MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
April 21, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:03 a.m. on Wednesday, April 21, 2021, Online and in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/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 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:

Assemblywoman Alexis Hansen

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senate District No. 6

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Border Hoffecker, Committee Manager
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Melissa A. Saragosa, Chief Judge, Las Vegas Justice Court
John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Amanda Silva, Program Specialist Supervisor, Nevada Criminal Justice Information System Compliance Unit, Records, Communications and Compliance Division, Department of Public Safety
Charlie Shepard, State President, AARP Nevada
Daniel Heenan, Assistant Fire Chief, Clark County Fire Department
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing Nevada District Attorneys Association
Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chairman Yeager:
[Roll was taken. Committee rules and protocol were explained.] We will now move to our agenda. We will take the bills in order as listed on the agenda. I will open the hearing on Senate Bill 7 (1st Reprint).

Senate Bill 7 (1st Reprint): Makes various changes to the jurisdiction of certain courts relating to certain orders for protection where the adverse party is a child under 18 years of age. (BDR 1-391)

Melissa A. Saragosa, Chief Judge, Las Vegas Justice Court:
I am here to present Senate Bill 7 (1st Reprint). Existing law provides for several different types of protective orders. Some of those fall within the jurisdiction of the justice courts: for example, protective orders against stalking and harassment, harassment in the workplace, and orders for the protection of minors. Others, depending upon population, fall within the district court's jurisdiction: for example, protection against domestic violence and protection against high-risk behavior, though that is not an exhaustive list.

This particular bill addresses a gap the court feels needs clarity. While our existing laws address the subject matter of the different types of protection orders, it does not address the personal jurisdiction over the adverse party against whom the protection order is sought, particularly juveniles. Though not a large number of cases by any means, the law is not clear on which court should handle the application for protection order where the adverse party is a juvenile. This bill is intended to clarify that the jurisdiction should lie with the district court, as that court should have exclusive jurisdiction over juveniles.

One of the issues that arises is that we want our customers to know where to file that particular application. In general, the violation of a protection order will be handled as either a new criminal matter, which would be handled as a juvenile delinquency matter, or the court could handle that as a matter of contempt. Because contempt carries the possibility of jail time, we feel the law should be clear that these matters fall within the district court jurisdiction rather than the justice court since the justice court does not handle juvenile matters, especially when the possibility of jail time is presented.

Section 1 of the bill makes this jurisdictional clarification. It allows the district court to appoint counsel for a juvenile adverse party. It provides for the manner of service of an order of protection. It also provides for the automatic sealing of a protection order record that does not exist in the justice court type of protection order. Should the adverse party wish to seal the record prior to the automatic date identified in this bill, the age of 21, there already exists a procedure for the adverse party to request sealing prior to that date under *Nevada Revised Statutes* (NRS) 62H.130.

Section 2 clarifies the justice court's jurisdiction by exempting cases where the adverse party is under the age of 18. Section 3 of the bill sets forth the inapplicability of the provisions to existing protection orders.

That concludes my presentation and overview of the bill.

Chairman Yeager:
Mr. McCormick, did you have any remarks at this time, or do you want to go to questions?

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:
I do not have any specific remarks at this point. I am happy to answer questions.

Chairman Yeager:
Does the Committee have any questions?

Assemblywoman Bilbray-Axelrod:
What happens now? I am imagining, since it is not in statute, that people go to different places. Is it different in different counties? What does it look like now?

Judge Saragosa:
You are right. It happens differently in all jurisdictions. In the south, we encountered a scenario where we received a case with a juvenile adverse party. One of our judges wrote an order transferring the order to the juvenile division of the district court, but it was sent back to us saying they do not have jurisdiction over juveniles. Then, the juvenile court claims they do not have jurisdiction over this matter because it is a stalking and harassment temporary protection order (TPO). There is a lot of confusion. The judiciary does not know where the Legislature wants those cases to lie. We have now had months of talking this out. There was a similar bill last session that we needed to tweak a bit. We brought it back this session after discussing it with the juvenile delinquency judges within the Eighth Judicial District Court and the Second Judicial District Court. Across the judiciary, we feel this is an appropriate resolution to the issue.

Assemblywoman Marzola:
Regarding section 1, subsection 2, where it states, "The district court may, at its discretion, appoint counsel for a child . . . ," I wonder why it is not "shall" to make it mandatory, especially since we are talking about a minor.

John McCormick:
I stole this language from Ohio, and that is how they have it. We do not have a particularly strong opinion either way. The court has the authority to appoint counsel as they see fit. Since this is not a delinquency proceeding, the actual petition for the protection order is a civil proceeding, so there is no requirement under *Gideon* [*Gideon v. Wainwright* 372 U.S. 335 (1963)] that counsel be appointed. We left it permissive in the statute. There is also some concern from the public defenders' offices about this. It is my understanding that the Washoe County and Clark County police departments do not necessarily agree on this, so we thought it best to leave it permissive at this point.

Assemblywoman Bilbray-Axelrod:
What happens if a child shows up without an attorney at that point?

John McCormick:
If the child shows up at a hearing without counsel, they would be on their own without appointed counsel. Hopefully, they would have a parent or guardian with them. Generally, in that circumstance, the courts would default to appointing counsel for a child.

Assemblywoman Bilbray-Axelrod:
Do you think that wording could be changed from "may" to "shall"? Can we make it mandatory for an attorney to be appointed in those cases?

John McCormick:
I do not think the judiciary would necessarily have an issue with that. I think the concern would come from the public defenders' offices.

Chairman Yeager:
Before I go to the next question, since it is on this line of questioning, I would like to ask something. How many cases are we talking about where we have minors involved with orders for protection? Are we talking a handful or hundreds or thousands? Judge Saragosa is in Clark County where the bulk of the population is, but if you have some insight, that would help us on the counsel question.

Judge Saragosa:
It is a small number. We are just talking a handful. Previously, we did not have a data mechanism in our case management system to pinpoint those. Through conversations with various judges, I have attempted to extract that information. I would say it is easily less than ten a year.

John McCormick:
I was going to say that it is, anecdotally, a small number across the state. In rural counties, it is an issue because there are so few, and there is no statutory guidance on who should do it. It happens so rarely that no one knows what to do.

Assemblywoman Nguyen:
This was brought in 2019, and it is clearly a large topic that has lots of stakeholders involved. It gets complicated very quickly. I agree with the idea that these children need counsel in these situations. From talking with the judges, some of these cases are kids seeking TPOs against other kids in certain circumstances. Is that correct?

Judge Saragosa:
Yes, that is correct.

Assemblywoman Nguyen:
Sometimes it is parents seeking TPOs against a friend's child from a school. I have seen those situations in talking with judges as well.

Judge Saragosa:
There is a specific mechanism—and this is a very unique area—in statute that allows an adult, parent, or guardian to file an application for the protection of a minor. That statute states that it must be filed against an adverse party who is over the age of 18. That gap is there as well. This bill covers that situation, since it makes it clear that it would go to the district court if the adverse party were under 18. The justice court does not currently hear those cases. If parents are seeking protection of their minor child against another minor child, they could not file in justice court because of that statute.

Assemblywoman Nguyen:
The parent can now file that TPO on behalf of their minor child. Is that correct?

Judge Saragosa:
Yes, that is correct.

Assemblywoman Nguyen:
This was an issue, but I do not know if it was clarified. As it currently stands, it is an interesting situation. If I get a TPO against another child on behalf of my child, if it is granted, whose record is it on? Does it go on the guardian's or parent's record? Does it look like the parent has a TPO on their record? How does that work?

John McCormick:
Currently, there is no specific statute or grant of authority to issue a protection order against a person under 18. In that scenario, the existing mechanism is the protection of minors TPO where the parent of the protected child would apply in justice court against the parent of the other party. That is the genesis of this bill. Since the justice court cannot issue a protection order against a minor, it would have to be against the guardian or parent. That becomes problematic. When a parent applies for an order on behalf of their child, the order would be issued against the parent. Depending on the family dynamics, it could be problematic for the parent.

Assemblywoman González:
In section 3, where it lists the protection orders—"domestic violence, harassment in the workplace, high-risk behavior, sexual assault, or stalking"—does it say these are the only instances in which a protection order can be used for someone under 18?

John McCormick:
Those are the current protection orders listed in statute. This bill clarifies that if a person is seeking one of those types of protection orders against a minor, it would be heard by district court. Other injunctive relief orders could be sought through the court, but those are the authorized protection orders we currently have.

Assemblywoman González:
What happens if a child violates this type of protection order?

John McCormick:
If a child violates this type of order, it is currently contemplated in NRS Title 5, Chapters 62A and 62B, et cetera. When dealing with juvenile justice, the juvenile court would have jurisdiction, since it would become a delinquency matter. If a child who violated an order were an adult, it would be a criminal matter; therefore, it becomes a delinquency for the juvenile court to handle.

Assemblyman O'Neill:
If a juvenile is emancipated, who has jurisdiction? Does the child stay in juvenile court or does the child go to adult court as an emancipated person?

John McCormick:
Honestly, I am not sure. I do not know enough about emancipation to know if that individual is treated as an adult for legal purposes after they are emancipated. I would imagine it would be the regular jurisdiction.

Judge Saragosa:
I wish I did have a better answer. I am not clear on that either because justice court does not have the original and exclusive jurisdiction over criminal acts committed by minors. I know they have a procedure whereby the case is evaluated and, based on the juvenile's record as well as the potential charged offense, the juvenile court may elect to treat them as an adult. Maybe that is one of the factors they consider. I am not aware of any specific statute that says, just because a child chooses to be emancipated, then commits a criminal act, they would automatically be treated as an adult.

John McCormick:
I pulled up the statute, and I believe that would be governed by NRS Chapters 129 and 130. It appears that the person would still be considered a juvenile delinquent under NRS Title 5 if they are emancipated and under the age of 18, unless otherwise provided by the court's decree emancipating them.

Assemblyman O'Neill:
I might not have been clear. For the TPO, does an emancipated juvenile go before the juvenile court or the justice court if they want to get a TPO against another juvenile? Which court do they go to?

John McCormick:
In light of NRS 129.130, it appears that they would be individual cases for emancipated minors. Based on the statute, it appears they would still go to district court to ask for a protection order against an emancipated individual who is 18 or younger, unless the specific decree emancipating that minor said otherwise.

Assemblyman O'Neill:
To get a TPO on a juvenile, you go to juvenile court. If this legislation passes, you will go to juvenile court because the individual is 17 years old. When they become an adult, do you go to justice court to get a continuation of your TPO? It seems right to me since they are now under adult statutes. You should go to justice court for review and certification. Or are you saying they stay under the juvenile court system even though they are an adult?

John McCormick:
In section 1, subsection 5 of this bill, it provides that, "If the district court issues an order listed in subsection 1 and the adverse party reaches the age of 18 years while the order is still in effect, the order remains effective against the adverse party until the order expires or is dissolved by the district court." In this specific issue, where it was issued against a 17-year-old who then turns 18, the order of the district court would remain in effect until it expires or is otherwise dissolved for continuity. The protected party would not need to monitor the birthday of the adverse party. If they sought another order after the expiration of this order, as provided in statute, they would then go to the justice court or the district court, depending on which county they live in and what type of order they are looking for.

Assemblywoman Summers-Armstrong:
My question has been asked and answered.

Assemblywoman Kasama:
With this language, the TPO would be served against the child and not the parent anymore. That was the problem before. Is that correct?

John McCormick:
Yes. In the previous example, if it were under the specific statutory provision that allows justice courts to issue an order for the protection of a minor, that cannot be issued against a minor, so it would go against the parent. This bill seeks to clarify that. We provide that, if a district court issues a protection order against a minor, it must be served against the minor as well as the parent or guardian, so everyone receives adequate service.

Assemblywoman Kasama:
Back to section 1, subsection 2, where we had the discussion regarding the district court "may" or "shall," it seems to me that, if a parent and a child came in to do a TPO, we do not have to appoint counsel. If we had "shall," it would force counsel to be there. If we leave it at "may," it can be the parent and child who ask for the TPO, and it can be handled that way. Is that correct?

John McCormick:
The provision regarding the appointment of counsel only applies to the adverse party. The juvenile against whom the order is sought would have no requirement for appointed counsel, nor would the potential protected party or guardian need counsel. That provision only refers to the potential adverse party.

Assemblywoman Kasama:
If the adverse party has a parent with them, they may be able to handle it. If we have "shall" they would need to have legal counsel. Is that correct?

John McCormick:
I believe it would be if the language were changed to "shall." The court would then appoint counsel for the minor adverse party regardless if a parent or guardian were there. If it were "may," as it is currently written, the court would make the determination whether to appoint counsel for that potential minor adverse party.

Assemblywoman Cohen:
My question is about One Family/One Judge. Would this invoke One Family/One Judge? If there is a TPO for a minor, and it goes to family court, you now have one family and one judge. Five years later when the parents have a custody issue, are we stuck under that or would they be required to go before that same judge? I know that is a local court rule issue, but I want to ensure we are not creating an unintended consequence that we are not thinking of.

John McCormick:
Since it is a local issue, I think this bill is mum on that. The specific court could make the determination, as far as family court and the age of the family court. In the rurals, it is a good chance that it will be the same judge regardless. We did not contemplate the One Family/One Judge project here. That would be made by the local jurisdiction.

Judge Saragosa:
I would like to point out that section 1, subsection 7, authorizes the district court to appoint a master to conduct these proceedings. In general—at least in the south—most of the protection order proceedings, even when they are domestic-violence related, are handled by a master and not by the judge who would preside over any issues related to child custody or divorce. Likewise, if there were a juvenile delinquency matter where there was a criminal charge brought against a juvenile adverse party for violating this order, that would go before the judge who handles juvenile delinquency matters, which may or may not be a master. I am not sure that this bill in its current form—since it does not always involve family matters and, generally speaking, the applicant is someone outside of the family—would necessarily be driven by this bill.

Assemblywoman Cohen:
Even with the hearing masters, there is still a district court judge who is considered the judge on the case. If you have a TPO, and then a custody matter opens a new case, you end up in the same department. I would ask, if this bill goes forward, to do an amendment that makes it clear that it is not necessarily required. I do not want to have practitioners and families have issues in the future that are unintended. I want to make it clear that that is not what this does, so we do not need to rewrite Rule 5 of the Eighth Judicial District Court Rules. We have been working on that for a couple of years and have finally gotten to the place where some of those sections are done.

Assemblywoman González:
I want to clarify that we do not know what the penalties are if a juvenile violates a TPO. Is that in statute?

John McCormick:
The penalties for those acts, if they were committed by an adult, are provided in statute. If an offense is committed by a juvenile and is considered by the juvenile court under Title 5, it would not be a criminal act, but it would be a delinquent act. The court would consider that matter as it would any other delinquent act.

Assemblywoman González:
We are saying this is a delinquent act, since it would be a criminal act if you were an adult. Right?

John McCormick:
Yes. In Title 5, which is the juvenile justice title, there are two types of juvenile offensives contemplated. One is a status offense, which is an offense because of the individual's age.

We call that "a child in need of supervision." Then, we have delinquent acts that would be criminal acts but for the age of the individual. Violation of these orders is considered a crime in the adult world, but they are delinquent acts since it is a minor committing the act.

Assemblywoman González:
This bill states it would be a delinquent act. Are you saying to refer to Title 5?

John McCormick:
Section 1, subsection 4, says, "The juvenile court has exclusive jurisdiction over any action in which it is alleged that a child who is the adverse party in an order listed in subsection 1 has committed a delinquent act by violating a condition set forth in the order." It is a delinquent act in this bill because, if it were committed by an adult, it would be a criminal act.

Assemblywoman González:
Would the courts be open to changing this? I worry when we continue to criminalize juveniles. I get worried that, when they violate the TPO and it is in criminal court, it does not necessarily translate over to juvenile court. Is there any openness to changing from a delinquent act to a status offense? Do you take the different types of violations into consideration?

John McCormick:
Whether a violation of the order is considered "a child in need of supervision" or "a delinquent act" is a policy decision for the Legislature to determine. The reason it is a delinquent act in this bill is because it is a delinquent act under our current statutory scheme. In this bill, we did not seek to change any aspect of juvenile court aside from granting specific jurisdiction for these orders to the district court.

Chairman Yeager:
Before we take testimony, I have one last question. Under the current law, the testimony was that the protection order is actually issued against the parent because you are not authorized to issue one against a minor. Currently, if the order is issued against the parent, but the minor violates the order, is the minor held accountable in some way? Is it the parent who must come forward to take the heat and explain what happened? Please talk about how that works right now, so we can get a sense of what happens if we do not pass this bill and what the status quo is.

Judge Saragosa:
That is one of the issues. It is different across the state. When we get a TPO application and send it to juvenile court but get it back, we issue the order in the name of the juvenile. We have jurisdiction over applications for protection orders against stalking and harassment, but there is no specific age limit on a civil TPO action. We would have to issue the TPO against the juveniles and treat them like adults. The rub is the uncomfortable nature of a justice court judge trying to handle this juvenile matter. In our court, we have never issued the protection

order against the parent, but I know there are different ways that other jurisdictions have handled it across the state.

I would like to clarify one point that I believe I misspoke on. Assemblywoman Nguyen asked whether this bill would allow a parent of a minor to seek a protection order for the protection of a child against another minor. I originally said it does, but I slightly misspoke. It will in all protection orders against sexual assault, protection orders against stalking and harassment, and all other types except those protection orders for children. The reason is, under NRS 33.400, subsection 1, it continues to state, "The parent or guardian of a child may petition any court of competent jurisdiction on behalf of the child for a temporary or extended order against a person who is 18 years of age or older and who the parent or guardian reasonably believes committed or is committing a crime." Then, it lists the nature of the offenses. That is the unique part of that statute. The current requirement reads that it must be filed against a person who is 18 years of age or older. There would never be an occasion to file against a juvenile in juvenile court, although a parent or guardian seeking protection for their child against another minor who has committed a sexual assault, domestic violence, harassment or stalking, or high-risk behavior would still be able to seek one in juvenile court against a juvenile.

John McCormick:
As Judge Saragosa indicated, we are seeking to fill the gap in statute. In a jurisdiction where a court lacks guidance on issuing an order against the parent of another child and that thinks it is statutorily permissible, it would depend on the violation. Most courts would be reticent to impose sanctions on a parent for the behavior of a child who violates an order.

Chairman Yeager:
Judge Saragosa has to step out soon, but Mr. McCormick can handle any concluding remarks. In the interest of time, we will take testimony on the bill, then come back for any concluding remarks. I will open testimony in support of Senate Bill 7 (1st Reprint). Is there anyone who would like to testify in support? [There was no one.] I will close support testimony. Is there anyone who would like to testify in opposition?

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
Due to the rules of the Committee, I am testifying in opposition today. I want to thank the sponsor for speaking with Mr. Piro and me on several occasions regarding this very important bill. We understand the need for uniformity and to ensure there is accountability. I provided an amendment [Exhibit C]. Our first concern is regarding the appointment of counsel. We believe all children who are involved in the TPO process who are adverse parties should be required to have counsel. As you heard, these are potentially criminal matters that are delinquent matters before the court. If there is any form of violation, they could be subjected to going to juvenile hall, so we believe it is extremely important to have counsel appointed for those adverse parties. In the amendment, I specified it would either be when a hearing occurs or upon the issuance of the protection order. That would mean, upon issuance of a TPO, counsel would be appointed so that counsel could speak to the individuals

and let them know what the requirements are and how to ensure they do not violate the order, so there would be no need to have it become a delinquent act. We believe this will, hopefully, help ensure there are no collateral consequences from that issuance.

I would note that, although this is a procedural change to clarify who has jurisdiction, we have a lot of concerns regarding having juveniles involved in TPOs, specifically with having the applicant an invited contact. That is one of the issues we currently see with adults regarding TPOs and extended protective orders in which the applicant is the one to initiate contact, then it is the adverse party who is held accountable for that contact if they continue after the issuance of the TPO. That could be a violation if the adverse party responds. In the age of social media, we have concerns.

For amendments 2 and 3, we have concerns about this information staying on a child's record until the age of 21. We believe it should be 18 unless it is resolved sooner. The other proposed amendment would require the information to be sealed earlier upon the expiration of the order. For example, if it is a temporary order that does not get extended, it should be automatically sealed at that time and taken off the child's record. The third amendment would allow for a process where the child could file a petition to ensure the information is not in the Central Repository for Nevada Records of Criminal History within the Records, Communications and Compliance Division of the Department of Public Safety. We believe these amendments are necessary to ensure our children are protected.

Chairman Yeager:
Is there anyone else who would like to testify in opposition? [There was no one.] I will close opposition testimony. I will open neutral testimony if there is anyone who would like to testify.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I heard some of the questions regarding "may" and "shall" as far as appointing counsel. I know this is a policy committee, and we agree with the policy of ensuring any kid pulled into the juvenile justice system is appointed an attorney. The thing that I will make the Committee aware of is that it will probably trigger an unsolicited fiscal note from Clark County. Anecdotally, the justice court says they do not think it will increase caseloads, but they have not been keeping data. That is problematic since we never have criminal justice data when we need it. This will increase court appearances and caseloads for our attorneys for juveniles. I am more than happy to do that with extra attorneys.

Chairman Yeager:
Is there anyone else who would like to testify in the neutral position? [There was no one.] I will close neutral testimony and hand it back to our presenters for concluding remarks.

John McCormick:
Judge Saragosa had to leave for another obligation, but I would like to thank the Committee for hearing this bill. I believe Ms. Bertschy's amendments are policy questions. We are not

opposed to them if the Committee were to choose to adopt them. Our only concern would be making the sealing age consistent. In her amendment it is 18, but currently it is 21. I understand the Legislature is processing a bill that will lower that to age 18. Our concern is that the sealing age be the same for all juvenile records.

Chairman Yeager:
I think we passed the bill out on the floor. We will monitor these things going forward. The bills on our side have to go through the Senate. I appreciate your willingness to work with the stakeholders. I will close the hearing on Senate Bill 7 (1st Reprint). We will move to our second bill on the agenda. I will open the hearing on Senate Bill 19 (1st Reprint).

Senate Bill 19 (1st Reprint): Establishes provisions authorizing certain entities to obtain information relating to the records of criminal history of certain persons responsible for the safety and well-being of children, elderly persons or persons with disabilities. (BDR 14-336)

Amanda Silva, Program Specialist Supervisor, Nevada Criminal Justice Information System Compliance Unit, Records, Communications and Compliance Division, Department of Public Safety:
I am here today to introduce Senate Bill 19 (1st Reprint) to the Committee. The Records, Communications and Compliance Division houses the Central Repository for Nevada Records of Criminal History, which maintains statewide records of Nevada arrests and dispositions. It is also responsible for processing fingerprint-based background checks for civil purposes, to include licensing, employment, and volunteers [Exhibit D].

Section 1 of this bill is proposed in an effort to ensure the continuation of fingerprint-based background checks on individuals working and/or volunteering to work with our state's most vulnerable population, which is children, the elderly, and individuals with disabilities. For an entity to have access to state and Federal Bureau of Investigation (FBI) criminal history record information, a federal or legislative authority must exist specifying this access. Currently, background checks for this population are being conducted under the federal authority of the National Child Protection Act as amended by the Volunteers for Children Act, also known as NCPA/VCA.

It is important to note that this federal authority can only be utilized in the absence of a state statutory authority. This bill does not give fingerprinting authority, but rather ensures that Nevada does not lose access to the federal fingerprint authority. This authority bridges the gap that allows access to fingerprint-based background checks to agencies working with vulnerable populations which do not otherwise qualify for a state statutory authority.

Until 2019, the FBI allowed states to utilize this federal authority in the absence of a state statutory authority. In January of 2019, the FBI issued notification to all states regarding amendments to the NCPA/VCA, which now require states to have a state statute that authorizes the national background checks of covered individuals to continue to utilize the NCPA/VCA authority. The Records, Communications and Compliance Division currently

has 333 active accounts that utilize the NCPA/VCA. In 2019, the division received 13,256 NCPA/VCA fingerprint submissions, and in 2020, we received 8,821. Should Nevada lose its authority to conduct national background checks utilizing the NCPA/VCA due to lack of state statutory authority—if this bill is not passed—those account holders would be adversely impacted since our office would be required to close the accounts due to lack of fingerprinting authority, thus placing our vulnerable populations at risk. Therefore, this bill seeks to enact state statutory authority to allow Nevada to continue to utilize the NCPA/VCA pursuant to U.S. Congress's Public Law 103-209. In summary, this bill will not change the way we process these background checks, but rather will allow Nevada to continue utilizing this federal authority to protect Nevada's most vulnerable population. I urge your support.

Chairman Yeager:
Let me ask a question to make sure I understand what we are doing. The way I understand it now is that we are allowed to conduct these background checks when we are dealing with folks who are working with children, the elderly, or people with disabilities. If we do not pass this bill, there is a chance that, as a state, we would no longer be able to do that type of background check because the federal government has said we would not be able to do them unless you put it into state statute. Do I have that correct?

Amanda Silva:
That is correct.

Chairman Yeager:
Are we at the point right now where we cannot do the background checks because we do not have it in statute, or is the concern that, in the future, that could happen?

Amanda Silva:
We are currently conducting these background checks. You are correct that the concern is that we would not have access to that authority in the future.

Assemblywoman Krasner:
Would this apply only to convictions? Would it also apply to arrests, which might include bad arrests, or arrests for wrongful reasons?

Amanda Silva:
It does not change what we are currently providing, so it includes both of those.

Assemblywoman Krasner:
I thought our system of justice was innocent until proven guilty. A mere arrest is not guilty; a conviction is. I have concerns with the bill.

Chairman Yeager:
Do we have additional questions from the Committee members?

Assemblywoman Summers-Armstrong:
This goes back to the previous presentation when we were talking about the collection of data for the young people. Do you collect the data that they were speaking of previously for juvenile arrests?

Amanda Silva:
No, we do not include juvenile records in that.

Assemblyman Wheeler:
I see the two-thirds vote on this. I do not see a fee. Is there a fee included in this, and is it higher than the fee we are currently charging?

Amanda Silva:
There is currently a fee charged. It is not being changed in this bill.

Chairman Yeager:
Additional questions? We will take testimony on the bill and then come back for concluding remarks. I will open testimony in support of Senate Bill 19 (1st Reprint). Is there anyone who would like to testify in support?

Charlie Shepard, State President, AARP Nevada:
A society is judged by how it treats its elders and those who are most vulnerable. It is critical that businesses or organizations that provide care or care placement services to children, older adults, and persons with disabilities are able to do thorough background checks on their employees, volunteers, and persons applying to be an employee or a volunteer to protect the clients they serve. That is what this bill does. It establishes the provisions that authorize these businesses or organizations to obtain records of criminal history for screening employees and volunteers. We must protect those who are most vulnerable and prevent any mistreatment or abuse. AARP Nevada, on behalf of our 345,000 members across the Silver State, supports S.B. 19 (R1). We encourage the Committee to pass this bill to ensure the protection of our children, elders, and persons with disabilities.

Chairman Yeager:
Is there anyone else who would like to testify in support? [There was no one.] I will note that there is a letter as an exhibit from Mr. Barry Gold, who is with AARP [Exhibit E]. I will close testimony in support and open testimony in opposition. [There was no one in opposition.] I will close opposition testimony and open neutral testimony if there is anyone who would like to testify in the neutral position. [There was no one.] We will close neutral testimony and turn it over for concluding remarks.

Amanda Silva:
Thank you for your time and support, and we look forward to seeing you in the working session.

Chairman Yeager:
I will close the hearing on Senate Bill 19 (1st Reprint). That moves us to our third and final bill on the agenda. I will open the hearing on Senate Bill 359 (1st Reprint). We have with us Senator Nicole Cannizzaro and Mr. Daniel Heenan, who is the Assistant Fire Chief for Clark County. We are going to give our presenter a moment to pop over here since she is in the middle of committee votes. We now have Senator Cannizzaro with us, who will present the bill.

Senate Bill 359 (1st Reprint): Provides additional penalties if a fire or explosion results from the commission of certain prohibited acts. (BDR 40-1006)

Senator Nicole J. Cannizzaro, Senate District No. 6:
I am here to present Senate Bill 359 (1st Reprint). By way of background information, recent years have seen increased demand for synthetic drugs, and as a result, illegal drug manufacturing is more common than we realize. Illegal drug manufacturing poses a significant law enforcement and emergency response issue in our state. The actual physical dangers are overwhelmingly hazardous.

The chemicals used to produce methamphetamines (meth), for example, are highly explosive and they ignite or explode if mixed or stockpiled inadequately. Oftentimes, when these fires or explosions occur, they can be in residential neighborhoods since that is where it is common for those operations to take place. Fires and explosions present danger to not only the individuals who are creating the drug, but also to anyone in the immediate area, including children, neighbors, and anyone innocently passing by.

This bill is fairly simple. It establishes enhanced penalties for those who are manufacturing or compounding a controlled substance other than marijuana. If a fire or explosion occurs as a result of manufacturing or compounding of a controlled substance, in addition to any other punishments, these individuals are guilty of arson, which would be a category C felony.

I will advise the Committee that the intent of this bill was to create a separate offense for this type of fire or explosion when it does occur. We worked with members from the public defenders' offices on redefining what exactly that penalty would be. That language is reflected in Senate Bill 359 (1st Reprint), which is the category C felony. After some conversations last night, it occurred to us that the language could potentially read simply as an enhancement piece. It is our intention that it is a separate crime. We are working on finessing some of that language. I expect that you will hear from them today. We are still in the process of working through how to make sure it accomplishes exactly what we are trying to accomplish. At the end of the day, this bill's intent is to give us the ability to address the illegal operations of drug labs when a fire or explosion occurs.

Mr. Daniel Heenan will walk us through the reasons this bill is important and necessary.

Daniel Heenan, Assistant Fire Chief, Clark County Fire Department:
I have been in this position for three years. Prior to that, I was a special agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for 30 years. When I was with ATF, I was a certified fire investigator for 20 years and the head of the United States National Response Team that traveled throughout the United States and internationally, assisting in large-scale fires and bombings. That is a bit about my background to understand why I am working with Senator Cannizzaro to bring this legislation forward.

Currently, when an explosion happens in a meth lab or a butane hash oil (BHO) lab, we can only charge malicious endangerment or malicious destruction. These incidents are very dangerous. Anecdotally, we only had a handful of these in the state, maybe 6 to 12, and primarily in the south. If you look at what has happened in Colorado and California over the last few years, the BHO process has resulted in massive explosions in primarily residential areas. What this process entails is taking the scrub marijuana leaves and stems, putting them in PVC pipes, and then pushing butane vapors—which are heavier than air—down through the pipe. In so doing, they extract an oil which has a very high tetrahydrocannabinol (THC) level. The issue is that butane is heavier than air and highly explosive, so when these people are extracting it, it spreads to the floor, and when it hits an obstruction such as a wall, it begins to migrate upwards. If it hits any viable ignition source within the explosive range, such as a spark of a thermostat changing or a pilot light of a water heater, you will have a massive explosion.

We had one last month that happened in a trailer where two adults were extracting marijuana BHO, and in so doing, they blew up their trailer. This resulted in both of them being taken to the University Medical Center of Southern Nevada burn unit. A third adult was also transported to the hospital, which left two children home alone. Fortunately, neighbors were able to take them, and we were able to get the American Red Cross and Child Protective Services involved. This is just one incident of the things that are happening when people try to extract BHO and/or meth illegally.

Chairman Yeager:
We have a couple of questions, but I want to start with the legislative intent. The way the bill reads—obviously, there are two sections to the bill, one that involves controlled substances other than marijuana, and the other involves marijuana. I want to get a sense of how we are to interpret the phrase "a fire or an explosion occurs." From my understanding of the process that Mr. Heenan just talked about in which you use butane, is there always going to be a fire as a result? I am trying to get what you mean by the phrase "fire or explosion" on the legislative record.

Senator Cannizzaro:
I will leave it to Mr. Heenan to talk about the mechanics, but the intent is to get to those activities in which someone is operating illegal and dangerous labs, and there is a fire or explosion that occurs as a result of those activities. With respect to the oil and its explosiveness, I will leave that for Mr. Heenan to answer.

Daniel Heenan:
Two things can happen: there can be a fire without an explosion, or there can be an explosion without a fire, although that is very rare. For an explosion to happen, you must be within the explosive limits of the vapors. We need oxygen and whatever the vapor is. In the case of the incident I am referring to, it is butane. Butane only has a potential explosive limit of 4 percent to 9 percent. Anything less than that is too lean, and anything higher than that is too rich. What also happens in some of this illegal manufacturing—especially illegal marijuana grows where somebody is not following the laws of the land and are doing their own grow—is that these marijuana grows take a substantial amount of energy and power to heat the plants to make them grow. What we are seeing is that people are leasing a house, doing a marijuana grow within the house, and then they are subverting the energy to the meter and going directly into NV Energy's main feed. This causes massive fire hazards where the conductors and the wiring in the house are not designed to have that amount of energy going through it, resulting in a lot of fires.

One of the biggest safety issues with this is when a fire department comes on scene, one of the first things they do is secure the power. They secure the power by going to the main meter box and turning the power to the off position, ensuring while they are fighting the fire with water, they will not have an electrocution. When they see these illegal marijuana grows in which they subverted the system, firefighters who believe they secured the power go into the fire, and they have an energized building unbeknownst to them. There is a danger of electrocution as they stand in water. That is where the fire and/or explosion comes from.

Assemblywoman Bilbray-Axelrod:
I want to make sure I understand the intent of the bill. We already have in statute all these drugs. We know that sometimes meth houses blow up. We have been hearing that for years. The intent of this bill is to add the additional marijuana aspect because, unbeknownst to me, that does happen. We do see explosions happening from very specific oils being extracted. Do I understand the intent correctly?

Senator Cannizzaro:
This bill actually does two things. It pertains to where there are illegal marijuana grows. It also pertains to where there are labs for things like meth. This bill's intent is to get to where those operations are taking place, which is already illegal under Nevada law. We are currently unable to address where a fire or explosion occurs. This adds a penalty when a fire or explosion occurs as a result of operating either one of those. It is not just for marijuana; it is also for illegal marijuana grows where they are extracting butane oil and operating a meth lab where a fire or explosion occurs. We are unable to address that, so we are addressing where a fire or explosion occurs.

Chairman Yeager:
I would assume you are currently unable to charge them under arson because it is not an intentional setting of a fire, but a result of doing something else.

Senator Cannizzaro:
That is correct. This type of activity does not fall under our arson statutes in the way they are currently constructed.

Assemblywoman Nguyen:
When I read the reprint, I was confused as to whether the intention was to have these two new separate charges or if one was to be an enhancement. To confirm, your intention is to work with the language so it does not read like an approved enhancement that you have for after sentencing. Is that correct?

Senator Cannizzaro:
That is correct. That is one of the things I brought up that Mr. Piro flagged for me and that we discussed last evening. That is our intention, so we may need to change some of the language so that it is clearer.

Assemblywoman Nguyen:
Is it your intent to capture people who have full manufacturing or compounding labs? Or is it your intent to include people who are staying in an apartment, a weekly, or a hotel room that are cooking, for lack of a better term, "individualized" drug use? Would these people be included in that? If they were in single suites and using heroin and it started a fire, would that be charged under this as well?

Senator Cannizzaro:
No. That is not what we are trying to get at. We were attempting to amend some of this language, so it was clear. We included the compounding and manufacturing pieces because we want to be clear that this is not for someone who is taking illegal substances inside an apartment and an accident happens. That is not what this is intended for. This is intended to get to what Mr. Heenan was describing. This is for labs that are being operated illegally. That is why you see it in this portion of the *Nevada Revised Statutes*. That is where the outlines for prescribing that these actions are illegal are currently located. It is the intent to get to where the labs are being operated.

Assemblyman Miller:
How often do we see this type of explosion as it relates to marijuana?

Senator Cannizzaro:
I will leave that answer to Mr. Heenan, since he can provide more on statistical data.

Daniel Heenan:
We have not been trying to capture this information. I have reached out to Carson City and Las Vegas Fire and Rescue and other fire departments throughout the state, but no one has a mechanism to capture that information. Anecdotally speaking, we have seen the BHO issue six times in Clark County alone. I am just talking about the Clark County Fire Department. I know the City of Las Vegas has had two, so that is eight. We are anticipating what happened in Colorado and California, where it has really taken over on a massive scale.

They have a much larger issue, even considering they are a larger state. They also legalized marijuana a long time before we did. This is part of the storm front that we were warned about in the law enforcement community, that these BHO labs are a massive issue related to explosions.

Assemblyman Miller:
If this is happening in other states where the grow houses in the neighborhood are going around the electrical company and going directly to the power source, which puts too much load on the electrical system in the house, are we seeing it in our state?

Daniel Heenan:
Yes, we have seen it. The Clark County Fire Department alone has had three of these incidents in the last six months. Someone will lease a house, move in, remove all the furniture if there was any, and put plants throughout the entire house. This can be hundreds to thousands of plants. Each room will have various stages of small newborn plants all the way up to a massive number of large-scale plants. For them to do this, they need all the power and energy. The only ones we know of are the ones we responded to because they caught fire.

Assemblywoman Cohen:
If I am doing something illegal that does not involve drugs, and that illegal act causes an explosion, right now, would it just be a nuisance charge? Are we making this different from other explosions that happen from other illegal acts? Is that what this bill will do?

Senator Cannizzaro:
The first caveat would be that it depends on what the illegal activity might be. Currently, under the arson statutes, if you were to set fire to a dwelling, that still requires the purposeful intention of setting a fire. That is how we typically think of arson and first-degree residential occupied arson. That is what you are referring to. I am not sure of any other illegal acts that might result in a fire, but, in theory, if there was some other illegal act, there is no mechanism to get to those acts other than malicious destruction of property. I cannot think of another illegal act that would cause this. We are adding this language to get to those situations and not for general illegal acts where a fire or explosion occurs. I think there is a significant difference between accidental fires and engaging in an activity that by its nature inherently presents dangerous risks and an enhanced degree of risk of fire or explosion.

You are correct that, under existing law, unless there is something particular about that specific fact pattern, there would not be a mechanism to get at it. There are not many inherently dangerous or explosive types of activities that would result in a fire or explosion.

Daniel Heenan:
If I may add to that, I agree with everything the Senator said. The only caveat that I might add is that there are current charges for possession of a destructive or incendiary device. If someone makes a pipe bomb or something like that, there is a whole separate set of charges. What we are talking about is fuel-air explosions in which the vapors of the material being

utilized combine with air and make an explosive mixture. This would be absent any incendiary device like a Molotov cocktail or an explosive device such as a pipe bomb.

Assemblyman Orentlicher:
When these manufacturers go directly to the energy supply, does NV Energy not get some signal that this is going on to preempt the problem we are talking about?

Daniel Heenan:
No. The way NV Energy tracks it is they have smart meters now. The meter records how much energy a house or business consumes. If you subvert that and do not go through the meter, but directly tap into it, the power company will get a minor spike in the neighborhood in the geographic area that is using a little more power, but it will not be specific to one house. That is why we use meters: to identify issues like this. People in the grow houses have figured that out, and that is why they are tapping into the main system.

Chairman Yeager:
Are there any other questions? I do not see any, so we will take testimony on the bill and then have concluding remarks. I will open it for testimony in support of Senate Bill 359 (1st Reprint). Is there anyone who would like to testify in support?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We have seen a growing trend in butane being used to extract marijuana, and we have had a number of cases where people have been injured because of fires or explosions as a result. We are here in support of the bill.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are in support of Senate Bill 359 (1st Reprint). We want to thank the presenters for bringing the bill.

Chairman Yeager:
Is there anyone else in support? [There was no one.] I will close testimony in support and open for testimony in opposition. Is there anyone who would like to testify in opposition?

Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice:
The Nevada Attorneys for Criminal Justice opposes Senate Bill 359 (1st Reprint). We worked on this in the Senate, but our group is not quite there yet. Our opposition at this point is primarily about this being a strict liability offense instead of requiring the conduct to be reckless or negligent.

In the bill as written, there is no requirement that the defendant have any state of mind regarding the fire. This is a problem because due process typically requires that the defendant intended to commit a crime in order to be convicted of it. That is not present here. The statute requires that a person have the intent to manufacture drugs, but that says nothing

about their intent to start a fire. We believe the bill, as written, would be open to constitutional challenge.

There is also a practical concern. The point of strict liability is to encourage people to take precautions. Strict liability here would allow people to be prosecuted for someone else's mistakes or intentional bad acts. For instance, the bill could incentivize rival gangs to set fires in each other's grow houses or drug manufacturing operations in order to tag their enemies with felony charges.

If the point of the bill is to encourage people to take precautions, this undermines it because it leaves them liable even if they take every precaution. If the point is to punish drug manufacturers for their bad conduct, strict liability also undermines that goal because it punishes them for other people's conduct. Ultimately, we are in opposition of this bill because of the strict liability component. The Senator has addressed some of our concerns previously and we are hopeful that we can keep working on it and move out of opposition.

Chairman Yeager:
Is there anyone else wishing to testify in opposition? [There was no one.] I will close opposition testimony and open neutral testimony.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
I want to thank the Senator for working with my office, as well as Mr. Piro, on the amendment in the Senate. She accepted our amendment, but unfortunately, the amendment ended up confusing the issue more where it is unclear at this point whether it is an enhancement that is determined at sentencing or a separate charge. We look forward to continuing to work with the Majority Leader to ensure the language is correct to match the intent.

Chairman Yeager:
We realize this is a work in progress, and I will offer our legal counsel, Mr. Wilkinson, to help in figuring out how to get the language correct.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I apologize to you, Mr. Wilkinson, because my drafting is pretty bad, but I think we can get the intent to where it needs to be and get this bill over the hump before the end of session.

Chairman Yeager:
Is there anyone else for neutral testimony? [There was no one.] I will close neutral testimony and invite Senator Cannizzaro to come back to the table for concluding remarks.

Senator Cannizzaro:
As you heard from both Ms. Bertschy and Mr. Piro, we are working to make sure this language accomplishes what we are intending to accomplish. I am sure Mr. Wilkinson can help us get it in the right place.

I want to address an item because one of the differences here—and why this currently cannot be charged under arson—is because the intent is where someone is engaging in reckless behavior, where it is negligent, and where it is exceedingly dangerous. This is not simply if you are standing near the house and a fire explosion occurs that you are somehow criminally liable. This is when someone is undertaking actions to engage in a particularly inherently dangerous activity. They have to be part of the manufacturing and compounding of these substances. By doing so, they are creating a situation where a fire or explosion is likely to occur. We are trying to ensure that we are adequately addressing that situation. That is what this bill seeks to do. There are concerns that this is somehow a place where a rival gang or someone else could go around setting fires, thereby tagging folks with felonies. Frankly, I think rival gangs are more likely to pick other types of felonies to tag people with. This is where a person is operating the lab, and as a result of those very dangerous activities, a fire or explosion occurs. That is where we are going.

I am committed to ensuring this language accomplishes what it is intended to accomplish, which is to get at those actions, and to do so in a way that makes sense statutorily. I will continue to work with the stakeholders on making sure the language comes out appropriately.

Chairman Yeager:
I will close the hearing on Senate Bill 359 (1st Reprint). That takes us to our final item on our agenda, which is public comment. As a reminder, public comment is a time to raise matters of a general nature within the jurisdiction of the Assembly Committee on Judiciary. We will open public comment.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am the sister of Thomas Purdy, who was murdered by Reno police, hog-tied for 40-plus minutes, and then asphyxiated while still hog-tied by the Washoe County Sheriff's Office deputies. It has been an emotional week. My family is overjoyed to see George Floyd's family get justice, justice that my family and so many others have been denied. My brother's case never even got reviewed by the district attorney. What does that say? Everyone was outraged about George Floyd, but what about the people in your own state that have been asphyxiated to death. Their deaths are no less than any other's.

I want to bring up something that I find offensive regarding Assembly Bill 268. If you are going to have somebody supporting your bill as an Assemblyperson, you should make sure they know the person's name: it is Miciah. I have been speaking with Miciah's mom, and it is ingenuous to name a bill after someone's son and not reach out to them personally to get their opinion on the bill or any insight from them. She is still waiting for your phone call. Please support bills that promote transparency and accountability.

Chairman Yeager:
Is there anyone else to give public comment? [There was no one.] I will close public comment. Is there anything from Committee members? I do not see anything from the Committee members. We have meetings on Thursday and Friday at 8 o'clock. We need to make sure we get through all our bills. We have three bills on each agenda. I do not know what next week looks like. We will be getting a lot of Senate bills coming over. I will keep you updated on where we go from here. My guess is that we will have a meeting every day until the next deadline. We may have the luxury of cancelling a meeting if we can get our work done in a timely fashion. This meeting is adjourned [at 10:43 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
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 Senate Bill 7 (1st Reprint), submitted and presented by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

Exhibit D is written testimony dated April 21, 2021, presented by Amanda Silva, Program Specialist Supervisor, Nevada Criminal Justice Information System Compliance Unit, Records, Communications and Compliance Division, Department of Public Safety, regarding Senate Bill 19 (1st Reprint).

Exhibit E is written testimony dated April 21, 2021, submitted by Charlie Shepard, State President, AARP Nevada, in support of Senate Bill 19 (1st Reprint).