city. There is a cure to this problem, but the bill as written, even with the amendment, is not the cure, but I think we can get there if we continue to work on that. I would like to thank Mr. Schifalacqua for bringing this bill forward and talking with us about it, but we think that more conversations need to be had to get the bill there.

My colleague, Mr. Pariente, mentioned a lot of the problems with the bill. I am just going to hone in on section 4: the amendment to peremptory challenges. Reducing the number is not okay. Jury selection is one of the most important parts of ensuring a fair trial. There has not been a slew of trials where we have been using up all these jurors in the community. I think when the decision first happened, we had five trials and there were four not guilty in the whole state. I will say that Mr. Schifalacqua said he consulted with the justice court, but he certainly did not consult necessarily with the people who are actually picking the juries here, which would be us, in this case. I want to assure the Committee that even though there have been problems here with the domestic violence statute because of the *Andersen* decision, prosecutions have not halted. People have continued to be prosecuted under this. There has not been this widespread halting of prosecution. Hopefully, we can work the issues out in this bill and allow municipality courts to conduct jury trials.

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

I want to thank the sponsors for bringing this forward and for starting to engage in the discussion with us regarding this bill. We hope to continue that discussion to ensure that the law that we are passing will work across the state of Nevada. I understand that the intention of this bill is to allow municipal courts to provide jury trials for domestic battery cases, but this bill will impact anyone charged with a domestic battery regardless if they were charged in municipal courts or another court. As indicated, your right to a jury trial is an incredibly

crucial right for those accused of a crime. In my discussion with the sponsor yesterday, it was my understanding that the intention of this bill is to ensure that everyone has a right to a jury trial based on the nature of the relationship between the accused and the complaining witness, not to the status of the accused. The status of the person accused has never been an element to this offense. The relationship is what is an issue. I am very concerned if we are making that distinction, we are requiring there to be a litigation which would be very costly and add additional time and burden upon everyone. The *Andersen* decision, as Mr. Pariente indicated, was clear that status is not an element of this charge and should not be determined upon who should be allowed to have a jury trial.

Regarding section 13, I believe it has been indicated that there is just some vagueness regarding subsection 4 in that section regarding the parent-child relationship. I believe that it is necessary to clean up that language in order to ensure that you are charging so that the individuals who are convicted of this charge have that information and that knowledge. The Sixth Amendment secures the person charged with the crime the right to jury trial by an impartial jury reflecting a fair cross section of the community. We believe that section 4, which requires only two peremptory challenges, is very detrimental when considering the Sixth Amendment. In my research, I did not find a single state which has jury directions for misdemeanor cases that limit your peremptory challenges to only two. This is extremely important when ensuring that we are picking jurors who are fair and impartial. Additionally, to Assemblywoman Cohen's question—to my knowledge, and partly due to COVID-19—neither Sparks Justice Court nor Reno Justice Court has conducted a jury trial for domestic battery. Thank you for your time and attention today.

Tonja Brown, Private Citizen, Carson City, Nevada:

Advocates for the Inmates and the Innocent echo the comments made by the previous callers in opposition of this bill. I think it will also give those a chance who have been accused to prove their innocence in court. There are times—I am not saying at all times—the supposed victim will make up allegations of abuse and domestic violence, and we believe, by having a jury trial, it can show and prove one's innocence. Thank you. Have a great day.

Chairman Yeager:

I will close opposition testimony. I will now open neutral testimony on A.B. 42. I believe we have someone with us on Zoom; Ms. Souza-Llamas, are you there? Would you like to provide testimony in neutral, please?

Erica Souza-Llamas, Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety:

The Records, Communications and Compliance Division houses the Central Repository for Nevada Records of Criminal History [[Exhibit H](#)]. I am here today to testify in neutral for A.B. 42. I have with me today, Nicole Lubich, who oversees our Brady Point of Contact Firearms Program to assist in answering any questions that Committee members may have.

Section 13 of A.B. 42 removes the federal definition of domestic violence and replaces it with the definition of an act which constitutes domestic violence pursuant to NRS 33.018.

By making this change, the number of offenses that will be considered when determining firearm eligibility may substantially increase the number of delays. Currently, the federal definition contains three criteria that must be met to disqualify an individual from obtaining a firearm. If this bill is enacted as introduced, the criteria will increase to 15 prohibitors, thus increasing research that will impact the workload for the Division as well as the local criminal justice agencies around the state and nation due to the Division submitting requests to these agencies for information to ascertain the status for determination purposes. An increase in research in this area will also result in an increase in denied or unresolved individuals. The impact of the additional workload as a result, should A.B. 42 pass, may necessitate additional staff in the Brady Point of Contact Firearms Program. We will be reaching out to Mr. Schifalacqua to discuss the impact of this bill on our Division. This concludes my testimony, and we are happy to answer any questions that Committee members may have.

Chairman Yeager:

Committee members, are there any questions?

Assemblyman O'Neill:

This is to Ms. Souza-Llamas. What would the fiscal impact be? Will you have to increase staff? What would be the time delays? If I remember, you only have three days to respond and either pass or disqualify a person from a purchase.

Erica Souza-Llamas:

That is correct. We have, per the federal law, three days to respond to provide a determination to the dealers. We do not know what the impact would be timewise on our Division with this. We have not done any studies.

Assemblyman O'Neill:

Would it be fair to say that you may have trouble meeting that three days?

Erica Souza-Llamas:

There is a possibility that we would not be able to meet the three days. It would most likely increase the number of unresolved cases that we have.

Assemblyman O'Neill:

Have you supplied a fiscal note on this bill?

Erica Souza-Llamas:

No, we have not. We have not been asked for one at this time.

Chairman Yeager:

Are there other questions from Committee members? I do not see additional questions. I want to thank you for being here and offering neutral testimony on Zoom this morning. I will close neutral testimony. I will now go back to our presenters from City of Henderson and then to Judge Glasson for any concluding remarks on A.B. 42.

Marc Schifalacqua:

I want to thank the Chairman and the Vice Chairwoman. I have had conversations with you both these past few years on this difficult issue facing our judiciary. I appreciate your insight. I just wanted to clarify a few things, but I think there is some good news here. I heard all the opposition, but I really did not hear anybody say that anyone is against giving municipal courts the authority and the rules to proceed with these trials. I think that is a good thing, and I do think any other differences can be worked out going forward.

I did want to clarify, though, some things that Mr. Pariente said, and he may not have heard my original testimony, so I understand that. The goal—and I worked with the public defenders on this several months ago—was that they would not have to file a written demand if there is a constitutional right to a jury trial like they would now. That is already fixed in section 2 of the bill. As far as his concern about cities opting out, this does not force cities to have jury trials, but if you are a prosecutor and you are filing a domestic violence charge that has an associated penalty of firearm prohibition, your court is going to have to provide that level of due process to a defendant. It does not force a prosecutor to do it. If a certain city could not handle that accommodation, they would have to go to the county who has concurrent jurisdiction on state laws. There would certainly be no issue or violation of law there. This bill overall, though, is about protecting folks in domestic violence situations but also giving those who are accused the due process that they are owed.

I know there have been some comments about this expanding to a lot of different other types of acts, and I am happy to make this clearer. The goal of this bill is simple battery domestic violence, and not only that, you would have to be both charged and convicted of that one offense to be prohibited under this change. This would not apply to trespassing or coercion or other types of offenses. I just wanted to be clear on that, and I am more than happy to make that clearer in the bill if needed. Currently we do prosecute for dating relationships in our courts. That is something new. That would not be a new prosecution; it was just included in the amendment. That is all I have. I do want to thank again the Committee for everyone's comments today. Ms. Rourke and I both appreciate all of your hard work.

Chairman Yeager:

Thank you, Mr. Schifalacqua. Judge Glasson, you have been sitting patiently through the hearing, so we will give you the last word and concluding remarks.

Judge Glasson:

I thank members of the Committee for their patience today. This proposed amendment would allow access to justice in our rural courts in counties to continue to provide jury trials for battery domestic cases with a lot of ease, and not require them to pick on the same people week after week after week, casting a much larger net for our townships that are located in high tourist areas. I thank you for the time and your patience today.

Chairman Yeager:

Thank you to the three of you for presenting. Mr. Schifalacqua, I hope it did not feel too uncomfortable to have the tables turned on you. Usually you are the one asking the questions

in court, and we had a chance to ask you some this morning. We appreciate that. It sounds to me like there may be some additional conversations that need to happen around the bill, so I ask you to keep me updated on where things are as we march towards our April 9, 2021, first committee passage deadline. Thank you for joining us this morning, and I wish you all a great rest of the day. I will close the hearing on A.B. 42. That takes us to our final item on the agenda today, and that item is public comment.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

I am the sister of Thomas Purdy, who was killed by Reno Police, hog-tied for 40 minutes during a mental health crisis, and then asphyxiated to death while still hog-tied by Washoe County Sheriff's Office. Today, I would like to talk about Arteair Porter, who was 22 years old when he was killed during a mental health crisis by Washoe County Sheriff's Office, Reno Police, and Sparks Police Department. Porter originally called 911 to report he was suicidal because his daughter had died, and his wife was pregnant with another child. The investigation showed that he had no daughter or wife. Police were very familiar with Arteair. His family described him as a schizophrenic, and the police had had several encounters going all the way back to 2013 involving Arteair and his mental health situation.

In February 2016, he called 911 and expressed failing to kill somebody. He was not on his medication and was taken to a mental health facility. On February 20, 2016, he called 911, stating he felt like he might stab someone. He was not on his medications, and he was also taken to a mental health facility that day. On July 1, 2015, Sparks Police responded to a group home where Arteair was living, and he was suicidal. He was taken to Northern Nevada Adult Mental Health Services. In 2014, law enforcement had several encounters with him as well. Washoe County District Attorney Chris Hicks's report justified the shooting. He states that the criminal and mental illness history of a person shot in an officer-involved shooting (OIS) is not relevant in OIS reviews; however, in this case, officers were professionally aware of Porter and his history, making it relevant to their decision-making. They knew this man had made prior threats before and never followed through with them, but this time, they decided when they heard that the man had a gun, all they heard was "gun," and they did not hear "a person in crisis." They lost sight of that. He was shot at 24 times by multiple officers. Please do not support bills that protect bad police. Please support bills that promote transparency and accountability for families like mine and Arteair's.

Chairman Yeager:

I will close public comment. That takes us through everything on our agenda. Thank you, Committee, for getting through that bill this morning. I know that was quite a bit technical for folks who do not practice in this area, but I thought the questions were thoughtful, and I think we are going in the right direction in terms of reaching a solution for the *Andersen* decision.

This meeting is adjourned [at 10:05 a.m.].

RESPECTFULLY SUBMITTED:

Kalin Ingstad
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 42, presented by Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson; and Nicole Rourke, Director of Government and Public Affairs, City of Henderson.

[Exhibit D](#) is a copy of a PowerPoint presentation titled "City of Henderson: Assembly Bill 42," dated March 10, 2021, presented by Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson; and Nicole Rourke, Director of Government and Public Affairs, City of Henderson.

[Exhibit E](#) is a copy of a Supreme Court case titled *Andersen v. The Eighth Judicial District Court*, 135 Nev. 321 (2019), submitted by Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson; and Nicole Rourke, Director of Government and Public Affairs, City of Henderson.

[Exhibit F](#) is a letter dated March 10, 2021, submitted by Randi Thompson, representing Nevada Firearms Coalition Political Action Committee, in opposition of Assembly Bill 42.

[Exhibit G](#) is a letter dated March 9, 2021, submitted by Daniel Reid, Western Regional Director, Nevada Rifle Association-Institute for Legislative Action, in opposition of Assembly Bill 42.

[Exhibit H](#) is a letter dated March 10, 2021, submitted by Erica Souza-Llamas, Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety, in neutral of Assembly Bill 42.