

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 1, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, March 1, 2021, Online. [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 Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Pam King, Committee Secretary

OTHERS PRESENT:

John Jones, Clark County District Attorney's Office, Nevada District Attorneys Association
Liz Ortenburger, CEO, SafeNest
John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Kendra Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

We open with Senate Bill (S.B.) 147, and I direct your attention to the proposed amendment ([Exhibit B](#)) from Senator Harris.

SENATE BILL 147: Establishes provisions relating to conditions of release that prohibit the contact or attempted contact of certain persons. (BDR 14-377)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

Senate Bill 147: Establishes provisions relating to nonmonetary conditions of pretrial release prohibiting contact commonly referred to as no contact orders.

This bill arose out of S.C.R. No. 11 of the 80th Session and its Committee to conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases, which I had the pleasure of chairing this past Interim.

By way of brief background: As you may recall from several measures introduced last Session—and you may have heard in various news reports regarding the status of recent litigation—the issue of pretrial release, sometimes commonly referred to as the bail process, has been an issue facing our great State. What we are talking about is a defendant being held in detention prior to trial or formal adjudication of guilt.

Under the Nevada Constitution and existing Nevada law, all persons arrested for offenses other than murder of the first degree are required to be offered the opportunity to be released on bail. Moreover, the Nevada Supreme Court recently held in relevant part in *Valdez-Jimenez v. Eighth Judicial District Court in and for County of Clark*, 136 Nev. 155 (2020) that defendants who were eligible for bail must be released on the least restrictive means possible, first, to ensure community safety, including the safety of the victim, and second, to ensure the defendant's appearance in court. Thus, it is an important and compelling need to balance the safety of the community, the rights of the victim and the costs associated with pretrial detention together with the constitutionally afforded rights of the accused.

It is also worth noting that Marsy's Law, set forth in Article 1, section 8A of the Nevada Constitution, requires the safety of the victims and the victim's family to be considered as a factor in determining monetary bail and nonmonetary conditions of pretrial release.

During the 2019 Legislative Session, three bail reform measures—A.B. No. 125 of the 80th Session, A.B. No. 203 of the 80th Session and A.B. No. 325 of the 80th Session—were introduced but ultimately did not pass. During those discussions, several members of the Legislature and other stakeholders identified the need for more extensive data on bail reform and the current state of the bail system in Nevada. Senate Concurrent Resolution (S.C.R.) No. 11 of the 80th Session was then introduced and enrolled, which called for the Legislative Commission to conduct an interim study to further examine the issue and report back to the Eighty-first Session of the Nevada Legislature.

Today I would like to provide a brief overview to the Committee's body of work before I delve into the details of Senate Bill 147. My rationale is that the S.C.R. 11 Committee ultimately approved a total of five bill draft requests (BDRs) that will be forthcoming this Session, hopefully, to this Committee.

During the 2019-2020 Interim, the S.C.R. 11 Committee held three subsequent meetings and a work session. Throughout the Interim, the Committee received formal presentations from interested stakeholders and national experts, and also heard public testimony on a broad range of topics involving pretrial detention of defendants in criminal cases. Discussion topics included, but were not limited to: a presentation on national trends in bail reform and bail reform measures enacted in other states by the National Conference of State Legislators; an overview of pretrial release in Nevada and the Nevada Pretrial Risk Assessment (NPRA) by the Administrative Office of the Courts; a presentation on the pretrial release process in justice court and failure to appear for certain misdemeanor and low-level offenses by Judge Diana L. Sullivan, Las Vegas Township Justice Court, Department 12, Clark County; a presentation on the statistics and data used in developing the NPRA by JFA Institute, which developed the NPRA; a presentation on pretrial jail populations by the Las Vegas Metropolitan Police Department (LVMPD) and the Washoe County Sheriff's Office; an overview of the Law Enforcement Assisted Diversion program in Clark County by LVMPD; presentations on the operation of bail agencies and the bail bond industry by representatives from private bail bond firms; presentations on possible reforms by district attorneys and public defenders; presentations on the *Valdez-Jimenez*

decision; a presentation on protecting the safety and rights of domestic violence survivors in the pretrial process; and presentations on the community impacts of pretrial detention and release.

Ultimately, this body of work led to the approval of five bill draft requests, four recommendations to draft a letter to the Nevada Supreme Court, and one recommendation to approve a policy statement in the final report. The full 68-page final report is available online on the S.C.R. 11 Committee's website.

Senate Bill 147 makes an important policy change to allow victims a statutory entry into the bail process—an ideal which is supported by the Nevada Constitution. The concept for this bill was originally brought to the S.C.R. 11 Committee from the Henderson City Attorney's Office. While the existing bail process under *Nevada Revised Statutes* (NRS) 178.484 and 178.4851 allows a court to impose conditions of release that prohibit contact with certain persons on its own volition, this bill provides a statutory mechanism for the victims to request the court to issue such an order.

Additionally, during the Interim, other presenters relayed that distinct procedural issues relate to the enforcement of no contact orders under statute. The discussion concluded that the process should include a mechanism to allow local law enforcement to be made aware of no contact orders that may be issued during the pretrial process, so that violations of such orders can be adequately enforced. No contact orders issued during the pretrial release process are not the same as protection orders; however, this bill would make strides to treat no contact orders similarly to protection orders in terms of their enforcement. With this background, the vote to approve the drafting of this legislation was unanimously approved by the S.C.R. 11 Committee.

I would like to provide a brief overview of Senate Bill 147. Section 1, subsection 1 of this bill allows a victim to request that the court issue an order which prohibits the defendant from contacting or attempting to contact a specific person or having another person contact or attempt to contact that specific person. Subsection 2 requires the court to consider the victim's request. Subsection 3 requires the court to transmit a copy of any such order or modification or cancelation thereof to local law enforcement, so that local law enforcement is aware of the order or any changes to the order. I am working on an amendment that will make this intent clear. As drafted, "all law enforcement agencies" is too broad. Subsection 4 allows a prosecutor or court

to seek such an order without first receiving such a request from the victim, and that should not be used as a basis for delaying a bail hearing. Subsection 5 defines the terms "cancel" and "condition of release prohibiting contact" for purposes of the bill. Finally, section 2 of the bill makes a conforming change for placement in the NRS if this bill is enacted and codified.

In conclusion, S.B. 147 strengthens the pretrial protections for victims by providing appropriate notice to law enforcement and the community. It is my hope that this brief discussion of the pretrial release process has helped shape some of the discussion for today as the important work of the S.C.R. 11 Committee comes before this Body. I strongly urge your support of this important legislation.

SENATOR PICKARD:

How does this differ from current law, particularly when it comes to the jurisdiction and authority of the judge to issue a stay away order, and how does this differ from a temporary protective order which is always available to people? I believe it is a lower standard of just satisfaction required. Can you explain those two things?

SENATOR HARRIS:

The temporary protective order is a civil remedy. One of the goals of this legislation is to give people some time with the stay away order to apply for the temporary protective order (TPO). I am not clear on whether the standards are much higher or lower. It is my understanding that the TPO process has due process built in. It is actually an effective mechanism to achieve this goal. Here we get the stay away order, with time for victims to apply for the TPO.

My understanding is that this bill does not change any of the standards or the process by which courts can already issue these. It really just gives the victims the ability and the knowledge in the NRS to make that request.

SENATOR PICKARD:

I do a fair amount of TPO work in my own practice, so these are typically orders that can be obtained pretty much at any time day or night. Much of it is online, so we can get those usually within hours of the person needing to get it. The difference and what I am keying on is that under a TPO violation, a violation results often in criminal action and a misdemeanor to violate a TPO, whereas here it only affords a trespass and no criminal action except for contempt power

which the court always possesses. I do not see why this bill is needed. On its face, it looks like it is not needed, but you and I had the conversation, and you made a very good point that I would like to get on record.

SENATOR HARRIS:

Senator Pickard, you hit on something that has been a problem with stay away orders in the past. That is why you see the trespass language. It is my opinion that these could already likely be charged as trespass, but explicitly putting it in gives officers something upon which they can act, whether that be issuing a citation or, if needed, taking someone to jail.

SENATOR OHRENSCHALL:

Thanks go to Chair Scheible and Senator Harris. First of all, I want to compliment Senator Harris for tackling this issue and chairing the Interim Committee looking at bail reform in Nevada. I commend your hard work, and it is great to see these bills.

If this bill passes, how would this work wherein an alleged victim seeks this kind of prohibitive prohibition on contact from the defendant? Would all of the courts apply?

SENATOR HARRIS:

That is the intention, Senator Ohrenschall, yes.

SENATOR CANNIZZARO:

Is this process directly relating to NRS 178, which deals with pretrial release? There are a number of factors in statute by which the court has to take into account all while focusing on the context of *Valdez-Jimenez*, to which Senator Harris did a good job of giving us the basics. This relates to where a court deems this necessary to ensure the safety of the community and to ensure that a defendant would come back to court. This particular mechanism relates to the safety of the community generally and more so to the specific victim. This is generally used in common practice and would outline this process in S.B. 147 as something that would relate directly to why somebody should be released and what we can put in place to ensure those two things. Is that an accurate statement?

SENATOR HARRIS:

Yes. All of the considerations that we statutorily, and by the Nevada Constitution, have to take into consideration when deciding the appropriate conditions still govern this process.

SENATOR CANNIZZARRO:

I bring that up because it is a little bit different than a restraining order. Although they may function similarly, this is a condition to say to the defendant, "We are going to release you, but we don't want you to have contact with the victim." That becomes pretty apparent in cases like domestic violence, sexual assault, or in abuse of a child. Those types of situations we see in a lot of gang cases, to ensure the safety of the community, in saying, you cannot be going and continuing to make contact with someone who has been victimized while the case is still pending. And so this is a little bit different to me than the protective order, so I just wanted to get that on the record because it does function a little differently.

With respect to the proposed amendment, [Exhibit B](#), I want clarification on a couple of things. Change to the language in section 1, subsection 1 says that the "victim may request" instead of the prosecuting attorney, which makes sense because we want victims to ask for that as a condition so they can feel safe if someone is going to be released.

I wanted to ask about the interplay with section 1, subsection 4 where it says that a prosecuting attorney or court does not necessarily need to have that request. I read this language to mean the victim has a pathway to ask for that irrespective of the court or the prosecutor asking for it. But there is also a mechanism if the court or the prosecutor believes it is necessary to ensure the safety of the community, either could request for that to be imposed.

SENATOR HARRIS:

Yes, that is correct.

SENATOR CANNIZZARRO:

The issue with the 90 days for the temporary protective order reads as though this would be active for 90 days and could be extended but only to allow the opportunity to seek a temporary restraining order or a temporary protective order. Could it be extended for other reasons? Or is the intent to allow merely for that process to take place?

SENATOR HARRIS:

The intent here is to allow courts to have the appropriate amount of flexibility that they need to ensure that the victim has the protections he or she needs and the defendant has the due process protections that person is, in fact, afforded. Courts can go even less than 90 days if they feel that is sufficient. I would leave it up to the courts to decide when it should be renewed. Senator Pickard brought up that at least in Clark County, getting TPOs can be done within hours, but there are times when people cannot take off work or need a little bit of additional time, and this would allow for that.

SENATOR CANNIZZARO:

That makes sense to me because we have a lot of serious cases. A child sex abuse case can go on for a long time; with the child victim, that can become a little more complicated as well. I agree that having that review for 90 days makes perfect sense because it builds in that due process that only happens when a defense attorney brings it back up to the court. For example, we have had instances where a no contact order may no longer be necessary. If they have a TPO, potentially it is not necessary as well. As long as we allow leeway to have a regular review of those—but then also allow for that to be extended regardless of whether there is an actual TPO because some of these cases take longer than 90 days by their nature—makes sense to me.

SENATOR HARRIS:

That is the balance I was looking to strike with that section.

CHAIR SCHEIBLE:

I will work backwards because we are talking about that 90-day threshold put into section 1, subsection 3. I understand that without an expiration, it is difficult for law enforcement to keep records of these kinds of orders because you cannot put in somebody's scope, for those who work in law enforcement regularly know, that you cannot run somebody and have an order. A TPO expires. A court order does not necessarily expire. Does putting the 90-day time period on it allow the order to be visible to any officer on the street who runs somebody's information?

SENATOR HARRIS:

It is my understanding that this will make it easier, although not all law enforcement agencies are technologically capable of putting these into some

database. This bill by no means requires that they do so, but for those set up to track these types of things, it should make it a bit easier for them to enforce.

CHAIR SCHEIBLE:

But that would also allow, for example, the longest an order made at the beginning of the case could possibly be is 90 days. If the court imposes that full 90 days, the case goes to a preliminary hearing in 80 days and is resolved, and the person plead and has requirements or whatever, then that order would basically go away. You do not have the fear of somebody coming back six months later when the case is already closed and nobody realized the order was still floating out there. Is that the guard rail on the other side?

SENATOR HARRIS:

That is correct. This bill would require the immediate transmittal of a revocation or any change in the same way that it would require the immediate transmission of the establishment of the order.

CHAIR SCHEIBLE:

It would allow a judge to make a decision if unsure of the relationship between the victim and the defendant, and not knowing if they have had contact. The judge could say, "Okay, I am going to issue an order for the next 30 days, and I am going to give you a hearing in 29 days, and I expect to get the facts on the record for whether this order is still necessary." The judge can make that choice as one way to handle the question of whether the victim and the defendant need to stay away from each other.

SENATOR HARRIS:

That is correct.

CHAIR SCHEIBLE:

We will close the presentation and move on to testimony in support of Senate Bill 147.

JOHN JONES (Clark County District Attorney's Office, Nevada District Attorneys Association):

On behalf of the Clark County District Attorney's office and the Nevada District Attorney's Association, we thank Senator Harris and appreciate her amendments to the bill. We have had several discussions with her over the past week since the bill dropped, and we support this bill. No contact orders

issued through the criminal case can be difficult to quickly enforce and may give victims a false sense of security upon the release of the alleged perpetrator. Victims often think that no contact orders issued to the criminal case have the full force and effect of a protective order, but this is not the case. As Senator Harris said, TPOs are civil remedies, and often judges in their civil cases do not have access to all of the information that we have in the criminal system. Senate Bill 147 helps to streamline the process for victims to receive a no contact order in the criminal case and to elevate that order to something more like a protective order. The Clark County District Attorney (DA) supports this effort.

I did see that the Nevada Judges of Limited Jurisdiction have some concerns with the bill. We are willing to work with Senator Harris, the Nevada Judges of Limited Jurisdiction and anybody else as this bill moves forward. We are currently in support.

LIZ ORTENBURGER (CEO, SafeNest):

SafeNest, as part of our suite of domestic violence services include advocates in Clark County Justice Courts. Annually, SafeNest supports over 25,000 victims of domestic violence each year. Within Clark County Justice Courts, we support more than 2,000 domestic violence survivors each year. The survivors are navigating the court cases associated with the violence committed against them.

Clark County Justice Courts use no contact orders. However, they lack the enforcement necessary to provide more than a piece of paper to survivors. While judges work to ensure that defendants understand the order, without enforcement once they leave the courtroom, it does not help a survivor to feel safe or supported.

Here is what we see. A violation of a no contact order is not a crime, just leverage for the DA's office to address in front of the presiding judge. Depending on the judge and the proof of violation, the defendant may be reprimanded. Law enforcement does not have the copy of the no contact order as they do a protection order, so if it is violated and the survivor calls the police and say he or she has a no contact order, enforcement officials do not know what the person is talking about. If the no contact order is violated, the burden of notification and proof is on the survivor. A survivor has to call the staff at the DA's office or a SafeNest staff advocate and then notify the DA to ask the

court to put it back on the calendar, which can take a few weeks. Depending on the judge and the DA, a no contact order might be placed automatically at the time of arraignment. If this happens, the survivor has to ask for it to be removed.

SafeNest supports this bill as it includes three critical elements that help our court system. It gives survivors a voice to ask for a no contact order. It makes survivors safer because it is enforced, and it includes law enforcement, a critical element in combatting domestic violence and, in this case, domestic violence homicides.

JOHN PIRO (Chief Deputy Public Defender, Clark County Public Defender's Office):

We are neutral on S.B. 147. If the bill were to revert to its original form, then we would be in opposition. We understand that this is filling a gap in the system, and we thank Senator Harris for making it clear that this bill will not delay bail hearings because the prosecutors will have a chance to ask for a no contact order and follow this process laid out in the bill if the victim is unavailable at the bail hearing. We thank Senator Harris for working with us on this bill.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):

We remain neutral on the proposed bill. We want this to go on record that this process should not replace the temporary protection order that victim survivors of domestic and sexual violence access. Emergency protection orders can be processed for victim survivors 24 hours a day, 7 days a week. Temporary protection orders are enforceable and allow victim survivors to apply for an extended protection order afterward which offers them longer protection and safety. Protection orders also offer more robust protections aside from just stay away orders. For example, protection orders clarify specific people, such as children and pets, and specific places, such as work, home and schools where a perpetrator is not allowed to go.

Because of the high risk of leaving an abusive relationship or calling the police on a perpetrator, we still strongly encourage victim survivors to have access to additional temporary and then extended protection orders rather than these stay away orders. We do thank Senator Harris for her work on this and for the attention to victim survivor's safety. We understand that this process is filling a gap which allows victim survivors the opportunity to seek limited safety while

applying for a longer term protection order, but we want to make sure that this is not being used as a tool for long-term safety planning and that victim survivors of domestic and sexual violence are still encouraged to seek additional protection orders.

KENDRA BERTSCHY (Deputy Public Defender, Washoe County Public Defender's Office):

I thank Senator Harris for speaking with myself and Mr. Piro on several occasions regarding this bill. I did participate in the Interim Committee where there was discussion about this bill, and we did have some concerns regarding how this would be drafted. We appreciate Senator Harris and all of her hard work to ensure that we are incorporating the intention of this bill of providing a mechanism that will allow victims to obtain a TPO. It is important to ensure that victims have that knowledge and those resources to access TPOs when warranted. We appreciate her work to clarify some of the language contained in the bill that initially caused us some concern. We appreciate her work to continue filling this gap.

CHUCK CALLAWAY (Police Director, Las Vegas Metropolitan Police Department):
I am here in support of this bill.

CHAIR SCHEIBLE:

The Committee received an amendment support statement for S.B. 147 from the Nevada Judges of Limited Jurisdiction ([Exhibit C](#)).

We will close the hearing on S.B. 147 and open a Committee Bill Draft Request introduction.

Pursuant to Joint Standing Rule No. 14, Committee members must vote to approve the drafting of legislative measures requested by the Senate Committee on Judiciary. Today, I request the Committee's approval of one bill draft:

BILL DRAFT REQUEST 14-514: Eliminates the Advisory Committee to Study Laws Concerning Sex Offender Registration and transfers its duties to the Advisory Commission on the Administration of Justice. (Later introduced as [Senate Bill 161](#).)

SENATOR OHRENSCHALL MOVED TO INTRODUCE BDR 14-514.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:

This concludes our Committee meeting for today, and we stand in adjournment
at 1:40 p.m.

RESPECTFULLY SUBMITTED:

Pam King,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B.147	B	1	Senator Dallas Harris	Proposed Amendment
S.B.147	C	1	Nevada Judges of Limited Jurisdiction	Amendment Support Statement