MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 23, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Tuesday, March 23, 2021, 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
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager

Jordan Carlson, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Alan Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada
Mark Knobel, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada
Robert Telles, Public Administrator, Clark County
Nicole Salcedo, Intern to Assemblywoman Rochelle T. Nguyen
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Marc Schifalacqua, Senior Assistant City Attorney-Criminal, City of Henderson
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Melissa Exline, representing the Nevada Justice Association
Liz Ortenburger, CEO, SafeNest
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department

Chairman Yeager:
[Roll was taken and Committee protocol was explained.] We have two bills on the agenda today. We are going to take those two bills in order as listed on the agenda. At this time, I am going to open the hearing on Assembly Bill 318.

Before we get started with the presentation, I will let Committee members and members of the public know that there is an amendment [Exhibit C] that you can find on the Nevada Electronic Legislative Information System (NELIS) under the exhibit tab, and I believe that is a friendly amendment. To present Assembly Bill 318 this morning, we have our own Assemblywoman Marzola, and I know she has some guests with her to help us get through this trusts and estates bill.

Assembly Bill 318: Revises various provisions relating to estates. (BDR 3-805)

Assemblywoman Elaine Marzola, Assembly District No. 21:
With me today are the cochairs of the Legislative Committee of the Probate and Trust Section of the Nevada State Bar, Alan Freer and Mark Knobel. Both gentlemen are experts in their field. To give a little bit of background, Nevada is at the forefront of the estate and

trust law. This is because the Legislature has consistently enacted cutting-edge provisions and updates. The bill before you today also updates our law as a result of the collaborative work with the Legislative Committee of the Probate and Trust Section for the State Bar. Assembly Bill 318 primarily amends *Nevada Revised Statutes* (NRS) Title 12, Wills and Estates of Deceased Persons. It also amends NRS Title 13: Guardianships, Conservatorships, and Trusts. These are Nevada's laws that pertain to the administration of trusts in the state. This bill intends to clarify laws relating to trusts in the state, adopt new laws to remain current as one of the top three leading jurisdictions of trusts and estates in the United States, streamline the probate and trust administration process while including safeguards to prevent abuse, and provide additional laws in response to the COVID-19 pandemic with respect to electronic wills and trusts and the remote execution of such documents. There is a friendly amendment posted on NELIS for your consideration [Exhibit C]. At this time, I would like to hand the presentation over to Mr. Knobel and Mr. Freer to go over the bill and the amendment.

Alan Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada:
I am unmuting to throw Mr. Knobel under the bus. He is going to start the presentation. He will be doing a presentation of sections 1 through 26 of the bill. Then I will be presenting on sections 27 through 44, and I will address the friendly amendment that we circulated last evening.

Mark Knobel, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada:
I will [unintelligible]. Those statutes relate to administration in Nevada. This bill is intended to verify the laws relating to trusts and estates; adopt new laws related to the forefront of the trust and estate jurisdictions in the United States, and Nevada is currently in the top two or three; it will streamline the probate and trust administration process and provide efficiencies, while including safeguards to prevent abuse; and the laws will also provide additional laws in response to the ongoing COVID-19 pandemic. [unintelligible]

Essentially, sections 1 and 2 of the bill amend the declaratory relief statutes to provide relief or a way to seek relief for a principal or agent of the power of attorney. Section 3 of the bill provides that fiduciaries that become in temporary possession of property and are selling it will be exempted from the real property disclosure requirement that is set forth in NRS. Section 15 of the bill amends nomination of administrator provisions to require disclosure of certain information when nominating personal representatives upon written request to aid in the investigation if potential abuse is suspected. This amendment and law were specifically requested by the Clark County Public Administrator's office to verify the veracity and circumstance of the nomination. I will now skip ahead because I know we are short on time.

[unintelligible] . . . some personal representatives to act alone. Sections 21 and 26 amend the attorney's power provisions of NRS Chapter 143 to provide that they continue acting as the manager of a limited liability company, general partner of a partnership, or operator of an unincorporated business. One other provision is section 22, which amends the ex parte

provisions of NRS Chapter 143 to exempt a public administrator's office from posting a separate bond when obtaining a restraining order to save taxpayer funds in acquiring a separate bond.

Sections 24 and 25 amend the notice of hearing provisions, the standing provisions of an independent administrator. Specifically, NRS 143.345 requires initial notice of petition seeking independent administration be given to the public administrator and granting the public administrator standing to object to independent administration. Alan Freer will cover the rest of the bill.

Alan Freer:
I will present sections 27 to 44 of the bill and discuss the conceptual amendment that was provided last evening [Exhibit C]. In line with the four objectives of the bill addressed by Assemblywoman Marzola and Mr. Knobel, I am going to address the latter half of the bill in the context of such objectives. With respect to the objective of streamlining administration, it continues to be a mandate that we seek to follow if it comports with the general directive of probate and trust statutes to ensure that administration is speedy and efficient with the least cost to the parties. Examples of this in the latter half of the bill appear in section 27, which permits the court discretion to set aside an estate from administration where you have a will that pours over into a trust because the administration of those assets will occur in a trust proceeding, as opposed to a more costly probate proceeding. Likewise, changes to sections 40 and 41 of the bill regarding notice to creditors and trust proceedings will bring that procedure in line with the state procedure so you do not have differing procedures depending on whether it is a probate or trust proceeding, so as to avoid confusion and provide uniformity.

With respect to clarifications of existing law, it is important that we allow these clarifications. I will echo the comments of the prior two presenters that Nevada is a top jurisdiction. Therefore, we have national discussions about Nevada's laws compared to other states, and they sometimes point out some areas of Nevada law that need clarification. Examples of that to afford uniformity of interpretation appear in sections 28 and 29. Section 28 clarifies statutory fees and when those are "reasonable" per se. Section 29 provides for circumstances when an attorney who is drafting a will is considered an "independent attorney" for purposes of the statutory undue influence. Section 30 amends the nomination of guardianship statutes. I will take a minute because we are into guardianship territory, but presently, there are multiple laws that permit nominations of guardians in various documents. Those are found throughout the various parts of the code. By bringing those references into NRS 159.0753, this will allow recognition of all the other statutory abilities to nominate guardians and harmonize that under the guardianship code section to avoid potential conflicts among those statutes.

Section 33 clarifies NRS 163.004 to avoid confusion as to when a trust is revocable or irrevocable under Nevada law, which is a very important distinction for not only tax purposes, but also general spendthrift and administration purposes. Section 39 clarifies provisions in the decanting statutes as to when a trustee has authority. Then lastly in that

area of the bill, section 42 clarifies circumstances when a divorced parent may represent a minor child in trust and estate proceedings and it defaults over to the parent that has custody of the child, as to allow them such representation. With respect to tax law, there are changes relating to section 31, which proposes a new statute that was added in NRS Chapter 163. The Internal Revenue Service recently issued a revenue ruling that permitted trusts to include a power to reimburse the settlor for tax payments for liabilities. This statute incorporates that permitted federal tax law power into Nevada law.

While we try to streamline the administration process, there needs to be a balance in providing protections to curtail abuse and protect beneficiaries and creditors of the estate. In that line, section 35 is one example of protections for beneficiaries where it requires a court order before a trustee can divide or combine trusts if the trust instrument does not expressly grant that power. Similarly, Mr. Knobel had referenced some sections that were drafted to allow notice to the public administrator. Sections 44 through 46 are similar. Those afford similar notice of standing and information to permit the public administrator to better protect estates, especially in instances where an intestate estate is being administered by a non-heir or next of kin.

Lastly, I do have the amendment that I would like to talk about. The conceptual amendment we provided last evening fixes a couple of errors that were encountered when drafting the bill; it includes three provisions that were omitted from the first printing. Briefly, those amendments are as follows: There is an amendment to section 19 where the original part of section 19 did not have a situation where if documents were not requested, what the timing was to turn over property belonging to a state. That adds a provision where, if you are not requesting additional documents, you are required to turn it over in ten days. The amendment to section 31 clarifies language to avoid unintended tax consequences. As I discussed, this is in line with the revenue ruling from the IRS, so we need to track that language. Sections 39 and 41 make changes to ensure that the administration process occurs and includes the language that was originally intended for the bill. The new amendments to sections 48, 49, and 50 were amendments that were proposed but not included in the original draft. Real quickly, section 48 amends NRS 139.100 to provide similar notice provisions on initial hearings and to enable the public administrator to receive notice of those probate petitions where the person seeking appointment is neither the spouse, heir, or nominee of the spouse or heir; and that is designed to curtail potential abuse. Likewise, the amendment to create a new section 49 changes a "shall" to a "may" in NRS 143.350 to permit the probate court discretion when it determines whether to grant independent administration of an estate. Lastly, the amendment to create a new section 50 adds an additional provision in the sale of property during independent administration. This is another safeguard statute for when an administration is occurring without court supervision and a sale is less than 90 percent of appraised value; the requirement would be to obtain written consent from all of the interested persons. If such consent is not provided, then the personal representative must go through with a judicial sale as opposed to an independent sale.

Chairman Yeager:
Mr. Knobel, we had some difficulties with your audio at portions of your testimony, but I wanted to let Committee members know that there is an exhibit on NELIS [Exhibit D] from the Probate and Trust Section of the State Bar of Nevada that goes through the sections of the bill and explains what they do. If you were unable to hear some of the audio from Mr. Knobel and are interested in particular sections, I wanted to reference that for the Committee.

I had a couple of questions. Mr. Knobel, in section 3 of the bill, essentially, we are adding an exception to subsection 1 about the need to complete a disclosure form. In the new language that we are adding, it indicates that if there is a fiduciary taking temporary possession solely to facilitate the sale of a property, they do not have to fill out the disclosure form regarding residential property. Is that exception going in there because this person would not have adequate personal knowledge to be able to fill out such a disclosure form?

Mark Knobel:
It is because they would be in temporary possession of the property. They may have never even lived on the property or never stepped foot on the property. They potentially could be from out of state. It puts an undue burden on personal representatives or heirs. It would create a situation where they would have to spend quite a bit of money on due diligence in order to properly fill out a disclosure form like that.

Chairman Yeager:
That certainly makes sense and is in line with what I anticipated the answer would be. Mr. Freer, in the new section 50 in the amendment, I noticed that the language at the bottom indicates that if the sale of real property is less than 90 percent of the appraised value, then all interested persons have to consent in writing and must otherwise seek confirmation of sale. Then it references NRS 148.060, and I wondered if you could shed a little bit of light on what "confirmation of sale" under that statute means and how that works in the real world.

Alan Freer:
We will start with the independent administration of the estate in section 50. When a court grants a personal representative independent administration of the estate, it typically speeds up the administrative process, but it gives the personal representative a lot more authority to go in and administrate the estate without receiving court orders approving certain actions. One of those actions is the sale of real property. Subsection 2 of NRS 143.380 outlines what typically is required in a normal probate sale process that includes publication of notice, providing notice of how much the brokers' commissions are going to be, finding a deal that is over 90 percent, and permitting the court examination of the contract. In a formal probate proceeding, that is not required because you are typically dealing with family members who get along and there are no issues. The one protection that we wanted to apply is that if you do fall under that 90 percent of the appraised value, then you need to get all of the family members and creditors involved; they have to look at the sale and approve the sale price. If not, then you have got to go back to a regular probate court sale proceeding, wherein you

would have to provide publication which then brings in potential bidders and bring the sale to the court for approval during a hearing process.

Chairman Yeager:
If I could restate that to make sure I understand it; essentially this is a streamlined procedure when you are not going through the formal process, but if it is going to be a sale of less than 90 percent, if everyone does not agree with that, then it would have to go through that more formal process where all the bells and whistles of the liquidation of the estate would happen.

Alan Freer:
You are absolutely correct.

Chairman Yeager:
Do we have other questions from Committee members for our experts on A.B. 318?

Assemblywoman Cohen:
Your presentation and the bill touch on some issues with family law and some issues with guardianship, and I want to make sure that I understand the process. If you come in support of this bill, does that mean all of the different sections of the Bar have vetted the bill?

Alan Freer:
The answer is yes. In the State Bar process, when a section gets approval to present a State Bar bill, in July or August of 2020, the sections circulate the different bill text between the various sections of the State Bar, including the family law and elder law sections. Then they have a comment period to provide any potential questions or concerns, whereupon there is a determination as to whether there are problems with sections of the bill. With respect to this bill, it was circulated. No other sections had any issues with it, so then when we went to the State Bar, the State Bar unanimously approved the text you see before you in the bill as a section-sponsored bill. Specifically, with respect to the family law and guardianship questions, I will make a representation that the section that changed in the guardianship code of NRS Chapter 159 does not provide any substantive change to the guardianship laws. It simply denotes the other sections where nominations of guardianship currently exist and can occur under Nevada law, so there is never an issue where the court is wondering if one nomination trumps another or if one is effective and another is not effective. It just references that all the various Nevada law nominations of guardianship are recognizable.

Assemblywoman Cohen:
My other question has to do with something I noticed in section 19 and, frankly, I do not know if it is in other sections and just did not catch my attention. There is a reference in section 19, subsection 2, to "10 business days," and I am wondering why the term is "business days" and not judicial days or calendar days, and if that might make things more confusing. I do not know exactly what a business day is, but I know what a judicial or calendar day is. Is that intentional to use the term "business days"?

Alan Freer:
You bring up a good point. That was a drafting choice; there was not any specific intent or reasoning for that. I would be fine including, as part of the amendment, a change to 10 judicial days or 14 calendar days.

Assemblywoman Kasama:
Can you give a 30,000-foot look as to why we are making so many changes? I believe there were changes in the last session as well. What were the biggest problems that we had here that have brought about all these changes?

Alan Freer:
Let us start with a little humor. The changes in this session's bill are about half of what we normally have had in the prior four or five sessions while I have been a co-chair of the committee. I am sure Chairman Yeager is very happy that we have a shorter bill today. From the 30,000-foot view, this session was different because of two issues. The most important meat of this bill occurs in sections 14 to 19. When the pandemic hit, we really needed to shore up electronic trusts and wills, and electronic notaries—because that is almost more important in allowing this remote notarization of documents during the pandemic to occur. These sections are the largest chunk from a 30,000-foot view of importance.

The other aspects of it are more of what I would call "fine-tuning" or "tinkering." When you get into tax law or complex situations, the turn of a word or a particular ambiguity on a line in text can have a cascading, or domino, effect on whether it is properly administered or whether tax laws allow for recognition of an exemption or not. Most of the other changes with respect to that are fine-tuning changes just to keep a good system of laws going. Those fine-tunings keep us running at optimal efficiency.

Assemblywoman Kasama:
In the past couple of sessions, there was just a lot of abuse with elder care and transferring of estates, so is this a large cleanup of the past sessions?

Alan Freer:
Yes, that is also correct. One of the things we are cleaning up, in terms of a big chunk, is the notification provisions to the public administrator and keeping in line with some of the administration statutes. There were situations where non-heirs, non-family members, and non-spouses were seeking appointment, which they can do under the statutes ever since we adopted the code in 1896 from California where you have non-family members being able to seek appointment. But here, because of some of the laws, there was a mousehole that was allowing for some abuse in trying to find distressed properties and selling those without the family members knowing full well what was going on. By allowing the additional notification to the public administrator, it provides an extra check and balance where the public administrator, who is in the court system regularly for probates and trusts, can get a sense if anybody is trying to abuse those statutes.

Chairman Yeager:
If we could stay on that topic, Mr. Freer, you mentioned in your testimony that there was a federal tax ruling that led to some of the drafting of this bill. If we could stay at this 30,000-foot view, could you just give us a sense of what that federal tax issue was and what the bill does to address it?

Alan Freer:
I have to give you a 30,000-foot view because I am a trust and estate litigator as opposed to a tax attorney. In section 31, what happened is that the IRS came out with a revenue ruling, which is a question where the IRS is receiving several inquiries about, Hey if we give a trust maker this type of power, do we still allow it to be outside of their estate? And so, what we are dealing with is completed gifts. When you set up certain trusts, you can freeze the tax portion of that and, in time, give it to children or charities or other beneficiaries without having it taxed in that person's estate when they pass away. But with that comes additional retaining powers, and the IRS has been very selective on which powers are okay for the trust maker to take and which powers are not okay. Section 31 recognizes that the IRS has said if a trustee has the power to reimburse taxes that the settlor has incurred by way of that trust, then reimbursing the settlor for those taxes is not going to cause a recognition of that trust in his estate when he passes away. It is allowing more reimbursement of taxes in a certain mechanism without jeopardizing the entire trust back into the estate.

Chairman Yeager:
Any additional questions from Committee members on A.B. 318?

Assemblywoman Summers-Armstrong:
In section 29, in the executive summary [Exhibit D], it says that it amends the definition of "independent attorney" under a certificate of independent review, and you list the NRS. It is mostly concerned with the drafting attorney, and I am going to assume that that is the attorney who drafted the will or trust, and who may qualify as an independent attorney so long as he or she is not a transferee or served as the attorney for a transferee. When you say "transferee," does that mean the person who is entitled to receive assets or is it the person who is moving assets within the trust to people who are inheriting? If you could clarify that for me? Is this an attempt to make sure that the attorney is not drafting a trust or a will that they could somehow benefit from?

Mark Knobel:
Essentially, the transferee is the recipient of the property. The attorney could not be the attorney for the recipient of the property. They are able to provide a certificate saying that the person making changes to a will or trust is not under some type of undue influence for the recipient of the property.

Assemblywoman Summers-Armstrong:
Does the term "transferee" imply that he or she is the only person who could be receiving a benefit? Could they be transferring to other people, or is that a whole different title?

Mark Knobel:
The transferee would be the recipient of the property only. Mr. Freer, I would let you jump in if you have any other ideas. The attorneys are prohibited by professional code from receiving any property of a will or trust that they draft. The attorney could not even be a recipient. And, of course, the attorney could not be representing a recipient in this process of providing a certificate of independent review.

Alan Freer:
To clarify, in this section of statutes Nevada has enacted a statutory presumption of undue influence where, under certain circumstances, if a will is drafted and it meets these, it is presumed void because of red flags in the drafting process. One of the ways around that statutory presumption is to have an attorney who is completely separated out and independent from any of the beneficiaries who are receiving gifts under a will or trust to be able to advise the person making the will or trust and ask questions similar to, Hey you have a gift going to this particular grandchild, and the gift is much larger than those of the other grandchildren; tell me about that gift. Is anybody putting pressure on you to make that gift? After they are able to certify that, they provide a certificate of independent review saying that they have gone through all of the provisions to do the best they possibly can to make sure that really is what the person making the will or trust wanted, without interference or undue influence from other family members, caregivers, et cetera. In specific answer to your question about the transferee, yes, there is another statute in that section that prohibits dependents or affiliates of the drafting attorney from receiving any of those benefits as well.

Chairman Yeager:
Do we have any other questions from Committee members? [There were none.] We will ask the presenters to sit tight for a moment while we take some testimony on the bill. Then we will have a chance to do some wrap-up after that. At this time, I am going to open it up for testimony in support of A.B. 318.

Robert Telles, Public Administrator, Clark County:
I am grateful to the Probate and Trust Section of the Nevada State Bar for taking up many of the provisions that relate to my office. Many of these provisions are created in an effort to ensure that the families are protected and that there is more transparency in the process. Also, there are certain provisions that will assist our office in doing a better job for our Nevada families. I think it is very important to talk about the issues relating to the Independent Administration of Estates Act. There have been certain situations that, while not necessarily unlawful, are of serious concern to Nevada families and will be addressed by this legislation. I am looking forward to making sure we have these safeguards in place in our laws so these types of things in independent administrations are done in good faith and we have mechanisms for ensuring such types of transactions can be stopped.

Chairman Yeager:
Is there anybody else who would like to give testimony in support? [There was no one.] I will close testimony in support. I will now open testimony in opposition. Can we go to the phone line to see if there is anyone in opposition? [There was no one.] I will close

opposition testimony. I will now open neutral testimony on the bill. Is there anybody who would like to give neutral testimony? [There was no one.] I will close neutral testimony. Assemblywoman Marzola, I will hand it over to you and your copresenters for any concluding remarks on A.B. 318.

Assemblywoman Marzola:
I just want to thank the Committee for their time in hearing Assembly Bill 318, and I hope to get your support for this important legislation.

Chairman Yeager:
I want to thank the presenters for joining us today. Committee, this is a dense bill, so if you have any questions after looking at the executive summary that was provided, please reach out. We will now close the hearing on Assembly Bill 318. Committee, we are going to move along to our second bill on the agenda, which is Assembly Bill 339. I will now open the hearing on that bill.

There is an amendment [Exhibit E] that you can find on the Nevada Electronic Legislative Information System (NELIS) that makes a few changes to the original bill. We have our own Assemblywoman Nguyen here with us to present Assembly Bill 339. We will give her a chance to do that and then I am sure we will have some questions.

Assembly Bill 339: Makes various changes relating to domestic violence. (BDR 14-120)

Assemblywoman Rochelle T. Nguyen, Assembly District No. 10:
Essentially, this bill creates a specialty court to help facilitate treatment programs for individuals convicted of misdemeanor battery domestic violence. I will be presenting the amendment that was emailed last night and that is posted on the Nevada Electronic Legislative Information System (NELIS) now. But at this time, for some background information, I am going to turn this presentation over to Nicole Salcedo. She is one of my interns this session.

Nicole Salcedo, Intern to Assemblywoman Rochelle T. Nguyen:
Specialty courts are problem-solving court strategies that are designed to address the root causes of criminal activity by coordinating efforts of the judiciary, prosecution, defense attorneys, law enforcement, mental health, social services, and treatment professionals. There are rigorous requirements such as frequent drug testing and court appearances, along with tightly structured regimens of treatment and recovery services. Specialty courts offer an alternative to incarceration. The goal is to break the cycle of the revolving door syndrome and support participants to achieve stability by promoting responsibility, accountability, and by teaching participants to become productive citizens which, in turn, reduces criminal recidivism and provides for better, healthier communities.

Specialty courts can also be helpful in freeing up the resources of the lower courts where many of these cases would normally be tried. This allows many to realize the promise of a speedy trial and resolution. Nevada implemented the first of its 46 specialty courts in the

early 1990s and has been a pioneer in the field ever since. National research shows they reduce crime by as much as 45 percent more than other methods, producing an average $2.21 direct benefit to communities for every $1 invested. When more high-risk offenders are helped, the return on investment can be $4.13 per $1 invested. Some additional benefits of implementing specialty courts are increasing public safety, reducing recidivism, improving quality of life for participants, and restoring positive community involvement.

While most specialty courts address nonviolent crime, domestic violence courts are part of a trend in the emergence of courts that address violent crime. The first domestic violence court started in Miami, Florida, in 1992. Currently, there are an estimated 300 domestic violence courts nationwide. Domestic violence courts create procedures to promote victim safety, collaborate with community-based organizations, and ensure accountability for domestic violence offenders. I will now turn it back to Assemblywoman Nguyen.

Assemblywoman Nguyen:
For those of you who are new to this Committee with me, I have participated in specialty courts from the time I was a brand-new lawyer. My very first job was clerking for the late Judge Jack Lehman, who had started the first drug court in the state of Nevada and only the second in our nation. Nevada has a long history of establishing specialty courts. There are many specialty courts in our court system. We have veterans' treatment courts, mental health courts, women in need courts, juvenile drug court, and many more. When you start to learn about the return on investment for these programs, you see they cut down on the recidivism rate, they help with actual treatment, and they are really hard to get through.

This bill creates some enabling language. Currently, this is one of the crimes—misdemeanor battery domestic violence—that is one of two criminal charges that I can think of where you cannot get a sentence reduction. The prosecutors do not have discretion. They are tied to a very specific structure. Under current statutes, if I catch my husband cheating on me and dump a drink on him, I will be charged with misdemeanor battery domestic violence. That is battery domestic violence, and under the current circumstances, I will be sentenced, convicted, and I will lose my Second Amendment right. I will have to do the standard six months of counseling one time per week for 26 weeks, I will have to pay a mandatory minimum fine of $340, and I will also have to do 48 hours of community service in addition to spending two days in jail. Correspondingly, if someone beats up their spouse and they are injured and it is an ongoing problem, it is the same penalty under law for that individual as well. If you are charged with murder, a prosecutor can reduce charges; they can take into consideration all of the circumstances; they can take into consideration your mental health history; they can consider mitigating circumstances that may be morally mitigating; and they can reduce that charge. They cannot do that for domestic battery.

We have established specialty courts in our state that have shown that they have been successful. They use best practices, they use evidence-based practices, they reach out to community organizations, and they engage in a more holistic approach in doing this. And that is what this bill allows. It allows that enabling language. Currently, the only people who can participate in the specialty court when charged with a battery domestic violence

misdemeanor are veterans. We made changes in 2017 that allowed veterans only to participate in the veterans' treatment program. Again, this is enabling language. It gives the court another tool if they want to establish these courts, to provide an incentive that is evidence-based, that is financially responsible for our communities, and that can show results.

There are some substantial amendments that were emailed out to Committee members yesterday. I can answer any questions about those. Essentially, battery domestic violence is a little more complex. I had taken some of the language from other specialty courts as to how they are formulated and how they exist, but there is some crossover and other issues when it comes to the ability to seal those records. I always tell my clients when I come into contact with them that a first offense domestic violence is a misdemeanor, a second offense is also a misdemeanor but it is enhanceable, and a third offense within seven years is a felony that carries a mandatory 1 to 6 years in prison. There are these enhancing penalties for this type of charge. For that reason, an automatic sealing is not necessarily accurate because we do want to be able to have that case open to a certain extent. If the person does reoffend, we want to be able to go back and charge him or her with that second offense if it is within that seven years. We have added some conditional dismissal language, and it is similar to the language that is used in the veterans' treatment program and our DUI specialty court. With that, I can go through and answer questions.

Chairman Yeager:
Assemblyman Wheeler has a question.

Assemblyman Wheeler:
You made a comment that got to me—that penalties would be the same for dumping a drink on someone as actual physical violence. I am wondering about something I do not see in the bill, but would it not be good to add more judicial discretion, as far as punishments are concerned, whether they go to the new specialty courts or not? I do not see that in here.

Assemblywoman Nguyen:
If you pull up the bill, on page 12, you will see a section in there that eliminates the section that ties our prosecutors' hands. I can tell you that I looked at this from a couple of different perspectives. I have met with members of our law enforcement, because I thought it might be good to give them more discretion in the field. We used to trust police officers in the field to make those kinds of determinations. I know in talking with them, they have been operating under this model for 16 years, I believe. These are some of those more dangerous calls they go out to. Sometimes it is a lot easier for the officers to arrest the person they think was the initial suspect, just to diffuse the situation.

Then I talked to our prosecutors across the state and asked them what we could do; what tools could we give them to weed out the good cases and dismiss or resolve other cases as they see fit. In that section, what also authorizes the specialty courts to exist is the fact that it also returns discretion back to prosecutors. If they see that case with the drink being dumped on someone's head, they can choose to dismiss or reduce the charge. They would have that

option under this language—to be able to look at a case and make that kind of determination on whether they want to reduce those charges.

Assemblywoman Hardy:
What would it take to actually have these courts established, so that prosecutors can get this discretion?

Assemblywoman Nguyen:
There are a couple of ways that we can establish specialty courts. There are pre-prosecution diversion programs and there are post-plea type programs, and that is what this would be. You would have to enter a guilty or nolo contendere plea, so you would have to enter a plea to the charge of battery domestic violence first offense. It would only apply to a first offense. Like many other specialty courts, you would have to go through a process of assessment and evaluation to see whether you are appropriate for that type of program. I wanted to make this bill with enabling language because I recognize that we are having some economic shortcomings, although I would encourage all of our courts to do this because specialty courts can save us up to $4 for every $1 invested.

In talking to some of these judges, some of the more urban areas have courts that are dedicated to handling DUIs or domestic violence, and so we do have DUI court programs, but I think there are judges out there who would want to do this. I think they see a need in their court, and they see the sheer number of cases. I think we heard from the City of Henderson about how many domestic violence charges there are in our state. This gives them another option to be able to handle these cases more appropriately than just arresting and giving standard conditions to all people across the board. I would hope that they would do this. It is just enabling language, and I would hope that people would take up the cause as they have in the past. We started off in Nevada with just drug court and now we have mental health court, women in need court, and youth offender court. So people have taken on these types of charges in other courts, and I trust our bench. They have been on the forefront of specialty courts in the past. I think they would take up that mantle as well.

Assemblywoman Hardy:
This is only for first offense misdemeanor battery domestic violence. I appreciate that, and I agree that we need to give judicial officers in the courts discretion to consider the circumstances as you said, was it just a drink thrown or was it a serious injury and what-not for each new situation? Could you go over section 4 on the amendment, where you made some changes that would allow for the victim to be heard before someone would be admitted into such a program.

Assemblywoman Nguyen:
If you look at the amended language, you will see I have taken out that part in section 4. I am not sure why that was in there. I did not want there to be a situation where you went to trial and were found guilty and then you decided you wanted a specialty court. It does have to be someone who tenders a plea of guilty—a plea of guilty but mentally ill—or a plea of nolo contendere. Nolo contendere, or no contest, just means that you are not admitting the

facts of the case, but you are admitting that you would be found guilty if you were to go to trial. It is a conviction, just like a plea of guilty, but I took out the part about being found guilty. I also wanted to put in there that there was argument from both parties, so both the defense and the prosecutor have the opportunity to say why this would be appropriate before a court decides to suspend the proceedings and to put a pause on the person's plea and allow him or her to complete this program.

Subsection 2 of section 4 talks about how the court shall allow the state and the victim to reasonably be heard before the court considers assigning a defendant to a program and shall consider the safety of the victim as a factor in determining whether to assign the defendant to the program. I will tell you that in talking with some of the victim advocacy groups, I am contemplating language to further indicate that the person has to be accepted into this specialty court, and that there is a process for how that specialty court is established and what kind of guidelines would be needed. Most of these specialty court statutes are pretty vague, but we do have some guidance in administrative codes and other areas where there are batterers' treatment programs. I want to make sure there is clarifying language that still gives authority to the court but also works within the existing structure that we have in other areas of law. As to how that is compatible, I am still waiting to hear from our legal department on how we incorporate some of that additional protection language in there.

Additionally, if you have been previously convicted of a misdemeanor battery constituting domestic violence or you have even completed a program in the past, you do not get to keep coming back to this program. There are some limitations for that. Additionally, in paragraph (b) of subsection 3, you will see is says, "The defendant has entered into a plea agreement with a prosecuting attorney . . . ." Let us say you are initially charged with a felony and it is plea bargained down to a misdemeanor first offense battery domestic violence. You cannot then also apply for a specialty court to get that dismissal. And then paragraph (c) prohibits those who were already convicted at trial.

Assemblywoman Summers-Armstrong:
You spoke about working with community groups; that sounded like restorative justice as a part of the process of therapy. Have you spoken with any of our local community groups about what that would look like? Can you speak to any of the groups you have spoken to who would be interested in participating in this sort of restorative, community-based counseling, in addition to community service?

Assemblywoman Nguyen:
I have met with several groups. I started working in this when the *Andersen* decision [*Andersen v. Eighth Judicial District*, 135 Nev. Adv. Op. 42 (2019)] came out in the fall of 2019. I also met several times with the Office of the Attorney General. They have a division that is a working group on all things related to battery domestic violence. I have talked with Liz Ortenburger, who actually will be testifying in opposition, because she wants some of this other language and protections that are already existing in the *Nevada Administrative Code* to be incorporated. I had said before that I am not opposed to that, but I want to make sure we can do it under the legal construct and also give discretion to our

other elected leaders, like our judges. As far as the restorative justice question, it is not typically done in a battery domestic violence setting. It was something that I had looked into, but I understand the model that you are trying to look at. This is kind of like a hybrid model. Unfortunately, this is not a black-and-white issue.

Is this bill going to fix all our problems regarding domestic violence in our state? Absolutely not. I think it is time for us to look at things that we have been doing and whether they work. I would argue that they do not, so I think we need to look at what we have been doing. SafeNest is the perfect example. They keep their own data. We do not even keep that data at the state. It is hard to collect information about racial, ethnic, and gender inequities, arrests, and treatment, because we do not routinely keep that information. We rely on these community partners for their data and information; this is what they do. I really have been working with them to figure out how we can balance some of those judicial issues, because it is different in a criminal court. We also have to protect due process rights, our communities, and our victims, and we discuss how we can do that. There are people who are going to be very uncomfortable with some of the provisions, but I am dedicated to trying to do something. I think that is where we need to start.

Most of the members of this Committee know that it would be easy to say, Hey if you are a victim, just leave that person. But sometimes you have a relationship with that person, or you have children in common with them. People want treatment for their batterers. They want a holistic approach. They want their kids to not repeat this cycle of violence—they did their time, they did not complete a class, or they did a one-size-fits-all model and they may need additional treatment because they have co-occurring problems. I have met with community organizations and I will continue to meet with them to try to get this language correct.

Assemblywoman Summers-Armstrong:
Thank you, Assemblywoman Nguyen, for acknowledging that there cannot be a one-size-fits-all approach. I would hope that when this court is set up, we can also work diligently to include treatment programs that are culturally competent. I think that one-size-fits-all approach does not work. We have to think broadly about how to bring people in to mend these relationships in families if they choose to participate. We should at least be offering this to them to reach them in a place where they are and are culturally competent.

My next question is about gun rights. We had talked a couple weeks ago about domestic violence and had heard from the courts. How would this affect that? I cannot remember if we talked about removing guns for domestic violence, and I am not sure if it was for misdemeanor or gross misdemeanor. Could you refresh that for me and give a quick overview of how this would bookend into that proposed legislation.

Assemblywoman Nguyen:
If you are charged and convicted of a misdemeanor battery domestic violence first offense in the state of Nevada and it is under the federal definition, you can no longer own,

manufacture, ship, or possess firearms or ammunition. That is a federal prohibition. We have a state prohibition that the City of Henderson's bill is looking to also incorporate those people who are left out, for example, in a dating relationship. That is their bill; this is this bill. That is current, existing law. When I had reached out to legal during the drafting of this on the original bill, lots of things have to happen. One, you have to plea to the battery domestic violence. The court has to hear from the victim, the prosecutor, the defendant, and they have to be accepted into this treatment program. Once you get into that program and you complete it, you would get a dismissal from your record. When it was originally written, I confirm that you would have a full restoration of all your constitutional rights, including your Second Amendment right. That is the carrot to the stick. If you do this complete program and you do all of this information, you get a complete restoration of your rights. I think that is in line with most of the specialty courts. If you are doing this treatment, you are doing the things that will get it off your record. Battery domestic violence is a little bit different, and I recognize that. I do have a question into legal on whether, under the amendment, you still have that restoration because it is a conditional dismissal due to these enhancing penalties that we have for first, second, and third offenses. As soon as I find that out, I will let you know whether you also get a restoration of Second Amendment rights under this new scenario, or whether there is a delay because of that conditional dismissal for this type of charge.

Assemblywoman Cohen:
In section 4 of the amendment, we are allowing arguments from the parties, and I am wondering if that is just oral arguments at a hearing, is that a set motion, or are written arguments allowed? I do not know the process for criminal court, and I want to understand that more and how that is going to happen.

Assemblywoman Nguyen:
This is in line with the provisions of Marsy's Law that give a victim a voice at sentencing or at crucial procedural days in that criminal case. This just puts that into statute. Currently, for example, if I have a client who pleads guilty to a battery domestic violence and prior to the court sentencing them the judge will ask, Are there any witnesses or victims or victim advocates that are in the courtroom that would like to provide testimony prior to me making my sentencing decision? I think it is just giving them the opportunity. I have seen people submit things in writing and orally—I have seen live testimony, and they can testify however they choose. In most of our courts they are assisted by a victim advocate who is present for supportive reasons. I have had people with family members come up and testify. This is in line with what we already do, but it is specifically putting it in statute that it is something that can be considered. This says that the court can specifically consider the safety of the victim as a factor for determining whether to assign someone to this program.

Assemblywoman Cohen:
Is that the same if someone is in the program and there is a question about whether they should remain in the program because of noncompliance? Is that also for oral arguments or do they get a written motion practice as well?

Assemblywoman Nguyen:
In the current specialty courts, it is a little unique. Typically, there is a defense attorney and a prosecutor, but there are also counselors and caseworkers, along with other individuals that are part of what they call the "treatment team." It is a weird hybrid criminal/specialty court treatment program, and I would align that with this. If you are looking to be terminated from a program, then you are entitled to some extra due process, like provisions where prior to your termination from that program you would be entitled to those. But, as far as discipline, the specialty courts use a lot of different things. Sometimes it is adding additional drug testing, counseling requirements, and you will have judges who have participants write papers on why they have things; they have a lot of flexibility over the kind of treatments and the punitive aspects of the program. Typically, victims are not involved in that treatment process. But I am not sure if that is specifically laid out in statute. In the end of crucial time periods, I would imagine victims would be allowed there.

Assemblywoman Cohen:
I also wanted to touch on some issues that we discussed over the weekend. I have a statement more than a question. I want to make sure that we are considering child custody issues, because the State of Nevada has said that, when you are dealing with child custody, the best interest of the child is the overriding factor. I do have concerns that if we are sealing records and dismissing cases, then we are making it more difficult for the family court to know if one party has a history of domestic violence, because it is such a big issue in the family law cases. Domestic violence is a specific factor when it comes to custody determinations and it helps when that criminal case is open for the judge to know what happened. It makes the process less time-consuming and, frankly, easier for a court to protect the child and the party who may have been victimized. I want to make sure we continue to look at that.

Assemblywoman Nguyen:
We did discuss this. I have been in communication to work on some potential language that would facilitate some of the clarity issues for the family courts. As I said, we do have a provision there to conditionally dismiss the case if you are successful. There is a balance. Part of the balance is that if someone completes such an intense program, like these specialty courts are, there should be some benefit at the end of that process for them. I am a true believer in the specialty courts and the power of rehabilitation in that area, and I would love to see that incorporated here. I recognize that there are other issues in how these statutes relate to our existing family court determinations. I think there are ways to make those records sealed conditionally. They would be conditionally dismissed and retained by the law enforcement agencies for enhancement purposes. I think there is a way to incorporate that for family court judges so they also have access to that within a certain time period. Obviously, the individual would be able to say, Hey I successfully completed this program and my charge was dismissed. I am looking into that and I will continue to have those conversations.

Assemblywoman Krasner:
My question relates to section 4, subsection 2, where it says, "Upon violation of a term or condition." This is a two-part question. What constitutes violation of a term or condition?

Assemblywoman Nguyen:
What happens in a specialty court is that they will set up certain requirements. Usually, they are individualized. But there is a general program for specialty courts, and they are typically done in phases. For the more intensive programming, counseling, therapy, and drug testing are at the front part of the program. Are you looking at the amendment or the original language?

Assemblywoman Krasner:
You do not list subsection 2 in the amendment; that is why I went back to the original language.

Assemblywoman Nguyen:
Section 4, subsection 2, paragraph (a), where it says, "the court may impose sanctions against a defendant for a violation." That section there?

Assemblywoman Krasner:
Here is what I am getting at. In section 4, subsection 2, it talks about violation of a term or condition. Could violation of a term or condition mean that a person goes back and batters his wife again? That is my first question.

Assemblywoman Nguyen:
Typically, what happens is that if you violate the terms or conditions and you pick up a new charge, you are going to be terminated from the program. In this case, instead of having your dismissal at the end of the program, you have already entered a guilty plea to the charge, so you would already be adjudicated as guilty to that charge, and then you can be sentenced accordingly. So, on a misdemeanor battery domestic violence, you would plead guilty, the court would assess you, send you to a specialty court, and during the specialty court you commit another crime or are terminated from the specialty court. You do not have to commit a new crime. If you are in violation, let us say you are not leaving urinalyses and they cannot test you, or you are not showing up for counseling and they decide you are not taking the program seriously, you will be terminated from the program and you will go back to court. Because you have already entered your guilty plea, the court will then adjudicate you guilty of that battery domestic violence misdemeanor charge. They can sentence you up to 6 months in jail on that charge. Typically, when you enter into a specialty court, you would have a 6-month suspended sentence hanging over your head. If you do not complete the program—either you are terminated because you violated the terms and conditions of the program or you went back and beat up your spouse—even if you do not have a conviction for it, they can still terminate you from the program. They would send you back and then you would have your sentence imposed. There is still that punitive aspect; you still have a conviction and the ability to be sentenced based on your previous plea.

Assemblywoman Krasner:
I appreciate the answer because it goes directly to my next question. In section 4, subsection 2(a), after somebody violates a term or condition, perhaps read "beating up their spouse again," the court may impose sanctions, but the person is allowed to remain in the program. Why would we allow them to remain in the program if they reoffend or go back and re-batter their spouse?

Assemblywoman Nguyen:
Terms and conditions can be a lot of different things. As far as a treatment program, a term and condition can, for example, be an order to go to counseling on Monday, Wednesday, and Friday. So, say on Wednesday you showed up late and the counseling agency says, If you are late, then you are absent. Say, you were not able to attend that counseling session on the Wednesday because you had car problems or other reasonable reasons you could not make it on time. That may be something that you do not terminate someone for because that is a term and condition. The court may instead impose a penalty. Sometimes that penalty can be additional counseling. Sometimes your penalty can be a warning. So the terms and conditions can be many different things. If you leave a random urinalysis as a condition of your specialty court treatment, and you leave a diluted urinalysis, they cannot test it because you drank too much water. Should you be terminated from the program because they could not test your urinalysis that time? Maybe not. Should there be a penalty for violating that term or condition of the specialty program? Yes, and so this gives those judges an opportunity to look at what the violation is and determine whether that is someone they want to keep in the program or terminate from the program.

Assemblywoman Krasner:
In the writing of the bill in section 4, subsection 2(a), what you are saying is that you do not want it to say, "The court may impose sanctions against the defendant for the violation, but allow the defendant to remain in the program," you want it to say, "The court will then have discretion to allow the defendant to remain in the program after violation of a term or condition." Is that what you are saying?

Assemblywoman Nguyen:
That is essentially what it is. This is the language that is existing in all of the specialty court statutes. This is how all of our 30 or so specialty courts run off of this same language.

Assemblywoman Krasner:
I am concerned because somebody beating up their spouse is domestic battery, and this is not really a right. It is a specialty court where we allow them to go, so they have a clean record after this. I have a few concerns about allowing somebody who re-batters their spouse to stay in this program where they are then getting their record cleaned.

Chairman Yeager:
If I could jump in, Assemblywoman Krasner, I do not think if someone commits another battery domestic violence that any judge in the state would allow them to stay in the program. I think that is a pretty unrealistic scenario. The way I read the language is that the

court has two options. Under paragraph (a) they can allow the person to stay in the program with a sanction, or under (b) they can essentially terminate the person and enter a judgment of conviction. I think the language that is there with the "may" does give the discretion that both of you are speaking to. Maybe you are speaking around each other, but I think that is the intent and that is how every other specialty court program is structured. But I do not see any way where a judge would allow someone who commits the same crime to remain in the program. In my experience, it is just never going to happen.

Do we have additional questions? [There were none.] Assemblywoman Nguyen, I just want to ask a couple of quick questions, so I will go into cross-examination mode. I want to confirm that A.B. 339 as presented in the amendment does not require any court to set up a specialty court program for battery domestic violence.

Assemblywoman Nguyen:
It does not. It is purely enabling language.

Chairman Yeager:
In Assembly Bill 339, as presented in the amendment, even if the court does set up a program, the court is not required to accept anybody into the program; that is a discretionary decision by the judge running the program. Is that correct?

Assemblywoman Nguyen:
It is completely discretionary. It is not mandatory at all on any parties to either have the program or to refer people to the program.

Chairman Yeager:
That is it for my questions. We should move on to some testimony. I ask the presenters to sit tight and let us take some testimony on the bill before coming back to wrap up. At this time, I am going to open up for testimony in support of A.B. 339. Can we go to the phone lines and see if there are folks there in support?

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in support of A.B. 339 with Assemblywoman Nguyen's proposed amendment. I want to thank her for reaching out to us on this bill and having some constructive discussions with us surrounding this issue. Domestic violence cases are among the most serious cases that prosecutors handle. At the Clark County District Attorney's Office, we have a specialized unit of prosecutors who handle only these cases. As Assemblywoman Nguyen indicated during her presentation of the bill, there are a lot of dynamics at play with these cases. Having specialized prosecutors to handle them helps us get the best possible outcome in each case. It is important to note that this language is enabling; allowing each jurisdiction to make its own determination with an eye towards their own resources and community needs. It is also important to note that this only applies to a first offense battery domestic violence case. Even if the person goes through this specialized court, any future enhancement will still

apply should the defendant offend again. I am going to take this opportunity to invite you to observe a day in domestic violence court. If you are interested in observing domestic violence court and meeting with a prosecutor who handles these cases, please let me know and I will make sure to set that up in the interim.

Chairman Yeager:
Let us take the next caller, please.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are also in support of this measure. We would like to thank Assemblywoman Nguyen for bringing this forward and for bringing a new option for courts to use in order to combat this problem that we have in the state.

Chairman Yeager:
Let us take the next caller in support.

Marc Schifalacqua, Senior Assistant City Attorney-Criminal, City of Henderson:
We are testifying this morning in support of A.B. 339. We believe that section 10 appropriately restores the executive discretion regarding domestic violence cases. This is especially important since these cases, as you heard a few weeks ago, are now entitled to a jury trial. This will help ensure that the appropriate cases are proceeding to a jury trial. Also, as amended, sections 4 and 5 do represent a fair balance between victim and defendant rights in reference to treatment programs. We fully support the addition of a statutory mechanism for a victim to clearly voice his or her concerns to a court before a defendant can be considered for the program, as well as excluding repeat offenders or those who proceed to trial from assignment to the program.

Chairman Yeager:
Let us go to the next caller in support.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
The Nevada Attorneys for Criminal Justice support A.B. 339 because it is a win-win situation. It is a win for offenders, who can get the treatment they need to stop offending, and it is a win for the victims in the community because, again, people get treatment and are less likely to reoffend. I think you can see that by the fact that we have both defense attorneys and prosecutors testifying about why this is a good reform. With that, I would urge the Committee to pass it.

Chairman Yeager:
Let us take the next caller in support.

Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence:

I am here to speak in support of A.B. 339 as amended. We would like to thank Assemblywoman Nguyen for meeting with us and listening to our concerns. The amendments that have been proposed go a long way in addressing our initial alarms about this bill, though some of my colleagues are not convinced and there may need to be additional amendments. When we first read the bill, before we saw any amendments, we were concerned. It seemed to provide for every court to set up a program to send all first-time offenders through a loosely defined program and have the charges dismissed. Adding to that, the removal of any requirements for prosecutors to prosecute these cases seemed to roll back 40 years of progress in a single bill. As a historical note, that requirement was added to the *Nevada Revised Statutes* (NRS) in 1997 at the request of prosecutors because of concerns that too many cases were being dismissed, not because a drink was spilled, but because of attitudes about domestic violence.

We are certainly the first to admit that all the efforts that we have put into this issue have not solved the problem. We see A.B. 339 as perhaps providing new tools to address the issue at the beginning and to address the co-occurring issues that are not causing the violence but are exacerbating the harm. For example, we know that victims can be prosecuted in cases where in self-defense they caused injury, which is not identified as self-defense, for in frustration or fear they lash out and are the ones that are arrested. These would be the kinds of defendants who are particularly suited for this type of court. What this cannot be is a free pass, or a get-out-of-jail-free card, or a work-around the ban against possessing a firearm if convicted of domestic violence. We completely agree with Assemblywoman Nguyen that there needs to be some process for data collection and evaluation that can tell us if this works. Again, we are in support of this bill as amended.

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

Thank you for allowing me to speak today on behalf of this extremely important bill. We appreciate Assemblywoman Nguyen for all of her hard work with creating an enabling statute for this specialty court. Reno Municipal Court currently allows for those charged with domestic violence to participate in their veterans' court program. This has been extremely successful, where I can say that I have several clients who are participating in that program and are doing exceptionally well. It is connecting them to services. It is connecting them to opportunities. It is allowing them to obtain employment, housing, and the necessary medical attention they need in order to succeed. The Second Judicial District Court specialty courts have a very high success rate. From 2018 to 2019, they indicated they had an over 70 percent completion rate, at least for veterans' court. Even individuals who started in specialty court programs and who did not finish still benefitted from having been in the program, according to the Second Judicial District Court's study in 2018. Even if an individual failed to complete a specialty court program, the fact that they participated in a specialty court program substantially reduced the likelihood that an individual would commit another offense. With domestic battery, this is extremely important. As you heard Mr. Piro and me testify over and over, we need to do something in order to address our offenders for

domestic battery to ensure that we are no longer in the top tiers with these issues. We truly believe this is one of the ways that we can successfully reduce our domestic battery cases: by offering courts opportunities to ensure that we are providing offenders with the appropriate treatment.

Chairman Yeager:
Let us take the next caller in support. [There was no one.] I will now open up for testimony in opposition of A.B. 339. Is there anybody who would like to offer testimony in opposition to the bill?

Melissa Exline, representing the Nevada Justice Association:
I am here in opposition, but I am looking forward to working with Assemblywoman Nguyen and continuing efforts to make acceptable modifications as we proceed down this legislative path. Our concerns echo Assemblywoman Cohen. Assembly Bill 339 could have unintended consequences that do more harm than good to Nevada families. Specifically, this includes erasing or wiping out the underlying criminal act that led to the domestic violence charge. While it is meritorious to look at addressing criminal issues that help the person charged when appropriate, we cannot forget about other legal implications and the further harm to a domestic violence victim.

I had the opportunity to look at the amendment proposed by Assemblywoman Nguyen and it helps, but it does not completely solve the concerns for protection of children and spouses from domestic violence as it relates to a custody action. In a custody dispute, the court must consider the best interests of the children as factors. And one obviously big factor to weigh is whether there was an act of domestic violence by a parent. If this allegation of domestic violence is raised in domestic court, it can strongly impact a custody decision. It is important to know if a party admitted to or was adjudicated to in a related criminal case by the offending parent. It directly impacts a custody matter, and it eases the generally hard to prove factual situation. The accused party can still respond to the allegation and make their case before the family court, but the burden shifts this issue in family court, and this is very important to consider.

The way A.B. 339 is written, the nonoffending parent would be in an odd situation because the criminal actions are wiped clean legally. Even with the seven-year period before sealing applies, many family relationships and custody disputes have ongoing returns to address custody later on. There can be multiple interactions with police. A seal or dismissal in this way could undermine the presumption statutes that we look to in family court and that the offender engaged in the act of domestic violence and then hamstrung the victim down the road. Essentially, it could blind the family court judge from access to very important information. The act of domestic violence in considerations regarding whether this took place should not be subject to legal erasure, and thus victimizing the nonoffending parent again.

The proposed amendments are a good start. We are thankful to Assemblywoman Nguyen for being open-minded on this issue. But we were looking at the issue of examples of how the

court gets information in other cases. For example, in abuse and neglect cases governed by NRS Chapter 432B, it is the ability of the court to keep records confidential, but we do not act like the underlying act never took place, or fully wipe it clean from legal existence. Indeed, the family court judge appropriately may still learn that there has been an allegation regarding child abuse and neglect and subject to caution to protect the accused. The record is available with appropriate dissemination to the courts in certain circumstances. The key here that we want to focus on is to make sure the family court judges have the information in front of them as the triers of facts for a full and fair adjudication. Looking at the examples that were talked about, the drink on the head versus punching your spouse in the face, this continuum of action and being appropriate in how that is considered, we just want to make sure that the information gets to the trier of facts, because that person can make the right decision when custody is at stake. I personally represented parents on both sides of this issue, like those who had been accused and denied things, or those who accused someone and had been a victim of things. I can understand the idea of carving out a specialty court for this area, however, we would like to see changes that would pull from NRS 432B that allow the judge to make the call to put the information in front of the court in evidence appropriately.

Chairman Yeager:
Let us take the next caller in opposition.

Liz Ortenburger, CEO, SafeNest:
As the largest provider in the state of domestic violence services, we are unique in that we are the only provider that works with survivors, batterers, and children who are affected by this epidemic. We see this from all sides. We stand in opposition to A.B. 339 for this reason. Creating a subgroup of batterers' treatment that the courts can implement without the oversight of already existing administrative code is contrary to what we have been working with, not only with the Attorney General's Office, but also including extensive research that is currently happening with the University of Nevada, Reno. In addition, restorative justice is being studied by the University of Nevada, Las Vegas, in the domestic violence context, and none of that is included in this bill either. We stand ready to work with Assemblywoman Nguyen to correct this bill, but at no time should firearms be put back in the hands of domestic violence batterers simply because they have completed classes. We stand in strong opposition to A.B. 339.

Chairman Yeager:
Let us go to any additional callers. [There was no one.] I will now close opposition testimony and open it for neutral testimony. Is there anybody who would like to testify in neutral this morning?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here in neutral today in the spirit of optimism on A.B. 339. As Assemblywoman Nguyen said, not all domestic violence situations are the same, and domestic violence calls are one of the most dangerous calls that our officers go on. We are bound by state law to arrest the primary aggressor when the primary aggressor can be determined. About

20 percent of our annual homicides are domestic violence-related, so this is a very serious issue in a very serious area. We definitely want people to get the help they need, and we support programs that provide treatment and programs that end domestic violence, but we also want to ensure that potential abusers are not getting two bites of the apple, so to speak, and we want to ensure that victims are protected. I just saw the amendments this morning and I am still evaluating them. I have had a conversation with the district attorney's office, which has provided me a level of comfort to come in neutral today in the hopes that we can have further dialogue in this important area.

Chairman Yeager:
Are there any additional callers in neutral? [There was no one.] I will close neutral testimony. I will hand it back to Assemblywoman Nguyen for any concluding remarks on A.B. 339.

Assemblywoman Nguyen:
I will continue to work on any proposed amendments and continue to have those conversations with stakeholders in order to get this bill correct. I appreciate your support of A.B. 339.

Chairman Yeager:
I will now close the hearing on A.B. 339. Committee members, that takes us to the next item on our agenda, which is public comment. [Public comment protocol was explained.] Can we go to the public comment line to see if there is anybody there who would like to give public comment this morning? [There was no one.] I will now close public comment.

Before we talk about the rest of the week, is there anything else from Committee members this morning? [There was nothing.] I do have good news. We have a meeting tomorrow, but we are changing the start time to 9 a.m., so you will get an extra hour. We have a work session tomorrow and we are going to start the work session at 9 a.m. We will get that document out to all of you sometime this afternoon, hopefully, to take a look at those bills. There should not be any surprises there in terms of amendments, just the amendments that were talked about in the various bill hearings. Then we do have a bill hearing tomorrow as well, so we will take that after we do the work session. Even though we are starting at 9 a.m., I will ask that everyone be here promptly at 9 a.m. so we can get our work session done in a timely manner.

Then, for the rest of the week, we are still looking at what those agendas might look like as bills come in on the floor, so I do not have an update for Thursday and Friday. We will most likely have Judiciary Committee meetings; I just do not know what time and what bills at this point. This meeting is adjourned [at 10:05 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jordan Carlson
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 conceptual amendment to Assembly Bill 318, dated March 23, 2021, submitted by Alan Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada; and Mark Knobel, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada.

Exhibit D is a document titled "Executive Summary AB 318," dated March 23, 2021, submitted by Alan Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada; and Mark Knobel, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada, regarding Assembly Bill 318.

Exhibit E is a proposed amendment to Assembly Bill 339, submitted by Assemblywoman Rochelle T. Nguyen, Assembly District No. 10.