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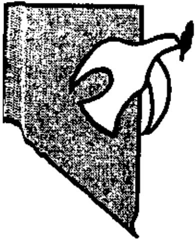

Nevada Network Against Domestic Violence

March 10, 2002

Chairman Bernie Anderson
Assembly Judiciary Committee
Nevada State Assembly
Legislative Building
Carson City, NV 89710

Chairman Anderson and Members of the Committee;

My name is Susan Meuschke. I am the Executive Director of the Nevada Network Against Domestic Violence (NNADV), the statewide coalition of domestic violence programs in Nevada. I am here today to speak in respectful opposition to AB 97.

Over the last 20 years the Nevada State Legislature has considered and passed a number of statutes that deal with domestic violence. Beginning in 1985, with the passage of statutes creating warrantless arrests and orders for protection against domestic violence, this Legislature has sought to enact legislation to move forward Nevada's efforts to stop domestic violence. Today, you have a bill that could move us backwards in those efforts.

Before I get into the specific concerns that we have with the bill, I would like to emphasize that there are two key concepts when considering the criminal justice system's response to domestic violence. They are: victim safety and offender accountability. Research, experience and common sense concur that we must work to make victims of domestic violence safe, and we must work equally to ensure that abusers are held accountable for their battering behavior.

ASSEMBLY JUDICIARY
DATE: 3/10/03 ROOM: 3138 EXHIBIT I
SUBMITTED BY: Susan Meuschke

There are three areas of concern in this proposed legislation: (1) the definition of protected parties; (2) mandatory sentencing provisions; and (3) prosecutorial discretion.

Section 1 of AB 97 proposes to eliminate an entire category of people from the list of those who are eligible for protection against domestic violence in NRS 33.018. (Sections 2 and 3 of the bill have the same corresponding change.) The bill proposes to remove individuals who are living together ("a person with whom he is or was actually residing"). Eliminating this group of relationships from the statute will result in abuse victims being unprotected. Examples include: caretakers of elderly and disabled individuals who are not dating, gay and lesbian partners who choose not to reveal their relationships, and immigrant families who live in the same household but are not all related by blood or marriage. Removing this group of relationships from the domestic violence statute also means that many domestic violence offenders will not be held accountable for their abusive and violent behavior.

The definition of protected parties in NRS 33.018 was passed almost 20 years ago (in 1985) and included the language currently suggested for removal. The only change to the definition has been to add "dating relationships" in 1995. When this definition has been in place and successfully protecting victims for so long, we see no good reason to change it now.

We also see this change as an opportunity for abusers to say, "oh no, we're just roommates" and evade appropriate punishments. The question becomes, do we change the definition and exclude whole classes of individuals who should be covered by this statute or do we maintain the definition and ask Judges (if we believe Prosecutors don't have that discretion) to use their discretion in those cases in which they believe that the intent of the statute does not apply?

Section 4 of the bill proposes two changes to the mandatory sentencing provisions that apply when a person is convicted of domestic battery. The first proposed change would remove the requirement for jail time – currently 2 days for the first offense – and allow the judge to order community service in lieu of jail time. Jail time is a vital part of holding abusers accountable for their battering behavior, and we believe it is important to maintain the current statutory requirements that a person convicted of the crime of domestic battery must spend two days in jail. We will leave to your judgment whether

the additional penalty of performing at least 48 hours of community service becomes too onerous a provision.

The second proposed change to the mandatory sentencing provisions would raise the fine (from $500 to $750) and allow the court to order community service in lieu of the fine on a second conviction. While we generally support the imposition of a fine upon conviction, we also recognize that some offenders are indigent and may be unable to pay it. Thus, we have no objection to either the increase in the fine or the proposal to allow community service in lieu of the fine.

Lastly, Section 4 also proposes to remove crucial language concerning prosecution of domestic battery cases. Part of the reason this change is being proposed is that prosecutors believe that they have no discretion in bringing domestic battery cases -- that they are forced to proceed with cases that involve parties who are not in a "true" domestic violence relationship. We respectfully disagree.

The law currently provides (at Section 4, subsec. 7 of the bill) that "[i]f a person is <u>charged</u> with committing a battery that constitutes domestic violence pursuant to NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless he knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial." NRS 200.485(7) (emphasis added).

Under the express terms of this existing law, a prosecutor retains discretion <u>not to charge</u> in the first place. Furthermore, even after a prosecutor brings charges, the prosecutor has the discretion and ability to dismiss or reduce the charges if the prosecutor learns that they cannot be proved at trial. So if that is true, what discretion do prosecutors need? The discretion to dismiss or plea bargain a case that they have charged correctly and can prove? I know the answer is much more complicated than that question implies. I also know that this statute was enacted because prosecutors, in the past, would routinely plead or dismiss domestic battery cases that were correctly charged and provable.

Our knowledge about prosecutorial discretion is only anecdotal, because there is currently no statistical or other data recorded about the dispositions in domestic violence cases, including explanations of the outcomes. We can tell you how many reports were

made to Law Enforcement, we can tell you how many arrests were made and we can tell you the reasons why arrest didn't happen. But we can't tell you on a statewide basis what occurs after the arrest. We believe that this Committee should not make any decisions to change the definition of protected parties, the mandatory sentencing requirements, or the provisions regarding proceeding with prosecution without more empirical data. If statistics support the position of those who would eliminate certain relationships from the domestic violence statutes and add more prosecutorial discretion, then we would certainly consider supporting legislation to address those concerns.

In short, the laws in this proposed legislation do not need to be amended. This piece of legislation would undo much of the progress that Nevada has made over the past decades in domestic violence prevention and intervention efforts, and we encourage you to reject it.

Thank you for listening to these concerns. I am available to answer any questions that you may have.