MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-first Session
May 5, 2021

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Wednesday, May 5, 2021, Online and in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Sally Ramm, Committee Secretary

OTHERS PRESENT:

Andrew LePeilbet, Disabled American Veterans; United Veterans Legislative Council; Combat Wounded Veterans in Nevada
John Piro, Chief Deputy Public Defender, Office of the Public Defender, Clark County

Kendra Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Elizabeth Davenport, American Civil Liberties Union of Nevada
Christine Saunders, Progressive Leadership Alliance of Nevada
Jim Hoffman, Nevada Attorneys for Criminal Justice
Paul Catha, Culinary Workers Union Local 226
Jamie Rodriguez, Washoe County
Brigid Duffy, Nevada District Attorneys Association
Nicole Rourke, City of Henderson
Marc Schifalacqua, City of Henderson
Liz Ortenburger, CEO, SafeNest
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Charlene Helbert, Deputy City Attorney, City of Las Vegas
Alyson McCormick, City of Sparks
Arielle Edwards, City of North Las Vegas
John Jones, Nevada District Attorneys Association
Calli Wilsey, City of Reno
A.J. Delap, Las Vegas Metropolitan Police Department
Kevin Higgins, Chief Judge, Sparks Township Justice Court, Department 2, Washoe County
Daniel Reid, National Rifle Association

CHAIR SCHEIBLE:
I will now call the Senate Judiciary meeting to order and open the hearing on Assembly Bill (A.B.) 202.

ASSEMBLY BILL 202 (1st Reprint): Revises provisions relating to charitable lotteries and charitable games. (BDR 41-581)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9)
Assembly Bill 202 caps the annual fees that a qualified organization must pay to conduct charitable gaming at $10 a year if the total value of the prizes offered by the organization in a calendar year does not exceed $100,000. It requires only one annual registration with the Gaming Control Board (GCB). The intent of the bill is to ensure the qualified organization is able to keep more of the money it collects to fund its activities and to cut some of the red tape associated with charitable gaming.

Assembly Bill No. 117 of the 80th Session made changes to the charitable gaming statute, including removing the fee structure from statute and allowing the GCB to enact regulations setting the fee structure. The GCB revised and adopted regulations in 2019. The Board enacted a $25 fee for each event or day an event was offered or for each tournament conducted. Although the GCB chair has the discretion to waive all or part of the fee, and has done so on occasion since the regulation was adopted, I began to hear from smaller charitable organizations the fee structure adopted resulted in higher fees than previously paid, or they had to request fee waivers on a more regular basis. Covid-19 hit and most of these events did not happen because charitable gaming was not taking place. We have the opportunity to limit those fees for a smaller organization statutorily so it does not have to go through the fee waiver process each time it has an event and can keep more of the funds. It will also save the GCB some time reviewing and approving fee waivers.

There is one proposed amendment (Exhibit B), which has three parts. First, it clarifies video lottery terminals (VLTs) which are included in the definition of a lottery. Video lottery terminals are proliferating around the Nation, particularly in states where lotteries are legal. Unlike Nevada slot machines that use a random number generator for payouts, VLTs are linked to a central network that connects the individual VLTs and a particular casino or in a geographic region just like a lottery. Furthermore, in many states, VLTs are beginning to crop up in locales that do not have appropriate gaming regulations, creating problems for local and state jurisdictions. For those reasons I am bringing an amendment to make clear VLTs are not permitted to operate in Nevada. Second, the amendment clarifies only professional sports organizations would be able to conduct online charitable gaming and only in conjunction with a cash prize when the team is playing a home game in Nevada and only at the team's arena or stadium and the land upon which it sits. Think about the Las Vegas Golden Knights and their 51-49 raffle; this allows customers to use mobile devices to purchase the tickets rather than go into the stands and find a vendor. This is an appropriate limitation on the proliferation of online charitable gaming. Third, this section of the amendment moves the effective date to July 1 to give the GCB more time to adjust the regulations to align with this bill, should it pass.

SENATOR HANSEN:
This refers to A.B. No. 117 of the 80th Session. We were told it was the Golden Knights bill. But we discovered buried in the bill was a provision that

eliminated the ability for all sorts of not-for-profit organizations to have charitable lotteries; everything from bake sales at schools to political organizations. Nothing in this bill looks like this changes. I would like to have a chance to correct what we did in A.B. No. 117 of the 80th Session. Any help with that?

ASSEMBLYMAN YEAGER:
Those issues have also been raised in the Assembly by Assemblywoman Alexis Hansen and others. The structure is this: If the organization is a 501(c)(3), it can do charitable gaming. If it is not, it cannot do charitable gaming. This structure creates a bright-line rule for the GCB because when it gets an application, it must determine its 501(c)(3) status to make the decision. I do not feel comfortable moving beyond that because we get into some real gray areas when we have organizations that are not 501(c)(3)s and want to do charitable gaming. There have been further discussions about this, but for GCB clarity, the bright-line rule makes sense, realizing some charitable and civic organizations do not have 501(c)(3) status.

SENATOR HANSEN:
Fair enough, but with all due respect to Mr. Morton, the ability of the GCB to block virtually every type of lottery or thing like that is disturbing to me. There is definitely a move in Nevada to see a lottery actually become a way to raise money, which I support. While it is nice for the GCB to have nice clean line of demarcation between what is 501(c)(3) and what is not, it hamstrings a large number of small organizations that do not have the funds or lawyers to become a 501(c)(3) organization. I respect your opinion, but on the record I say we should fix the problem.

ANDREW LEPEILBET (Disabled American Veterans; United Veterans Legislative Council; Combat Wounded Veterans in Nevada):
I also represent 65,000 Disabled American Veterans, and I am the chair of the United Veterans Legislative Council for Nevada, representing 250,000 veterans and 500,000 Nevadans when you count their families.

Like Senator Hansen said, we were hit by the bill in the last Session. Many of our veterans groups make money for their scholarships and other charitable activities. All of those things ended the day A.B. No. 117 of the 80th Session was passed. This bill removes a significant part of the issue for our veteran organizations in the State. I do not know how there could be a fiscal note on

this bill. The United Veterans Legislative Council, the Disabled American Veterans in Nevada and the Combat Wounded Veterans in Nevada support the passing of this bill.

ASSEMBLYMAN YEAGER:
The bill was heard in the Assembly Committee on Ways and Means for the small fiscal impact of $2,000. The Committee chose to process the bill despite the fiscal note.

SENATOR SETTELMEYER:
I understand the desire to have a bright-line test for the GCB. Would you be interested in expanding it beyond the discussion of nonprofits to include all charitable organizations registered with the Office of the Secretary of State? Theoretically, the Office of the Secretary of State should be able to talk to the Office of the Attorney General.

ASSEMBLYMAN YEAGER:
We are certainly willing to discuss your thoughts. This is a new idea, so I would like the chance to think about it. One of my concerns is we need a bright-line test so the GCB is not in the position of picking winners and losers. This may be an option I am open to considering.

CHAIR SCHEIBLE:
We will now close the hearing on A.B. 202 and open the hearing on A.B. 132.

ASSEMBLY BILL 132 (1st Reprint): Establishes provisions relating to custodial interrogations of children. (BDR 5-783)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
We learned about Miranda warnings with the landmark U.S. Supreme Court case *Miranda v. Arizona*, 384 U.S. 436 (1966). Prior to that, a host of things were happening, namely a lot of folks did not understand what protections were extended to them. Miranda requires they be told they have: a right to remain silent, anything they say can and will be used against them in a court of law, and a right to an attorney.

One of the things often overlooked in the Miranda case, and what I want to focus on, is the defendant may waive these rights provided the waiver is made voluntarily, knowingly and intelligently. Those three words are the most

important in understanding the Miranda warning because after having their rights read to them, people do not waive their rights knowingly and intelligently. This is the genesis of this bill and our focus. To all of the kids in Nevada, this bill is specifically for you.

We have had many U.S. Supreme Court cases where it has been acknowledged minors do not necessarily understand what they are doing. Reasons for this are included in the letter provided by Dr. Ana Oliveras (Exhibit C). This bill seeks to expand what the Miranda warnings are by making them easier to understand. I had an opportunity to give the language in A.B. 132 to teachers at two schools in Clark County—Cortez Elementary School and West Prep, both K-12 schools—and asked them to read this language to their students and provide some feedback. They compared the two Miranda warnings, and the students better understood the language in A.B. 132, which is what we wanted to make sure this bill accomplished.

We already limit so many different ways what people under the age of 18 can do. They cannot enter into a binding contract; they need parental consent to get married. We limit at what time they can work. We tell them they cannot vote. There is a larger list of things we tell minors they cannot do because we have decided we have a responsibility to ensure minors understand what they are doing, and at times they do not.

We go out of our way to create laws and protections, so we put the responsibility on adults to create a safety net for younger people. It is important for minors who are waiving their constitutional rights to understand what they are saying. Put yourself in the mindset of the child to genuinely understand what happens.

In the past 15 years, the *Miranda v. Arizona* caselaw has recognized that children are generally less mature and responsible than adults. They often lack the experience, perspective and judgment to recognize and avoid choices that could be harmful to them. Children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Children are generally more vulnerable to outside influences than adults and have limited understanding of the criminal justice system and the roles of the institutional actors within them.

I am an advocate and a representative for communities. I talk about the immigrant community a lot, and I am asked, "Who do you think is the most disenfranchised community when it comes to access to the court and due process?" I argue it is children. They are often disenfranchised when it comes to access to their constitutional protections to fight and advocate for themselves. Their world is designed for them to be told what to do.

I will go through the bill language now and express how this bill helps to address the concerns and alleviate some of the frustrations of people who work with kids in the juvenile justice system and have concurred too often we see kids waiving their rights without necessarily understanding what is happening.

I am going to go through the exact language of the bill.

Another way of seeing this is we are taking the generic Miranda rights and expanding on them. One of the questions I like to preemptively address is somebody once told me if the U.S. Supreme Court created a set of rules of what the Miranda rights have to be, are we somehow violating constitutional law by expanding on them. I try to remind people the ruling set the floor but not the ceiling. We as a State can expand the Miranda warnings to ensure everyone understands them.

JOHN PIRO (Chief Public Defender, Office of the Public Defender, Clark County):
We have noticed in our practice, although Assemblyman Flores has hit heavily on it, that children going through the system do not have a strong grasp about what is happening, no matter how often our attorneys try to explain it. Most adults do not have a clear understanding of what is going on when they are going through the justice system. I talk to a lot of clients during postcase resolution when we are working on sealing their records, and they indicate they did not fully understand what was going on. I tell them I wish they told me then so I could slow things down. This is providing protection on the front end for the child. As Assemblyman Flores said, we protect children in all other aspects of the law. It is time we provide the appropriate protection for their constitutional rights. The words to key on are "intelligent waiver." This warning has been screened through school teachers to make sure we have age-appropriate words children can understand.

SENATOR SETTELMEYER:
If someone does not follow the Miranda wording verbatim, does that throw it all out, or do they just have to get the gist of it? We are trying to make it simpler to understand. But if an officer gives this new Miranda language to someone who is over 18 years old or the existing language to someone who is under 18 years old, is the evidence still admissible?

MR. PIRO:
In some respect it may be litigated depending on how much it varied, but as the U.S. Supreme Court said, there are no magic words, but the key concepts must be communicated. This means the person being arrested must understand the warning. Understanding in this context means that they are able to make the decision to waive their rights in a knowing, voluntary and intelligent manner. Sometimes this issue is litigated if the information given is a large departure from the traditional wording but, at least in southern Nevada, officers have preprinted cards.

When the U.S. District Court for the District of Nevada found the waiver language the officers were using was unacceptable, they immediately changed the wording on their cards. This is likely to happen if the wording changes again.

SENATOR SETTELMEYER:
What would happen in a situation where the officer would not know the right age of the person? If you use the wrong card on a 19-year-old, are you still correct?

MR. PIRO:
This is an understandable version, so it will be appropriate to use for adults as well as children. Other states have studied the rates of dyslexia in prison and jails and found the rates are absurdly high. Most of the adults that come through our office have a sixth-grade reading level or lower. This version of Miranda is actually much better for everybody's understanding but certainly for children.

ASSEMBLYMAN FLORES:
The U.S. Supreme Court addressed a similar question in 2011 in a North Carolina case. In that case, there was a minor with special needs, approximately aged 13 and he was taken back to school after being home.

The question asked was, "Was it a custodial interrogation or did he voluntarily show up and participate and give the information?" Justice Sonia Sotomayor's ruling said, "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers' reports to blind themselves to commonsense reality, we hold a child's age properly informs the Miranda custody analysis." So, there are going to be scenarios where whether there was a proper Miranda warning to a child will be litigated. This is not the intent. Law enforcement will attest that at the beginning they will carry a card to use when they are arresting a younger person.

SENATOR OHRENSCHALL:
A lot of people think children are being arrested for graffiti or petty larceny, but we have juveniles at the Lovelock Correctional Center who are sentenced as adults. These rights are so important to kids because nobody can be sure when the initial arrest happens where the path may lead and whether the case will stay in juvenile court or be transferred to adult court. Anything like this helps children try to understand their rights in the situation of being under arrest and in custody and may change a lot of kids' lives for the better.

SENATOR HANSEN:
Mr. Piro mentioned we protect children under all other aspects of the law, but actually the most disenfranchised are the unborn. There is a certain Assemblywoman who would love to have a cosponsor on her bill on parental notification.

Regarding the question of, "Do you understand what I have told you?" What if the answer is no?

MR. PIRO:
Then it is probably time to call in a lawyer to make sure the child can understand his or her rights before waiving rights.

SENATOR HANSEN:
If a minor is incapable of making a good judgment call, why do we just not strike the ability to have any interrogation prior to arrest?

The question I have in this whole concept is whether a minor is incapable of making a good judgment call regardless. Why do we not strike the ability to

have any type of interrogation prior to arrest? Kids cannot talk to law enforcement if they are under the age of 18.

MR. PIRO:
The bill started out that way, and this is where we wound up where people could accept it.

SENATOR PICKARD:
It is interesting when we created the *Nevada Rules of Civil Procedure* 16.215, which was the judicial interviewing of children, one of the things we talked about was Justice Sotomayor's comment—which is spot on—that children do not understand, and if adults are not understanding, then children certainly will not. I am supportive of this, but I am wondering was this an effort on your part to simplify language or did the language come from somewhere that has been vetted and tested empirically?

ASSEMBLYMAN FLORES:
It has been vetted. King County in Washington has a similar Miranda warning for anyone under age 18, and we had an opportunity to talk with them. Our public defenders also reached out to public defenders and judges to get feedback and perspective from them. To answer Senator Hansen's question, there are other states that do not allow for minors to waive their rights to an attorney. If there is going to be a custodial interrogation, an attorney must be present, but we are not there yet.

SENATOR PICKARD:
It sounds like we have some data showing this meets a certain level of understanding because children are on a steep learning curve. Fifteen-year-olds will understand more than a 14-year-old, but is there data to support the assumption that the average youth being arrested will understand this, or at what point do we hit the tipping point?

MR. PIRO:
Ms. Bertschy is going to talk about the King County discussions. They are currently using similar language.

CHAIR SCHEIBLE:
You mentioned you ran this by some elementary school teachers who ran it by their students, which I think is brilliant and I love the method of vetting it. My legal understanding of Miranda is the warning has to conform to the Constitution and there are certain parameters within the Constitution that must be met. Within those boundaries, it is up to an individual peace officer to determine how they communicate those Miranda warnings.

In most jurisdictions, like Las Vegas, entire departments adopt policies that are across the board consistent with those parameters. There is nothing in law preventing an officer from giving a different version as long as it meets the constitutional standards. There are times when we litigate what officers say when they do not have their cards with them, and they do their best to recite the rights. I have seen cases where officers get interrupted and repeat a portion but not another portion or miss a sentence and do or do not go back to it. The standard to which the language is to be held does not have to do with the person to whom you are talking, but with whether it meets the constitutional requirements of Miranda.

What you are doing in this bill is further refining the language to make sure it is understandable to a particular group of people and in this case, kids. You mentioned that you compared this language to other warning language. Is the current language Las Vegas Metropolitan Police Department (LVMPD) uses a juvenile warning or the current LVMPD adult warning or a different warning altogether?

ASSEMBLYMAN FLORES:
We used the language Clark County School District provided. I believe it is called the "Miranda plus" warning.

CHAIR SCHEIBLE:
The kids found the current language in the bill easier to understand?

ASSEMBLYMAN FLORES:
The feedback we got from the teachers was the students understood the bill language better.

CHAIR SCHEIBLE:
I have a question about the term "parent." Do juveniles only have a right to have a parent present or could it be a guardian or adult with legal authority? I am not sure it requires an amendment to the bill, I am trying to get legislative history on the record on why we have chosen this language.

ASSEMBLYMAN FLORES:
We chose the wording after conversations with different stakeholders involving law enforcement, Clark County and the LVMPD. A minor has a constitutional right to remain silent, but does not have a constitutional right to have a parent or guardian present during interrogation.

CHAIR SCHEIBLE:
What I am imagining is a kid who hears this warning and lives with his or her grandparents and someone says you have a right to have a parent present and the child thinks my mom and dad are not around so what about my grandmother?

My final question is about language barriers. This would fall into all of the other caselaw that has been decided about ensuring people have access to information in a language they understand. Can you assure me this falls into that category, and we will not have a gap for kids who are not proficient in English?

MR. PIRO:
That will be covered. Las Vegas Metropolitan Police Department does a good job of examining those issues and will probably lead the way.

KENDRA BERTSCHY (Deputy Public Defender, Washoe County Public Defenders' Office):
Starting from the Eightieth Legislative Session when Senator Ohrenschall brought a bill and we discussed the possibility of engaging in what other states are doing and expanding their Miranda warning especially for juveniles, I began to research this issue. Senator Scheible was involved in those conversations. We reached out to Joey Orduna Hastings, CEO of the National Council of Juvenile and Family Court Judges, who connected me with the public defender offices around several jurisdictions, as well as judges and former judges. We decided on what seems to be the model in several states, which is the King County, Washington, Miranda warning. I would note it was initiated by the King

County Sheriff's Office in collaboration with the Department of Public Defense and a nonprofit that works with children called Creative Justice. This model is the genesis of these Miranda warnings.

Harvard Medical School researchers also studied Miranda warnings across the Country. They found when they looked at the Miranda wordings throughout different jurisdictions, 50 percent of the warnings required at least an eighth grade level of reading comprehension. When a person is arrested, understanding and comprehension are reduced by 20 percent. This shows the need for rewording these warnings. As for Senator Settelmeyer's question regarding the difference, I had the privilege of going on a ride-along with the Washoe County Sheriff's Department, where the officer read from the Miranda warning card. I hope officers would read the juvenile Miranda warning even if they did not know the age of the person arrested. It provides additional clarity, under the constitutional mandates, to assure what is being agreed or not agreed to is understood. These constitutional rights are being asserted or waived. In 2010, the American Bar Association passed a resolution urging governments to develop simply worded Miranda warnings, and this bill does that.

Sheriff John Urquhart from King County Sheriff's Department said:

> These warnings use simple, comprehensive language designed to ensure children know their rights when they make a knowing and voluntary decision. Criminal convictions have much larger and longer impacts than a possible jail sentence. We want to help youth succeed. That is why we are asking them to help us solve crimes while at the same time we are working harder to protect their rights.

We hope you will join us in this effort.

SENATOR PICKARD:
So often, as was mentioned, the child is going to say yes, particularly those who have been raised to respect and adhere to authority when they are asked if they are willing to talk to law enforcement. Many are going to reflectively say yes, and now they are subject to the interrogation. I want to confirm that King County and other jurisdictions that have adopted this language have found the younger children are understanding they can say no and they will be safe.

MS. BERTSCHY:
I cannot say that specifically but will note the studies show 90 percent of our youth waive their rights. The study discussed the reason for that is they do not understand what they are doing. Our office has a position that an attorney must be present in order to ensure the child understood his or her rights. We were willing to do that. Unfortunately, this did not make it into this bill. I cannot answer Senator Pickard's questions because other jurisdictions have an additional safeguard to ensure children understand their rights.

ELIZABETH DAVENPORT (American Civil Liberties Union of Nevada):
Children are our most vulnerable population. We must protect their right to due process when they are most at risk to be caught in the incarceration machine. Echoing Assemblyman Flores, children are uniquely vulnerable and often placed in a protected class because of this. They do not have fully developed brains and are predisposed to be obedient to people with authority figure status, as Senator Pickard was describing. Children are more easily intimidated, have a natural dependency on adults and are therefore recognized as having a high susceptibility to any police coercion no matter how slight. In some jurisdictions, as many as 80 percent to 90 percent of children waive their rights to an attorney because they do not understand the word "waive." A study in the medical journal *Law and Human Behavior* from the American Psychological Association shows children are more susceptible and more likely than adults to make decisions reflecting a propensity to comply with authority figures. The ACLU of Nevada supports A.B. 132 to enable children to more easily understand their Miranda warnings as a first step in the direction of protecting children's due process rights. We urge your support.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
All youth should have access to the resources and information they need to navigate the criminal justice system, regardless of the severity of the charges. Provisions of A.B. 132 will help increase fairness and better ensure justice for youths in Nevada. We urge your support.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
Nevada Attorneys for Criminal Justice (NACJ) supports A.B. 132. It is common sense that kids need a lot of things explained to them that might be obvious to adults. Why would that not extend to Miranda warnings? The purpose of Miranda warnings is to make sure people are not tricked or coerced, accidentally or on purpose, into testifying against themselves. That policy rationale applies

with special force to children. Practical experience bears out the need for this kind of specialized warning, so NACJ supports this bill.

PAUL CATHA (Culinary Workers Union Local 226):
The Culinary Union supports A.B. 132 because it furthers the fulfillment of the constitutionally protected rights for all children in Nevada regardless of background. The Culinary Union represents 60,000 working families in Nevada. A majority of members are people of color, and tens of thousands are parents. We know there are significant racial disparities in the outcomes of our legal system. This is why we must standardize and streamline the juvenile judicial process with more just legal outcomes. Assembly Bill 132 is a commonsense solution that will aid in the fulfillment of children's constitutional rights. As the largest organization of parents in Nevada, the Culinary Union urges the Legislature to support and pass A.B. 132.

JAMIE RODRIGUEZ (Washoe County):
I am here today to support A.B. 132 on behalf of our Juvenile Justice Division in Washoe County. The amended version of the bill addressed many of our concerns with the bill as drafted, and it is a positive step forward to helping youths in our communities who may be involved with the criminal justice system. We fully support the bill as amended.

BRIGID DUFFY (Nevada District Attorneys Association):
I am here today on behalf of the Nevada District Attorneys Association in support of A.B. 132. This bill offers a developmentally appropriate Miranda for people aged 18 and under who have contact with law enforcement.

CHAIR SCHEIBLE:
I will now close the hearing on A.B. 132 and open the hearing on A.B. 42.

ASSEMBLY BILL 42 (1st Reprint): Makes various changes relating to criminal law and criminal procedure. (BDR 14-371)

NICOLE ROURKE (City of Henderson):
This bill addresses a need to establish the statutory authority for municipal courts to conduct jury trials. I have provided a copy of my presentation (Exhibit D). Historically, municipal and justice courts cannot conduct jury trials in Nevada. However, as a result of the statutory change in 2015 and a subsequent Nevada Supreme Court decision, municipal courts are now tasked with

conducting jury trials in cases involving misdemeanor battery domestic violence. In 2015, the Legislature amended NRS 202.360 to include a misdemeanor in domestic violence in the list of crimes where a conviction prohibits a person from owning or possessing firearms. As a result of this change, the Supreme Court released the decision in *Andersen v. the Eighth Judicial District Court in and for the County of Clark*, 135 Nev. 321 (2019) which deemed a misdemeanor domestic battery under State law a serious offense under the Sixth Amendment of the U.S. Constitution, and thus defendants are entitled to a jury trial. This presents a challenge for our municipal courts without specific authority granted in statute.

The Henderson Municipal Court processes approximately 1,000 domestic violence cases each year. Establishing authority to conduct jury trials will allow these courts to invest in the infrastructure necessary to move forward with meeting the obligations established by the *Andersen* case.

MARC SCHIFALACQUA (City of Henderson):
There is no doubt the *Andersen* case was a huge decision. It also left some huge questions unanswered, and we are here to fix the problems and questions that linger from the decision. The first and most glaring issue is: are municipal courts now allowed to conduct jury trials? Typically, cities get their authority from a few sources—statutes, charters or the Constitution, none of which say municipalities can conduct jury trials. It is implied in the *Andersen* case*,* which was a municipal court case, but it does not specifically state that municipal court has jurisdiction. In addition, we have never had a history in Nevada of conducting trials in municipal courts, so our courts are not outfitted for jury trials. There are no jury boxes. We do not have a jury commissioner or personnel. Can we invest in getting the necessary tools? What rules do we follow? Our rules for jury trials are in NRS 175 and the words "municipal court" are not in that statute. What rules should be followed for consistency?

Can we do these jury trials? I have always argued yes, since the *Andersen* case is based on the Sixth Amendment to the U.S. Constitution. We are operating a criminal court; obviously we can comply with the Constitution. I have been relying on this case in my arguments: *Donahue v. Sparks*, *City of,* 111 Nev. 1281, 903 P.2D, 225 (1995). A Sparks Municipal Court judge in 1994 ordered a jury trial for a DUI. This was challenged. The Supreme Court said he could not do that absent a constitutional ruling. Now, we have a constitutional ruling that says you can do this, so it is what we have been doing. Again, the attacks on

our ability to provide this due process correctly have been nonstop. We have been litigating the question of municipal courts holding jury trials ever since. Three different district court judges have agreed this is a constitutional ruling and compliance is appropriate. These were all in various stages of briefing with the Supreme Court, and there has been no decision nor do I expect there will be one by the end of this Session. This has hampered us from moving forward.

It is more than that. In 1988*, Blanton v. North Las Vegas Municipal Court,* 103 Nev. 623, 748 P.2d 494 (1987) was a challenge to a DUI defendant asking for a jury trial. The court said the defendant did not get a jury trial, but the court also said if it ruled that the defendant does get a jury trial, it cannot be done until the matter is settled by the Legislature in the next Session. It is not the responsibility of the Supreme Court to provide the rules of how to proceed on these cases, how many peremptory challenges can be made or whether all procedures are uniform throughout the State. That is not what the Supreme Court can give us. The Supreme Court said even if it were ordering, it did not think it could be done until the Legislature sets out the rules. This decision was issued right at the end of the last Session, in September 2019. We are being challenged about our authority and did not have any rules. There are 1,000 victims a year handled in the Henderson Municipal Court. In North Las Vegas, Las Vegas and Henderson, there are almost 7,000 misdemeanor domestic violence cases a year, more than the Clark County District Attorney's Office, the Public Defender's Office and justice court can handle. Handing them over to municipal court would never work.

These are our victims, this is our problem and we have a duty to them. There was a lot of time between September 2019 and May 5, 2021. The three largest cities in Clark County have enacted a domestic violence ordinance with similar penalties and enhancement capabilities. The prohibition to carry or own firearms is not included in the penalties that are being ordered in municipal court, which is how they eliminate the necessity for doing jury trials. This is meant as a stopgap measure. We want to go forward to do these trials, but we need protection and rules.

This is a tough problem. One of the toughest the judiciary system has dealt with in some time, but it is not an impossible problem. This bill is to give clear language that we can provide this right, give us the rules, so we are all doing this uniformly, and provide a clear definition of the gun prohibition law which is

not clear right now. Then we will know who is prohibited, who gets this jury trial and who does not.

There are various parts of this bill talking about the authority and the rules. It changes a lot of language, inserts the municipal court into NRS 175 so we are following the rules. This tells us how to pay the jurors and other details. There is a lot of conformity to make sure we comply. I will touch on two parts that are more substantive.

First, the size of the jury. How many jurors do we need for a misdemeanor jury trial in Nevada? In 1983, the Legislature added a section that said six jurors were enough for a misdemeanor. It provided a statutory right at that point, but there was never a constitutional right. There have never been misdemeanor jury trials until last year, so this has been a dormant law for over 30 years. The U.S. Supreme Court says you can have six jurors under the federal constitution, but many states have struck down their six-person juror statutes. The Nevada Constitution originally did not specify the number of people on a jury, but subsequent caselaw in *State v. McClear*, 11 Nev. 39 (1876) shows juries should consist of 12 people.

Let me be clear, we would like juries of six people. This is going to be hard enough, and most of our buildings are not made for juries at all. If we have 12 jurors it is tougher because of space constraints. I have been litigating this issue for the last two years and many cases have been put on hold during that time for the Nevada Supreme Court to weigh in. Every state I looked at that writes its constitution like ours says there must be 12 people on a jury—Wisconsin, Minnesota, Illinois, Kansas, Idaho, Pennsylvania and Rhode Island. This is not the conclusion I want, it is the conclusion I came to, so I want to describe why.

Second, I want to highlight the gun prohibition law. This is the whole reason for the *Andersen* case. In 2015, we added domestic violence charges which result in becoming prohibited from owning or possessing guns in Nevada. We wanted to take a look at the law. The definition of domestic violence in the bill is based on federal law instead of Nevada law, and this is where we run into trouble on this issue. Under the federal law, it prohibits a few people from owning or possessing if they are convicted. Spouses, former spouses, children or anybody similarly situated to those groups are the defined victims. A large portion of our cases deal with dating relationships. The federal law and hence Nevada,

according to the definition in this bill, does not include a partner in a general dating relationship as a victim of domestic violence. If a husband is convicted of abusing his wife he is prohibited from owning or possessing a firearm. Same scenario between a boyfriend and girlfriend, but the perpetrator is not prohibited from owning or possessing a firearm. It would be good policy to close this loophole. Also the practical reason for this is when we pick up a police report and it says the parties have been dating six months, we are not going to know if they are going to meet the federal language. Are they similarly situated to a spousal relationship? The right to the jury trial is tied to the gun prohibition. If you could have your guns taken away upon conviction, you get this level of due process. We need to know clearly who is in and who is out, and right now nobody knows.

There is another problem. In *U.S. v. Hayes*, 555 U.S. 415 (2009), it says you could be convicted of a lesser offense and still be prohibited from firearm ownership. Then we would have to provide jury trials to those individuals as well, and we want to keep this clear. This is for the crime of battery domestic violence. You have to be charged and convicted of that crime to be prohibited to own or possess firearms in Nevada in municipal court. We are not seeking to rope in other crimes nobody intended to include prohibited firearms ownership as part of the penalty.

The federal definition can change. There are various bills in Congress right now to change it. If we rely on those definitions, we could like changes, or not, and we would not have much of a voice.

SENATOR HARRIS:
My first question is about the stopgap you have put into place. If this legislation passes, will that ordinance no longer be operative?

MR. SCHIFALACQUA:
It will still be operative, but a jury trial would happen under the ordinance. Under the new definition of the gun prohibition, it is a violation of State law or any other jurisdiction that has the same law. Whichever definition is chosen, the jury trial will be included.

SENATOR HARRIS:
My second question is about section 13, and it looks like, on line 38, you have the parent or the legal guardian of the person. Is that intended to capture juveniles, or is it also intended to apply to the adult guardianship relationship?

MR. SCHIFALACQUA:
Starting with the biological child and parent, it would apply when both are adults. The legal guardian language is in the federal language, so it would not be much of a change. We are looking for people in the parental role.

SENATOR HARRIS:
What you are looking for is the parent of the person or legal guardian of a child.

MR. SCHIFALACQUA:
Yes.

SENATOR HARRIS:
As currently drafted, it seems this would apply to someone who has guardianship of the estate of an adult or guardianship of the person or guardianship of the person and estate of an adult. It is sweeping in the adult guardianship process, and if it is your intent to carve that out, then it may be an amendment that should be put forth.

MR. SCHIFALACQUA:
Yes, it is really meant to apply to the parent-child relationship at any age.

SENATOR PICKARD:
After our conversation I looked up the *State v. Borowsky*, 11 Nev. 119 (1876) case, which was interesting because it had to do with public administrators who violate the law. In that case, the Nevada Supreme Court stated a person could consent to fewer than 12 jurors. When we look at statutory construction and interpretation of constitutional law, the canon suggests we are allowed as a Legislature to deviate so long as we are not contrary to the Constitution. The Constitution does not require 12 jurors for misdemeanor convictions. Would it be true that if we, as a Legislature post-*State v. Borowsky*, and all the history that has ensued, particularly in light of the *Andersen* case, are at liberty to state a six-member jury is sufficient in these cases?

MR. SCHIFALACQUA:
Is the word "twelve" embedded in the word "inviolate" to the degree that we cannot make a law that goes against this? The other states that have looked at it with similar history and similar language have said yes, and a six-person jury cannot be done without a constitutional amendment.

SENATOR PICKARD:
On that interpretation, if we are going to do this, we will be impaneling juries with 12 jurors. What kind of accommodations will be needed in addition to the obvious creating the jury box. You hinted at jury commissioners and the like. What kind of impact is this going to have on the justice courts and municipal courts that are hearing domestic violence cases? What are we forcing everybody to do in this case?

MR. SCHIFALACQUA:
There is no question this is difficult. The main issues are space and expense. When there are more jurors, more room is needed in the courtroom, and in a juror facility in which to call the initial pool. Additionally, more people will need to be called. There is no question there is an added expense when 12 jurors are needed rather than 6 jurors. The statute allows the parties to agree to fewer jurors.

SENATOR PICKARD:
If this bill passes, how long will it take for the City of Henderson to prepare for that?

MR. SCHIFALACQUA:
At least six months, which is why we gave ourselves some time before this would be fully enacted. A short-term plan and a long-term plan is needed. Short term may be some folding chairs and trying to find a different space to call the jury pool, then we would need to do construction.

SENATOR SETTELMEYER:
Would it only be the larger cities that would be able to take advantage of this?

MR. SCHIFALACQUA:
No. The larger cities could summons their jury pool from their cities themselves. They would not have to go countywide. Those locations under the population cap can send the summons countywide. We worked with the justices of the

peace on this, and there is something similar with their townships. If they have a small township, they can summons the jury countywide.

SENATOR SETTELMEYER:
I understand the concept to have all the federal rules regarding gun prohibitions directly listed word for word. Would there be a concept for this referring to the federal rules to make it easier to understand from state to state and make it more applicable?

MR. SCHIFALACQUA:
The concern is bringing in all the other crimes that will not apply in Nevada. It is dangerous to reference federal law because it has been interpreted to give a lot of lesser included offenses and we just want to deal with the issue in the *Andersen* case.

LIZ ORTENBURGER (CEO, SafeNest):
SafeNest is on the frontline of the epidemic of domestic violence every day, serving over 25,000 clients annually. We are in full support of this bill as it ends the firearm loophole created by the municipal courts in response to the *Andersen* case.

Why is ending this critical? Because the chance of homicide for domestic violence victims is increased by 500 percent when there is a firearm in the home. This does not just affect the primary victim. It includes children, grandparents and acquaintances of the victim who are also likely to be murdered if they are in the vicinity. Nevada remains in the top ten most dangerous places in the Country for women being murdered by men. Fifty percent to 80 percent of that is with gunshots. We must close this loophole for survivors of domestic violence who deserve to know that their batterer will not be their murderer.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):
We are in support of A.B. 42. This bill establishes in State statute that municipal courts have the authority to conduct jury trials, ensuring municipal courts are able to hold domestic violence offenders accountable. Seconding what Ms. Ortenburger said, it is imperative that domestic violence offenders are held accountable, and once convicted lose the right to bear or purchase any firearms. This will reduce the increased risk to domestic violence victim

survivors. This bill will ensure that there is uniformity in the processing of domestic violence in all municipal courts throughout the State.

CHARLENE HELBERT (Deputy City Attorney, City of Las Vegas):
Although A.B. 42 has a lot of legal language involving jurisdictions, court functions and definitions, at its core it is a bill about victim safety. Since the *Andersen* case decision, prosecuting these cases has been frustrating. Our office has referred between 3,500 and 5,000 cases a year and has had domestic violence cases dismissed outright, with 2 of our 6 courts saying they do not have jurisdiction to hear a case if it requires a jury trial. We had convictions under our ordinance when the victim who has just testified about the abuse will leave with her abuser and go home to a place that we know has firearms. We have had other victims concerned about retaliation because they know a defendant can be violent. I have to explain the abuser, even if convicted, can keep his or her guns because it is unclear whether we can do a jury trial. Victim safety has been eroded by ambiguity in the law.

The fact is, domestic violence is one of the most common types of violent crimes in Nevada. In 2019, the Office of the Attorney General noted nearly 25,000 reports of domestic violence. We need every town, city and municipality in Nevada to help combat this issue, prosecute these cases, hold offenders accountable and keep victims safe.

Assembly Bill 42 allows for the continued prosecution of these violent cases within city jurisdictions. Adoption of this bill allows resolution of an important issue in a few weeks, which would otherwise take the court years to decide.

ALYSON MCCORMICK (City of Sparks):
After the Supreme Court determined that a jury trial is required for certain domestic battery offenses, the City of Sparks adopted an ordinance allowing the municipal court to hold jury trials when constitutionally required. That ordinance was a stopgap measure to hold domestic offenders accountable until the Legislature could act. Assembly Bill 42 would remove all doubt as to whether the Sparks Municipal Court may hold jury trials if constitutionally required. The City of Sparks has concerns about the logistics and the cost of 12-person juries. The city questions whether 12-person juries are constitutionally required for misdemeanor offenses like these. However, we will continue to work with the City of Henderson on that issue.

ARIELLE EDWARDS (City of North Las Vegas):
Assembly Bill 42 gives additional clarity to the NRS as it pertains to prosecuting battery domestic violence cases. As we understand A.B. 42, if the City of North Las Vegas wants to continue prosecuting battery domestic violence cases, jury trials will be required unless waived by the defendant. Our support of this bill comes with a cost to the City of North Las Vegas. We have submitted a substantial fiscal note for A.B. 42 due to the need for retrofit and expansion of our municipal courts to house such cases. We support the effective date for passage of the bill.

JOHN JONES (Nevada District Attorneys Association):
We are in support of A.B. 42. This bill provides clarity. It clarifies that municipal courts can hold domestic violence trials. It would be disastrous for domestic violence prosecutions if a future court ruling held that municipal courts could not have jurisdiction over domestic violence trials. A ruling like this would require the county district attorneys' offices to handle all domestic violence cases within a county. As Mr. Schifalacqua indicated, the southern municipal jurisdictions in Clark County combined handle more of these cases than the Clark County District Attorney's Office. The District Attorney's office cannot more than double our caseload and still provide the justice that domestic violence victims deserve.

We fully support moving away from the federal definition in the prohibited person violence statute. This would provide clarity as to which defendants are prohibited from possessing a firearm. We urge this Committee to pass A.B. 42.

CALLI WILSEY (City of Reno):
We support this bill because it provides needed clarity and confirmation as mentioned by several of my colleagues from other municipalities today. Prior to the bill heading to a work session, we hope to seek additional clarity with the bill's sponsor on the constitutionality question raised and discussed today related to the number of jurors. We believe the question of the number of jurors is not clear, and we have made changes to our courts under a different interpretation. The change to 12 jurors could create logistical and physical challenges for us. We look forward to that conversation to get additional information.

A.J. DELAP (Las Vegas Metropolitan Police Department):
Las Vegas Metropolitan Police Department is in support of A.B. 42 and its provisions.

MR. PIRO:
We submitted a proposed revision with amendments (Exhibit E). That is the only reason we are in opposition. If section 12, subsection 10, paragraph (a) of the original bill is amended, we would no longer oppose this bill. Several district attorneys in southern Nevada made the argument that once a person has a prior felony or a prior battery domestic violence conviction, he or she would no longer be entitled to a jury trial. We have opposed that argument, and recently Mary Kay Holthus, District Judge, Department 18, Eighth Judicial District, a former prosecutor, now a judge, ruled against the State for making that argument. We are firm in our opinion that the right to a jury trial attaches to the charge itself.

As for the 12 jurors, in 2017, people were saying if we enacted jury trials for this type of charge, the consequences would be disastrous. However, we have been doing jury trials for a long time. Municipal courts should have the right to hold jury trials because they handle a lot of cases. We want to see some of the bill adjusted. Many of the issues could be handled with interlocal agreements while courtrooms are being outfitted. The Henderson Justice Court, which is just one floor below the Henderson Municipal Court, has a jury box, so perhaps the municipal court could handle jury trials there. The floodgates have not opened on jury trials around the State. I believe we are at less than 20 trials even though this decision was made a long time ago. There is no need to worry, and interlocal agreements would get us through this phase before the municipal courts ready themselves to handle jurors.

MS. BERTSCHY:
We are also in opposition mostly because of what we provided in our amendments, Exhibit E, with some additional clarity we would like to see in this bill to ensure that we are all operating under the same system across the State. I am not going through the amendments because you can see them online. As Mr. Piro indicated, the main amendment is the necessity of changing the language to ensure that we are complying with the Nevada Constitution, Article 1, section 3 ensuring that everyone who has a right to a jury deal is receiving a jury trial. As Mr. Piro alluded, concerns are going across Nevada that everyone who is charged with domestic battery regardless of the jurisdiction

should be afforded the right to a jury trial. Additionally, section 13 of the bill needs further clarity to ensure that we are not excluding the adult wards of guardianships.

KEVIN HIGGINS (Chief Judge, Sparks Township Justice Court, Department 2, Washoe County):
I am appearing on behalf of the Nevada Judges of Limited Jurisdiction, which is the association of all the lower court judges in Nevada.

Reluctantly, we are opposed to the section of the bill which would increase the size of the juries in justice and municipal courts from 6 to 12 jurors. We do not think this is constitutionally required. We do not think it is required by caselaw and the adverse consequences in many of our courts outweigh other issues. Few of our courts in Nevada have room for six jurors and are struggling to meet that requirement. Fewer still can accommodate 12 jurors and a venire of 50. The original bill did not have that change, which was amended on the Floor. As noted, the Nevada Constitution is silent on the number of jurors. It just says the right to the jury trial is inviolate. Caselaw talks about the number of jurors.

Since 1983, the NRS has limited the number of jurors in criminal cases in justice court to six and there were a number of jury trials in justice court. The statute has allowed it for a long time, it was not an option chosen by most defendants. In conversations with senior judges, it was common in Washoe County through most of the 1970s and 1980s to have jury trials in DUIs. There was a two- to three-year wait to get the jury trials. There were significant problems with that. I am unaware of any caselaw in Nevada that challenges the six jurors that are allowed in justice court. The two Nevada cases from 1876 do not require 12-person juries in justice court. The *State v. McClear* case dealt with an act of the Legislature that removed all of the challenges for cause in Nevada, and they were litigating to decide if it was appropriate. *State v. McClear* said it was. This was a felony rape case in district court. *State v. McClear* also said based on common law, the jurors meant 12 competent men, so citing *State v. McClear* might not be logical since half the people in this building could not sit on a jury today based on this decision.

The *State v. Borowsky* case was an impeachment case. The county assessor in Washoe County had taken money and walked off the job. The question was whether the district court could handle the case. The term misdemeanor was used in the statute. The defendant was being tried for a "high crime and

misdemeanor." The Supreme Court said the district court could hear the case even though misdemeanor was used. The defendant was found guilty in district court. As an historical note, he was sentenced to a $2,000 fine which he was allowed to pay off at $2 a day in prison. Both of these cases are felony cases, not lower court cases.

Many states have chosen to give greater constitutional rights, including the number of jurors, across the United States. But the U.S. Supreme Court has said repeatedly that six-person juries in lower courts are constitutional. Nevada can choose to require 12 jurors, but I do not think it is required by the State Constitution or NRS.

Our essential problem with the amendment is the unintended consequences. It is going to be practically impossible for many courts in Nevada to host 12-person juries. I have a new courthouse; it is eight years old. We built a jury box anticipating short-form simple jury trials. There are six seats in it. We are looking at how to squeeze seven people into the box. We probably will need to have people on folding chairs. To accommodate a 12-person jury plus 2 alternates is going to require a chainsaw and significant amount of work in my courtroom. We have actually looked at a bid for $75,000 plus. When you take social distancing into consideration and a venire of 50 to get 12 people, I am not sure we have any place in our courthouse to put 50 people that are socially distanced.

Our concern is the pragmatic consequence of increasing the number of jurors. We can end up in high school gyms and Elks halls across Nevada that are big enough, but there are no benches or recording equipment. There is no jury box or security. It is possible to do, but the consequences are unintended. Anything that causes it to be more difficult to hold a jury trial in a domestic violence case should be avoided. Making it as difficult as this is in some jurisdictions may lead to different charging decisions if there is a question about whether municipal court is appropriate. I think we have seen fewer domestic violence cases charged in Washoe County since the *Andersen* case happened. This was anecdotal, no statistical analysis was done.

We are ready to go in Sparks with a six-person jury. We have 22 cases backed up. Because of Covid-19, we have not been able to hold trials. We are working with the District Court Jury Commissioner who will start polling the jurors in July. We have looked at several alternates. Can I sit in Reno District Court and

hold the case there? I am not sure my criminal jurisdiction moves from Sparks to Reno. That question will have to be resolved. We have many small townships in Nevada that are not located in the same city or town with the district court. We have townships that have fewer than 1,000 residents. In Lander County, the Austin Township has 287 residents. To call 50 people, court personnel would have to call 25 percent of the residents. Whether the trial can go to the Argenta Township Justice Court in Battle Mountain is an open question.

We are not opposed to jury trials in these cases. We think it is important. I have been on the bench 18 years, and I know what domestic violence does to families and to victims. But I think those cases need to be resolved quickly without making it more difficult, which will extend the time it takes to get them in court. On balance, the possible question about whether six-person juries may be unconstitutional should be left in the Nevada Supreme Court. The off-chance that this may be unconstitutional is outweighed by the collateral consequences.

SENATOR PICKARD:
The Constitution does not specify 12-person juries. Has this ever been brought to the Supreme Court?

JUDGE HIGGINS:
I am unaware of any challenges to the six-person juries. The Supreme Court has had the opportunity to weigh in. There have been two or three decisions discussing collateral issues since the *Andersen* case. Nothing has been said about the number of jurors. One of the senior judges sat on the bench at Lake Tahoe and in Reno in the 1980s, and they did jury trials in Justice Court. To my knowledge, these were six-person juries. Since 1983, our statute has said criminal cases in justice court with six-person juries are appropriate.

SENATOR OHRENSCHALL:
If a trial is held with six jurors, is there a risk of those decisions being overturned if later an appellate court said 12 jurors are needed?

JUDGE HIGGINS:
There is complicated caselaw on the retroactivity of constitutional rights. If the case is concluded by the time the Supreme Court decides, I do not believe courts are going to retroactively go back to change any of the prior cases. If a case is in trial or has no final decision, there is a possibility if a fundamental

constitutional right is in question. Retroactively, it would not affect any completed cases.

SENATOR HARRIS:
If your courtroom was currently set up to do 12-person juries, would you still be in opposition?

JUDGE HIGGINS:
No, probably not. But I am also here on behalf of the 95 limited jurisdiction judges in Nevada. Some of the bigger courthouses could handle it. Austin, Beatty and Eureka and most of those courts are going to be in trouble. I do not think 12-person juries are constitutionally required in municipal court. If you want to make it a legislative decision that it is required, of course we will do that.

SENATOR HARRIS:
My concern is putting a price on a constitutional right. It is expensive to do a jury trial in the first place. At one point, those were not required and then we forced everybody to get with it because we decided this is what people deserved.

JUDGE HIGGINS:
I agree that we should not put a price on constitutional rights. I am not sure, though, that there is a constitutional right to a 12-person jury trial in justice court.

SENATOR HARRIS:
Is the only way to find out if the Supreme Court requires a 12-person constitutional jury is to first do a 6-person jury, and then have it challenged?

JUDGE HIGGINS:
I understand there have been some cases with six-person juries in Clark County and the Reno Justice Court had two, but they were cancelled. Theoretically, it does require someone who is convicted and then appeals the decision.

DANIEL REID (National Rifle Association):
While we are appreciative of the bill and the due-process protections and the enhancements it provides, our opposition is limited to section 13, the expansion

beyond the federal law for a lifetime firearm prohibition for a misdemeanor crime of domestic violence. We have worked with the sponsor and we will continue to try to do that, but with the change in who can be prohibited for these misdemeanor crimes is a bridge too far for us, and we are in opposition.

MR. HOFFMAN:
We oppose A.B. 42. We are not opposed to the concept of allowing municipal courts to hold jury trials for domestic violence charges. It is important to get the details right. We do not feel that the bill as currently drafted does that. I would also note the reason we are here is the Supreme Court found the existing version of these statutes unconstitutional. If the Legislature does not get the details right, that opens us up for further constitutional litigation and uncertainty and nobody wants that. It is better to get it right now and not have to come back next Session. We would move to support with the adoption in Mr. Piro's and Ms. Bertschy's amendments, Exhibit E.

MR. SCHIFALACQUA:
The good news is that it does not sound like anyone is opposed to municipalities having the clear right to do the jury trials moving forward. The Nevada Constitution says, "The right by jury shall be secured to all and remain inviolate forever." It does not say just those in a certain court. That is my interpretation and that is why we are asking for 12-person juries. The practical concerns are real. We will meet with the Legislative Counsel Bureau legal team to see whether we can look at this again and whether there is anything we are missing and change that if we can.

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CHAIR SCHEIBLE:
This concludes the hearing on A.B. 42, which is now closed. The meeting is adjourned at 2:57 p.m.

RESPECTFULLY SUBMITTED:

Sally Ramm,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
	A	1		Agenda
A.B. 202	B	1	Assemblyman Steve Yeager	Proposed Amendment
A.B. 132	C	1	Ana Olivares	Support Statement
A.B. 42	D	1	Nicole Rourke / City of Henderson	Presentation
A.B. 42	E	1	John Piro / Office of the Public Defender, Clark County	Proposed Amendment and Concerns