MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
April 27, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:02 a.m. on Tuesday, April 27, 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 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:

Senator James A. Settelmeyer, Senate District No. 17

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:

Kyle Davis, representing Coalition for Nevada's Wildlife
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Martin Paris, Executive Director, Nevada Cattlemen's Association
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office; and representing Clark County Public Defender's Office
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Colby Prout, Natural Resources Manager, Nevada Association of Counties
Tamatha R. Schreinert, Judge, Family Division, Second Judicial District Court; and Member, Supreme Court Permanent Guardianship Commission
Linda Marquis, Judge, Family Division, Eighth Judicial District Court; and Co-Chair, Supreme Court Permanent Guardianship Commission
Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Kimberly Fergus, Private Citizen, Las Vegas, Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chairman Yeager:
[Roll was taken and Committee protocol was explained.] I am going to take the bills slightly out of order because we do have Senator Settelmeyer with us here this morning, and I know he has a lot going on, as do the rest of us. At this time, I will open the hearing on Senate Bill 94 (1st Reprint).

Senate Bill 94 (1st Reprint): Provides that an unlocked gate does not, in and of itself, constitute a public nuisance. (BDR 15-440)

Senator James A. Settelmeyer, Senate District No. 17:
This is not a new issue for this Committee, to say the least. This started a long time ago where we ran into some issues where people were trespassing on private property, but because it was not appropriately marked, trespassers were getting away with it. We had situations where people were hunting on private property in the middle of green fields and killing animals and getting away with it. So, we brought forth a bill that stated that if it was cultivated land, then that should make someone know that they are on private property. Then some people decided they wanted to stick in another bill dealing with locked gates, because we also have a problem on public roads where people will sometimes put a lock on a gate that is on a public road. That is wrong; it is a public road even if it traverses through private property. We put a bill in last session that said people cannot lock a public road off, but unfortunately, the language came out so tight that it says you cannot have an encumbrance on a public road in any way, shape, or form. So, some district attorneys read it at the plain language to state that you cannot have a gate on a road.

If you have your own property and it is completely fenced off, it is kind of hard to keep animals in if you are not allowed to have a gate. That is where this bill comes about. It is trying to state that an unlocked gate does not, in and of itself, constitute a nuisance, meaning that you can still have the gate that you have had on your property for 100 years out in the middle of nowhere. It is just stating that it is unlocked; you can open the gate and drive through someone's private property because, again, they do have a public road through their private property.

When it started out, it had a much different rendition. I involved my local district attorney and he was trying to solve the world. Then my district attorney did not agree with another district attorney, who did not agree with the Nevada Cattlemen's Association, who did not agree with the county commissioners, who did . . . not agree . . . . You can tell where this went. In that respect, you will have some opposition today because some folks want to hijack this bill to try to solve their problems. My overall opinion is that they should bring their own solutions. I am trying to simply state that an individual who has private property has the right to have the gate they have always had, and that gate does not constitute a nuisance. Some of these counties are trying to tell property owners to take down their gates that have been there for 20 or 30 years. Again, it is hard to have animals on property without a gate.

Chairman Yeager:
We have been building on this concept since at least 2017 when I started on this Committee, and it may have been before that. You are becoming a regular fixture in the Assembly Committee on Judiciary after first house passage. I do not want to relitigate what was done in the Senate Committee on Judiciary, but I had a chance to look back and see how the bill started. It looked like there were quite a few revisions which ended up in this one sentence we have in the bill on page 3, section 1, subsection 6. I just wondered if you could give some context about where the bill started and how it ended up being as simple as it is in front of us today.

Senator Settelmeyer:
When it started out, the counties wanted to try to address what are called SR-27 public access roads and all other public roads that are within a community. They wanted to try to delineate that and get into the authorization of who had the authority to state whether there was a gate, was not a gate, when that authority occurred, and they wanted to retrace the entire lineage of that piece of property going back to the deeds or patents. Well, that gets a little convoluted. And so it seemed like it was much easier, in order to try to find some form of agreement, to go to the crux of the issues, which was the concept of an unlocked gate.

Assemblywoman Hansen:
I am a huge fan of Senate Bill 316 of the 80th Session, but yes, it did have some things that needed to be clarified. Just for the body's edification and those listening, remind all of us what the rule is about a gate in Nevada. When you come across a gate, what are you supposed to do with that gate?

Senator Settelmeyer:
In my world, you leave it how you found it. Simply put, an agriculturalist may have left a gate open because they are going to be moving cattle through it. So, when they come down to draw, they expect that gate to be where they left it. If it was open and they come all the way down and it is shut, it can create some rather large problems. So, my adage is that you leave it how you found it. Now, if the gate has a sign that says "Please close the gate at all times," well then, in my opinion, the farmer should have put a spring latch on it or something to make it do that. Because sometimes when I am running cattle, I like my gates how I left them.

As far as the other renditions, some of the issues that came up with Senate Bill 316 of the 80th Session, it was sponsored by an unscrupulous senator who had a similar name to someone on this Committee. I appreciate this issue that he ran into in the high country where someone would illegally place a lock on a gate that restricted access to public property. That is not allowed, and that is what the bill was originally about. Unfortunately, within the drafting process, it came out that no encumbrances were allowed in any shape or form. That, by definition, meant that you could not have a gate, which again, was not the intent of the bill.

Assemblywoman Bilbray-Axelrod:
When I was reading this bill last night, I immediately went to an unlocked gate and something in Clark County, like someone with a pool, perhaps, that had an unlocked gate. I am wondering if this statute would have any unintended consequences with public safety, especially for children.

Senator Settelmeyer:
This is dealing with the occurrence on what are called public roads. That is what the bill is all about. Again, on people's private property, they will have an easement on their right of way to have a public road through it. In some of those instances, though, for years people have had a gate on it. People have the right to drive up on this public road, get out, open the gate, drive through, shut the gate, and keep going. That is what the intent of the bill is.

Unfortunately, even with the language we had last time, it said no encumbrances. I had constituents who said things like, I have a cattleguard and that is not a gate, can I have the cattleguard? And some of the district attorneys were saying that they cannot have a cattleguard because it says "no encumbrances" in any shape or form. That creates the problem. That is what this bill is trying to address, that a gate by itself does not create a nuisance. And no, it is not meant in any shape or form for complete private property situations where you do not have a public easement or right of way in any way, shape, or form.

That is the intent of the bill, for those unique situations. Sometimes those situations get created by the government. I have one piece of property that has a highway through the middle of it; it did not start out that way. A long time ago, it used to be a toll road where it was designed to be on the edge of the property. Toll roads are designed to go by houses.

Once you have cars going over 25 or 30 miles per hour, you really do not like the idea of having cars right by your house. So, we agreed to donate some property and put U.S. Highway 395 through the center of the ranch. What is also humorous is that nobody has ever done any paperwork; I still actually own all of it, but that would be the last thing I would try to do on 395 is put up a toll road. I do not think I would live longer than the afternoon.

Assemblyman Orentlicher:
I have a couple of questions, not about what you are trying to do, but because in all the statutory language, I noticed some rather archaic provisions that would be nice to delete. If you look on page 2, and the first one is on line 13, section 1, subsection 2(g) it says, "Where vagrants resort." I am not sure what exactly that is intended to get at, but I can see it being misused against homeless people, so I am not sure we want to keep that. Then on line 19, section 1, subsection 3(b) it says, "Offends public decency," which could very well be unconstitutional. So, are you receptive to taking those out?

Senator Settelmeyer:
In that respect, I am not familiar with why those particular things were put in the bill, and I would be remiss to agree to take something out that may have been there for a particular reason. If I were to agree to take that out, that would really make the district attorneys happy with me. As I indicated earlier, it is always situational. Of course, this bill is in your Committee and you can do whatever you want. You have the jurisdiction, the power, and the authority. I would suggest, though, that people bring their own rules and bills in order to try to tamper with things. Sometimes what seems like a real simple thing that you might want to take out may have a good reason for being there. Then you find out that the reason they put in the public decency thing is that you had some unscrupulous people on public property next to a school who were doing some very unpleasant things. I would hate to find out that was in there for a particular reason and I agreed to take it out.

As far as "Where vagrants resort," I have no idea why that one is in there. It could be a situation where the law enforcement or prosecutors needed the ability to deal with people who were congregating and creating problems, such as fires or things of that nature. It would just give them the ability. I do not know. I would be remiss without actually going back and researching where those provisions came in and to talk with the district attorneys. I can do that on those particular two provisions for you and try to report back on their general temperature. But since they already do not like the general temperature of the bill because they want it to go further, they may not give me the best answer.

Chairman Yeager:
Do we have further questions from Committee members? [There were none.] We will now open up the hearing for testimony in support of S.B. 94 (R1). We will start here in Carson City.

Kyle Davis, representing Coalition for Nevada's Wildlife:
We are here in support of this legislation. We appreciate Senator Settelmeyer working with us on the Senate side. We were one of the groups that felt the bill was overly broad when it

first came out. We did work closely with Senator Settelmeyer and Senator Hansen on S.B. 316 of the 80th Session. We thought that was a very important bill for public access to public lands. We think the bill you have in front of you today is in keeping with the spirit of that bill, making sure we clarify that a gate is allowed and that it is important for people who do work on our public lands. We think this bill is consistent with that bill we were supportive of last session. We are in support of the bill as written.

Chairman Yeager:
Anybody else in Carson City who would like to testify in support? [There was no one.] Can we go to the phone lines to see if there are any callers in support?

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are here in support of S.B. 94 (R1) and we appreciate Senator Settelmeyer for bringing this important bill today. This proposes to alleviate the kinds of conflicts that our sheriff's offices deal with quite regularly regarding access throughout the state. We would ask that this bill be considered in the version it is currently.

Martin Paris, Executive Director, Nevada Cattlemen's Association:
I am calling in today in support of S.B. 94 (R1) and appreciate Senator Settelmeyer's efforts on the bill. Senate Bill 94 (1st Reprint) seeks to clarify that a private property owner can place an unlocked gate across an unlocked road without it being considered a public nuisance. This bill is in response to S.B. 316 of the 80th Session, which made it a public nuisance for any person to prevent or obstruct free passage on public roads that cross through private property. We believe the intent of S.B. 316 of the 80th Session was to stop private landowners from locking gates and not allowing access on public roads that cross through private property, which is appropriate.

However, the way the *Nevada Revised Statutes* (NRS) 202.450 reads currently, fencing or otherwise enclosing a public road that passes through private property is a public nuisance. The current statute is being interpreted to mean that a private landowner cannot have a fence with a gate at all, even if that gate remains unlocked. It is very important to farmers and ranchers that they maintain the ability to fence or gate private property to contain livestock. Running livestock on private property is impossible without the ability to fully enclose the property. Senate Bill 94 (1st Reprint) makes the necessary changes to statute to allow private landowners to be able to utilize their properties without facing penalties. We ask that this Committee pass S.B. 94 (R1).

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office; and representing Clark County Public Defender's Office:
We want to thank Senator Settelmeyer for working with us on this bill. He was able to alleviate our concerns with the current revision of the bill that you see before you. It addresses all of the issues that we had, and we appreciate working with the Senator on this bill. We have seen him since 2017 working on this issue, and we hope that this will finally suit the needs of his jurisdiction.

Chairman Yeager:
Can we take the next caller, please? [There was no one.] I will now close testimony in support and open it up for testimony in opposition. Can we go to the phone lines to take testimony in opposition, please? [There was no one.] I will now close testimony in opposition and I will move on to testimony in neutral. Can we go to the phone lines to see if there is anyone testifying in neutral?

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
I do apologize, but I missed the opposition testimony time. Is it still possible to testify in opposition?

Chairman Yeager:
Yes, Mr. Ortiz. I am going to close neutral testimony for the moment and reopen for opposition testimony.

Alex Ortiz:
Clark County opposes S.B. 94 (R1). I do want to thank the sponsor for taking time to discuss our concerns today; however, the provisions of this first reprint are overly broad. There is no context or specifics related to the intent of the bill. It can relate to any gate, anywhere, on any road, on any property. It also conflicts with NRS 202.450, subsection 5, which makes it a public nuisance for any person to fence, enclose, prevent, or obstruct free passage or transit over a road. It needs to be narrowed to define the scope of the subject matter, which is understood to be certain roads under certain conditions. That said, Clark County worked with the Senator on a proposed amendment that addressed all our concerns and, unfortunately, we were not able to come to an agreement on that amendment. But we would like to continue to work with the Senator to see if he would consider our amendment.

Colby Prout, Natural Resources Manager, Nevada Association of Counties:
We would also like to testify in opposition. The Nevada Association of Counties does appreciate the sponsor's time and his willingness to meet with us and consider our amendment. However, we do oppose S.B. 94 (R1) in its current reprint, which does look to reconcile a current issue in existing law with a simple approach. But we do feel it may still result in undesirable outcomes because of its overbreadth. Specifically, it undermines counties' ability to ensure public health and safety by allowing gates to cross moderately or heavily trafficked roads. It may also jeopardize the counties' authority over the title of roads throughout the state and undermine counties' ability to regulate and ensure the functionality of the roads that they are charged with maintaining.

Chairman Yeager:
Before we go back to neutral, can we do one more call for opposition testimony, please? [There was none.] I will now reclose opposition testimony and reopen for neutral testimony. Can we go to the phones to see if there are any callers in neutral? [There were none.] I will now close neutral testimony and hand it back to Senator Settelmeyer for concluding remarks.

Senator Settelmeyer:
Within the bill, we made it simple to make it simple. In that respect, we see that an unlocked gate does not, in and of itself, make a public nuisance. So if you show that the road is paved, then guess what, you better take down that gate because that would be unreasonable in and of itself. If the road is of such a nature that it caused a problem, the county would have the ability to say, No, that is a nuisance. But if it is just a gate in the middle of nowhere, in and of itself not causing a problem, it should be allowed.

The amendment that came forward had language in it that stated that the property owner would hereby assume all liability for the entire course of the road through their property, period. That was one of the more egregious things where property owners said, Wait, on my private property and someone is trespassing, no matter what happens, it is 100 percent my fault? That does not make a lot of sense. If someone is driving through my property going 60 miles per hour and they flip their vehicle and get hurt, I think it is their fault for driving in unsafe conditions. Why does the burden go to me 100 percent? It is that type of language where the amendment tends to lose more support than it gained; therefore the amendment was not brought forward. As you can see, the simple discussion of a gate is not that simple. So, we tried to leave it at that. I will try to look into Assemblyman Orentlicher's concerns.

Chairman Yeager:
I am now going to close the hearing on Senate Bill 94 (1st Reprint). Committee, we are going to take the other two bills out of order to accommodate some scheduling issues. At this time, I am going to open up the hearing on Senate Bill 8 (1st Reprint).

I believe we have two of our family court judges here. One from the Eighth Judicial District, and that would be Judge Marquis, and one from the Second Judicial District, and that would be Judge Schreinert. I want to welcome both of you to the Committee this morning. We will give you a chance to make some remarks about what the bill does, and then I am sure we will have some questions.

Senate Bill 8 (1st Reprint): Revises provisions governing guardianship of minors. (BDR 13-390)

Tamatha R. Schreinert, Judge, Family Division, Second Judicial District Court; and Member, Supreme Court Permanent Guardianship Commission:
The Nevada Supreme Court Permanent Guardianship Commission is in support of Senate Bill 8 (1st Reprint). In 2017, if you recall, the guardianship statutes were written to separate out adult guardianships from minor guardianships. When this occurred, the provisions for the transferring and registration of minor guardianships were left out, although those provisions are in the adult guardianship statutes. Senate Bill 8 (1st Reprint) mirrors the provisions from the adult guardianship statutes and places them into the minor guardianship's statutes. In addition, S.B. 8 (R1) clarifies the definition of a child's home state, ensuring it conforms with other child and family statutes, specifically the Uniform Child Custody Jurisdiction Act (UCCJA), which is a law that all states follow to ensure that only one state at a time is making orders regarding a child. And finally, S.B. 8 (R1) allows for the

appointment of guardianships in Nevada if the child is present and it is in the child's best interest, even if Nevada is not yet their home state. I will provide brief examples for each provision.

Section 2 of the bill allows the ability to transfer a Nevada guardianship out of state with permission from the court. When a guardianship has been in place in Nevada for several years and the guardians and child are granted permission to move to another state, they may have difficulty obtaining a guardianship in the other state due to the fact that they have an open guardianship case in Nevada. This amendment will make the transition easier by allowing the transfer of guardianship to the other state; then the Nevada guardianship case would terminate. Section 3 allows the transfer of an out-of-state guardianship to Nevada with court oversight and findings. For example, grandparents who have had guardianship of children for years and who receive a new job in Nevada can get their state's permission to move here with the children. This amendment will allow the transfer of their guardianship to Nevada but also require them to complete a full petition so we have all their current information and make best-interest findings.

Sections 4 and 5 allow the registration of an out-of-state guardianship in Nevada, again with court oversight and findings. Litigants have relief; they could register an out-of-state guardianship similar to registering an out-of-state custody order, but we have no authority to do so under *Nevada Revised Statute*s (NRS) Chapter 159A. For example, a guardian who moves to Nevada may wish to register their out-of-state guardianship if the minor is near their eighteenth birthday and they do not need any changes to the guardianship; or if the guardian lives in California and the child goes to school in Nevada, then the guardian would only need to register the guardianship because they still live in the other state.

Section 6 defines "home state" to conform to the UCCJA—again, the law that all states follow to ensure that only one state at a time is making orders regarding a child. When a person petitions the court for guardianship, they are asked to disclose any other cases involving the child or courts that may have jurisdiction over the child. This amendment allows Nevada courts to accept and release jurisdiction of the child pursuant to the UCCJA, which is very common in other child and family cases.

And finally, section 7 allows guardianship to be issued so long as the child is present in Nevada and it is in the child's best interest to do so without having to make a family wait for six months, when Nevada becomes the home state. This section also clarifies that guardianships can be issued when the court has authority to do so under the UCCJA. An example of when we might need section 7 is if a family moves here during summer break and needs a Nevada guardianship to enroll in Nevada's schools, but the family will not have been here for six months until long into the school year. Oftentimes, caretakers and guardians need to add the child to their medical insurance when they have recently moved to Nevada. We currently have the authority to grant a temporary guardianship, but insurance companies often require a full guardianship in order to put the child on the medical insurance.

This amendment will allow Nevada courts to grant guardianships when it is in the child's interest rather than having to wait six months to do so. Judge Marquis and I and the Guardianship Commission thank you for our ability to present the bill today. Judge Marquis had divided our time in that I would provide our statement and I will hopefully be available for some questions, but I do have a court hearing. Judge Marquis and I are here for questions.

Chairman Yeager:
We do have a few questions so far.

Assemblywoman Cohen:
In section 6 with that home state definition, the new language is "lived with a parent or a person acting as a parent." If the child is under state care, is that encompassed within that definition?

Linda Marquis, Judge, Family Division, Eighth Judicial District Court; and Co-Chair, Supreme Court Permanent Guardianship Commission:
If there is an open and active abuse and neglect case, generally we would not see any action in the guardianship case. That case would be open and active, and there is a different type of guardianship under NRS Chapter 432B that has different rules and that may be an option for guardianship if that is happening. Certainly, if somebody was with a foster parent for a period of time and the abuse and neglect courts have taken emergency jurisdiction, because their jurisdiction is a little bit different than ours, we could still have jurisdiction over an NRS 159A guardianship, arguably, but I do not know if that would happen very often.

Assemblywoman Cohen:
So, even if there is a placement, even if it is relative, fictive, that type of thing, it would still be considered under NRS 432B, and probably would not come into play here, is what I am hearing?

Judge Marquis:
I say generally, because there is a certain action and a certain finding that the abuse and neglect judges have to make in order to start their jurisdiction under an NRS 432B guardianship. They have to find that the child is in need of protection and then make a case plan and adopt it. Before they do that, we could still have jurisdiction under NRS 159A, but after they have that hearing, then we do not have jurisdiction, and an NRS 432B guardianship is appropriate.

Assemblywoman Cohen:
In the new language, the difference between a temporary guardianship and a permanent guardianship is not necessarily an issue. The language just refers to guardianship without making that difference in most of the places in the new language in the bill.

Judge Marquis:
When we talk about transferring or relocation under guardianship, the only type of guardianship that may be transferred or under which you may relocate to another jurisdiction is a full, general guardianship and not a temporary guardianship. Under the rules, we can only give a temporary guardianship for a period of 120 days, and we must have a status check every 60 days to see that family. That is generally while we wait to have an evidentiary hearing and that is a temporary order, so we do not see, under a temporary order, a request to relocate. You can only request to relocate outside of the jurisdiction when you have a general guardianship.

This resolves some of the issues about temporary versus general because insurance companies will not honor a temporary guardianship, many medical providers will not honor a temporary guardianship, and many schools will not honor a temporary guardianship. They require that full general guardianship so that the care provider may sign them up for school or get dental treatment. Certain types of medical treatment are unavailable to children who are under a temporary guardianship.

Chairman Yeager:
Do we have additional questions from Committee members this morning? [There were none.] I am going to open up for testimony in support of Senate Bill 8 (1st Reprint) at this time. Is there anybody here to testify in support? [There was no one.] I will close testimony in support and I will open it up for testimony in opposition. Is there anybody on the phone in opposition? [There was no one.] I will now close testimony in opposition and I will open for testimony in neutral. Is there anybody who wishes to testify in the neutral position? [There was no one.] I will close testimony in the neutral position, and I will hand it back to the presenters for concluding remarks on S.B. 8 (R1).

Judge Marquis:
I think this resolves the omission from the 2017 legislation and mirrors the language in the adult statute. It would be a great help to our citizens and children in Clark County and all over the state.

Judge Schreinert:
I mirror those comments from my colleague down south that this will really help us serve the families here in Washoe County and throughout the state.

Chairman Yeager:
I will now close the hearing on Senate Bill 8 (1st Reprint). Moving right along, we are back to the first bill listed on our agenda. That would be Senate Bill 6 (2nd Reprint). Welcome back to the Assembly Committee on Judiciary, Judge Bell. Please go ahead with your presentation and then I am sure we will have some questions.

Senate Bill 6 (2nd Reprint): Revises provisions governing orders for protection against high-risk behavior. (BDR 3-394)

Linda Marie Bell, Chief Judge, Eighth Judicial District Court:
Last legislative session, the Legislature passed a bill authorizing high-risk protection orders in certain situations to remove firearms from people who are engaging in high-risk behaviors. I am going to share some statistics from Clark County and then walk you through the bill. Since this statute passed, I have presided over all of the high-risk protection order applications in Clark County except for one where I had a conflict. While presiding over those cases, it has become apparent to me that there is a great deal of confusion for people applying for these types of protection orders. The goal of this bill is to simplify and streamline the process to make it simpler and clearer when people apply for the high-risk protection orders.

Since the law went into effect in Clark County, we have had thirty-three applications; twenty-five of those were seeking other types of protection orders. For example, people were filing for domestic violence protective orders or workplace harassment protection orders and they did not understand that they were applying for something other than a protective order for themselves. Of the eight who were actually applying for a high-risk protective order, three were granted in some capacity or another; one was granted on a temporary basis but not extended and that was a community applicant; and the other two were extended orders that were law enforcement applicants where the adverse parties in both cases were present at a notice hearing and did not oppose the granting of the order. The other five applications were denied for not meeting the standards set forth in the statute. I also understand in checking with Washoe County that they have got a handful of applications, less than five, and that none have been granted to date.

Part of the confusion that I have seen lies with the different procedures that someone has to follow depending on what type of protection order the applicant is seeking. They can file an application for what is called an ex parte order in the law, an extended order, or both. The way that the form looks, there are two check boxes, and depending on which one the applicant checks, it can result in having to have two hearings in a seven-day period, and even some of our law enforcement agencies have struggled with the process, which has resulted in some delays in getting the applications heard.

The bill changes the terminology in the law by using the term "emergency order" instead of "ex parte" to have it more accurately reflect what that short-term order is. An ex parte order is typically defined as an order made by the court without notice to the other party. As the law stands, the short-term order can be issued with or without notice, so the term "ex parte" does not necessarily apply. We changed the language to better reflect that we are granting a short-term, seven-day order to give time to the court to make sure that the parties are noticed and have a full hearing with witnesses if that is necessary.

Sections 1.3 and 1.5 streamline the application process so that there is just one application for the high-risk protective order. Section 1.3 allows for one application that can either be

granted on an emergency basis if that seems appropriate to the judge, or the court can decline to issue the emergency order and just set it for a hearing to consider whether there should be an extended order after the adverse party has been notified and been able to come in and present any evidence against the application. Section 1.5 requires the court to schedule a hearing no later than seven days to determine whether an extended order should issue, if an emergency order is granted or if it is not. Regardless, there would still be a full hearing.

Section 4 adds conforming language that the applicants have to show that the individual possesses an imminent risk to themselves or to others. This is another area where some of the applications that have been denied had trouble because there has been confusion where people are applying based on things that happened several months in the past. It just mirrors that the judge needs to make a finding that there is imminent risk, and this mirrors that sentiment throughout so that the applicants have to show that there is an imminent risk to themselves or others. It also allows and encourages applicants to provide supplemental documentation and information to the court, which is really helpful, when the court is looking at whether to issue an order on an emergency basis, to have documentation such as mental health records, police reports, or anything else that may support the application.

The law also currently provides, if there is only an application for an extended order, that service needs to be effectuated under the *Nevada Rules of Civil Procedure*. This created some safety concerns for the person serving the papers and a little confusion about when a law enforcement agency sought only an extended order but had not served the adverse party before the application could be heard. It just eliminates that to reduce confusion on that front. Under section 4, subsection 4, where that requirement is removed, I will note that the public defenders reached out to us with some concerns about the adverse party not being served the application, so we are working with them so that if an emergency order is granted, then under section 9, the appropriate law enforcement agency would serve the application along with the emergency order and notice of the hearing to make sure that the adverse party has all the information that they need to prepare for the hearing if they are opposing the application.

Section 8 removes the ability for the adverse party to surrender the firearm to someone who does not reside with the adverse party. If the firearm is surrendered, then it would go to a law enforcement agency.

Finally, the bill removes the duty of the court to assist the parties. We are always happy to work with community organizations to educate the community about protection orders; and our clerks, to the extent they can, try to help people to file papers. But the current law puts our clerks in a difficult position regarding legal advice, and we want to make sure that the right entities are doing that and not our clerk's office. With that, I am happy to answer any questions that the Committee has.

Chairman Yeager:
I wanted to clarify a couple of things. I believe you indicated that you are speaking with the public defenders about a potential amendment, but there is not an amendment being offered right now. Is that one that might come after some further discussions?

Judge Bell:
That is correct.

Chairman Yeager:
Then the other question I had, it sounded like, as far as you are aware, only three of these orders have been granted throughout the state, and I guess, at least when you consider Clark and Washoe Counties, you are aware of three being granted and a handful that were applied for but ultimately denied. Did I get the numbers right there?

Judge Bell:
That is correct. I understand that there are ten or eleven between Washoe and Clark Counties and three of those have been granted in some capacity. One was temporary and two were extended, and neither of those were opposed by the adverse party.

Chairman Yeager:
Do we have questions from Committee members?

Assemblyman Wheeler:
When we are taking ex parte to emergency—we spoke about this a little bit offline—even though it goes to an emergency instead of ex parte, it can still be one-sided, correct? That is what ex parte means. It can still be an ex parte case, but we are just reclassifying it. Would someone still be able to file a grievance against another person without that person's knowledge under the emergency order, as they would under ex parte?

Judge Bell:
The law currently provides for the application to be with or without notice as ex parte, and nothing about these amendments changes that. It just changes the terminology to a more correct term because it can be with or without notice. It would still allow community applicants without notice to the adverse party.

Assemblywoman González:
We spoke yesterday about it just being with people in the same home and I cannot remember something. If I was not living with somebody and I wanted to report or get this order, what is that process like? Or what court would I need to file that in, because I know some of the issue is folks not knowing where to file the correct petition.

Judge Bell:
The family member applicant was something that I believe was seriously considered two years ago, and the policy consideration that the Legislature ultimately decided on was what is currently in the statute now. Nothing about this amendment changes that. It allows

certain people with certain family relationships—for example, if they have a child in common. There are some circumstances where the people would not have to reside together, but they must fall within the definition of a family member as set out in the statute. Then those people can file the application. If somebody was outside of that, then they would need to contact law enforcement, and law enforcement would decide whether to file an application.

Chairman Yeager:
Do we have additional questions for Judge Bell on S.B. 6 (R2)?

Assemblyman Wheeler:
Could you explain to me, Your Honor, the automatic hearing on an extended order? If the emergency is already denied, what is the purpose of having that if the emergency is already denied?

Judge Bell:
We, as judges, always like to have hearings with both sides present and give everybody the opportunity to present any evidence that they have. The way this statute is written allows for the order to be granted if there is some sort of emergency, but then requires a full hearing so both sides can come in and present anything that they want to present. If there is not a sufficient basis to grant the emergency application, it allows both parties to come in without having the ex parte removal of firearms and present their respective sides so the court can then make a determination with all the information from both sides. It could be that an emergency order is not granted, a hearing is set, and then the extended order is also not granted. It would depend on what information was provided at the time of the hearing. It is to make sure there is a full hearing and that both sides have the opportunity to provide information.

Assemblyman O'Neill:
When they come in to present their cases, either side, are they represented? Does the district attorney of a county represent the original party? Are they allowed legal representation?

Judge Bell:
The district attorney does not represent the community applicant. The cases that we have had so far, there have been law enforcement applicants where we have had the extended hearing, and the one community applicant we had hired private counsel.

Chairman Yeager:
Are there any other questions from Committee members? [There were none.] Thank you, Judge Bell. We ask you to hold tight while we take testimony and we will come back to you for concluding remarks. I will now open for testimony in support of Senate Bill 6 (2nd Reprint). Is there anybody who would like to testify in support? [There was no one.] I will now close testimony in support and open testimony in opposition. Is there anyone who would like to testify in opposition?

Kimberly Fergus, Private Citizen, Las Vegas, Nevada:
I am confused here on this S.B. 6 (R2); however, this has to do with the red flag law, and there is pending litigation on it being ex parte. Is ex parte not stripping people of due process? This could make criminals of law-abiding citizens. There should be the highest standard to deprive someone of their rights. Instead, this makes court proceedings secret to the accused with a vindictive relative able to make baseless claims. Nevada deserves legislators who protect the rights of all, including gun owners. Please, vote no on S.B. 6 (R2).

Chairman Yeager:
Is there anyone else here in opposition? [There was no one.] I will now close opposition testimony and I will open for testimony in neutral. Is there anybody who would like to testify in the neutral position? [There was no one.] I will close neutral testimony. Judge Bell, do you have any concluding remarks on Senate Bill 6 (2nd Reprint)?

Judge Bell:
I understand that there are those who have some fundamental disagreements with the law itself, and I want to make clear that I am certainly not taking any kind of policy position here. That was determined two years ago. I am only trying to make the existing law work better for the members of our community to make this statute more streamlined in terms of how it operates.

[Exhibit C was submitted to the Nevada Electronic Legislative Information System, but was not discussed.]

Chairman Yeager:
Please do let us know if there are additional amendments that you are able to work on with the public defenders. I will now close the hearing on Senate Bill 6 (2nd Reprint). That takes us to our final agenda item this morning which is public comment. [Public comment protocol was explained.] Can we take our first public commenter now, please?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
Today I would like to talk about Miciah Lee. Miciah William Lee was 18 years old when he was shot and killed by Sparks Police officers Ryan Patterson and Eric Dejesus. Patterson fired five shots, and Dejesus fired two shots immediately after that. Eric Dejesus also shot and killed Jorge Moreno-Aguirre on July 28, 2016, and Ryan Patterson is also a two-time community member killer. He was one of three cops who killed Jose Dominguez on April 28, 2019, less than a year before he would kill Miciah.

The City of Sparks police were called to take a suicidal teenager they knew to be severely mentally ill into custody for his own safety, but within minutes of approaching him shot him dead. The City of Sparks officers had the time and opportunity to assess the situation and to employ tactics and accommodations recognized by nationally accepted police practices and training to peacefully resolve the situation, specifically by using de-escalation techniques, communication, and crisis intervention. If the officers had utilized proper training in the

fundamental principles of maintaining a covered position to calmly communicate with an emotionally disabled person rather than hysterically screaming commands, loudly cursing, and sadistically using an attack dog while cruelly rushing the teenager with lights and sirens blaring, the incident would not have happened.

At the time Miciah drove off, he was not wanted for a crime and there were no outstanding warrants for his arrest. He was in the middle of a serious mental health crisis and his mom did what we were all told to do. She called 911 and she pleaded with them not to shoot her son. Sadly, minutes later, Ryan Patterson and Eric Dejesus would kill Miciah, who was completely silent at the time. He did not utter a word, did not charge the officers, did not run toward the officers, did not make a threatening gesture, or threaten to harm the officers or try to flee, as they had disabled the vehicle. I do not want any more mothers or families to know this heartache. I ask that you support bills that promote transparency and accountability. If law enforcement opposes a bill, I ask that you support it.

Chairman Yeager:
Are there additional public commenters on the line? [There were none.] I will close public comment. Committee members, now that we have gotten through bills on gates, guardianships, and guns, is there anything else from any Committee members this morning? [There was nothing.]

Let me give you a quick lay of the land on where we go from here. We do have a meeting tomorrow at 8 a.m. because we have three bills and I think they may take more time. Thursday's meeting is at 9 a.m.; there will be two bills. We will not be having a Judiciary Committee meeting on Friday morning. Friday morning has been canceled. We have a couple more days this week, and when we get to Thursday, I will have a better sense of what next week will look like.

After this week, we have two weeks to the second committee passage deadline, so we will be working hard to hear the Senate bills that we have over here in the Committee. Committee, as always, I appreciate your attention and hard work this morning. I will see you back here in this Committee tomorrow morning at 8 a.m. This meeting is adjourned [at 10:17 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 letter dated April 26, 2021, submitted by Alida Benson on behalf of the Nevada Republican Party, signed by Michael J. McDonald, Chairman, Nevada Republican Party, in opposition to Senate Bill 6 (2nd Reprint).