

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-Second Session
March 9, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 9 a.m. on Thursday, March 9, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shannon Bilbray-Axelrod (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Selena Torres, Assembly District No. 3



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Garrett Tamagni, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Alison Brasier, representing Nevada Justice Association
George T. Bochanis, Private Citizen, Las Vegas, Nevada
Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber
Misty Grimmer, representing Nevada Resort Association
Lauren Chapple-Love, President, Nevada Psychological Association
Matthew B. Walker, Deputy City Attorney, City of Las Vegas

Chair Miller:

[Roll was called. Committee protocol was explained.] We only have one bill on the agenda this morning. Assemblywoman Torres will present [Assembly Bill 244](#) with Ms. Alison Brasier and Mr. George Bochanis. With that, I will open the hearing on [Assembly Bill 244](#), and you can proceed when you are ready. Assemblywoman Torres will be with us briefly as she has to return to the Assembly Committee on Government Affairs.

[Assembly Bill 244](#): Revises provisions relating to certain mental or physical examinations. (BDR 54-819)

Assemblywoman Selena Torres, Assembly District No. 3:

I am honored to be here today to present [Assembly Bill 244](#), which is making some changes to the *Nevada Revised Statutes* (NRS) regarding legislation that we actually passed out of this Committee when I sat as a member of this body in 2019. I will be honest, this particular bill is very specific and detailed, and I am fortunate today to be here with two phenomenal attorneys from our great state, Mr. Bochanis and Ms. Brasier. They are going to carry on the presentation from here. That being said, I am very familiar with the legislation. I am happy to have conversations with my colleagues outside of this committee room. If you have any questions, I am happy to continue to work with you to answer those. We also know that there have been some issues raised by various parties and we will continue to work with stakeholders to address some of those concerns. Thank you. With the Chair's permission, I will return to my committee.

Alison Brasier, representing Nevada Justice Association:

[Assembly Bill 244](#) is a bill that deals with rights for individuals who are compelled to attend examinations, physical and mental examinations, with a doctor with whom they have no doctor-patient relationship and it is not for treatment purposes. These are examinations that happen solely for evaluations, most of the time by insurance carriers or by licensing agencies

that require medical examinations for some type of license. Again, these are not the normal, you go visit your doctor because you want to get treatment or help with something that is wrong with you; these are non-doctor-patient relationship examinations that people in the state of Nevada are being forced to go to if they want to receive benefits or enforce rights that they have. These are things like disability insurance examinations; examinations if you are making a claim against your own insurance company to get benefits that you have already paid for; licenses, like a pilot's license where maybe it was suspended because of a medical condition and now you are having to go back in to get an examination to reinstate your license; and workers' compensation examinations. These are things that a lot of people may have never been through, but in our world, they happen every day to citizens in our state under these different circumstances.

I want to clarify this is not about doctor-patient relationship examinations. We are not intending it to include examinations that might happen involuntarily for mental health reasons or for public safety reasons. That is not what we are intending to include in this bill. It is the examinations that are being compelled by insurance companies, by licensing boards, for which it is just evaluation, no treatment is occurring. As Assemblywoman Torres mentioned, a similar bill was passed back in 2019 out of both houses. It became law on a bipartisan method and that became NRS 52.380. That went up to the Nevada Supreme Court and the Supreme Court felt that that statute invaded their territory a little bit too much with dealing with procedural issues. When we got that decision back from the Supreme Court, we took a step back and said, you know, our intention was really to protect people's rights, their substantive right to bodily autonomy, and what rights and what protections do people have when they are being compelled to go to an examination? Assembly Bill 244 is not about procedure, it is about rights that are covered for all citizens in various situations in and outside of the courtroom. This is about substantive rights; it is not about court procedure.

As we have outlined in section 1, subsection 1, paragraphs (a) through (e), those are the protections we feel individuals in this state should have when they are being forced to go to these examinations. The first one in section 1, subsection 1, paragraph (a) is notice so that you can make sure you are prepared and ready for the examination.

Subsection 1, paragraph (b) is an observer of your choice. This happens every day when people go to important medical examinations; a lot of people feel more comfortable if they bring someone with them, not only to be able to remember what happened after the exam, but for comfort, for safety, to help them understand afterwards what the doctor was actually saying or what went on. In the context of workers' compensation evaluations or examinations that happen in the context of civil litigation, a lot of individuals feel comfortable bringing a nurse practitioner with them to help them understand what those tests were the doctors were doing or what did all of that mean. An observer of your choice is something that we normally do in everyday life, but we want to add that protection in during these compelled examinations.

Subsection 1, paragraph (c) is straightforward to have an interpreter present if you feel like that would assist in the examination. Subsection 1, paragraph (d) is to be able to take notes during the examination. The last one in subsection 1, paragraph (e) is to be able to record the examination, again, so that there is an objective record of what happened and that is really protection for everyone involved—for the person who is being examined and also for the doctor or other medical professional who is performing the examination. If there is any question, we have a record; we know what happened.

These are all rights that if someone does not want to enforce them, if they say I am fine going forward without recording it, I do not want to do this, they do not have to do this; but in this bill, we are providing the right to the person, and it is their decision if they want to exercise that right or not. There was some concern if people would feel comfortable if things are being recorded while they are being examined. It is optional for the person, but we want that right to be in statute so that people can enforce it if it is something that they feel more comfortable with. That is what the bill says, and I am going to turn it over to Mr. Bochanis to give you some examples of how some of these things are already occurring within our state and other states.

George T. Bochanis, Private Citizen, Las Vegas, Nevada:

I have been an attorney here in our great state since 1982, and my practice involves solely personal injury and workers' compensation matters. I am very proud to set forth this bill for you all this morning. I like to call this bill, the "Compelled Examination Fairness Act," because it promotes fairness and transparency during these compelled examinations. Now, when you hear "compelled examination," it sounds like it is something that is being forced on a person. And it is. These are exams that a person is compelled to attend because of a policy provision.

Here is a great example. When a person wants to apply for disability insurance or health insurance, oftentimes your company requires an examination. Our position is that is fine, that is something that is compelled, that is something that is required, but that is something that you should be allowed to bring an observer to and that is something you should be able to record, and who does that benefit? It is our position this benefits both the person who is being compelled or forced to that examination and the doctor. It protects both parties—you know what is happening and occurring during these types of examinations, and as a result of that, you have both transparency and you have fairness. That is a perfect example of a compelled examination.

I think there is a little confusion, and when I read the Legislative Counsel Bureau's summary, there is a lot of emphasis on the prior statute and the Supreme Court decision since then. The prior statute and what is being presented to you today are two different animals. This is a far broader application. The previous statute had to do with one circumstance in our *Nevada Rules of Civil Procedure* (NRCP). This involves things that are outside of civil discovery, outside of the lawsuit situation; it is something that is far broader. That is why it involves a substantive right: a person being able to protect what happens to them, basically their body,

during an examination with a doctor they have no relationship with whatsoever. This bill protects that person, and we feel, likewise, it protects the doctor for what occurs.

Imagine a doctor stating something in a report that a person does not recall being stated during the exam. Well, having another person present and having a recording of that examination prevents those types of problems. That is why it is fair to both parties involved in something like this. I have been practicing workers' compensation law since I opened my office, we are talking 37 years, and workers' compensation cases for that period of time, when an exam is compelled during workers' compensation, you are allowed to bring anyone you want as an observer. I can tell you that in 37 years, there has not been a problem with this type of arrangement. You have never seen, as this body, people coming up to you and saying, You know, the fact that workers' compensation claimants are allowed to bring in an observer has created all these issues and problems. Nothing. It has been totally nonproblematic, and it is our position that this is also going to create no problems, but instead this substantive right is going to promote both fairness and transparency.

Additionally, other states allow these types of observers during examinations. I did a survey during the last session, and it was well over 20 states that allowed observers of any type at most of these types of compelled examinations. We are not promoting here anything that is unique or different or out in left field. This is something that, first of all, has been occurring in our state for decades and it is something that has been allowed in other states across our country. It is very important and, I cannot state it enough, this creates a substantive right. This is outside of any type of civil discovery procedure. This goes beyond it.

In closing, I just want to let all of you know that we are working with other stakeholders on any issues they may have that are kind of on the fringes of what we are seeking to do with this bill. We thank you all for your consideration on this and of course, we would love to take any questions that any of you have. Thank you very much, Chair.

Chair Miller:

I am glad you said that, because there are quite a number of questions that we have today.

Assemblywoman Newby:

This bill kind of reminds me of when my mother was going through cancer, ultimately passing away, and it was necessary for me to go to the doctor with her to better understand what was going on. I cannot imagine what would have happened if I had been turned away. Have there been instances in which people have gone to these examinations with a loved one or a friend or someone else to help interpret and remember what the doctor's directions were where they have been turned away?

Alison Brasier:

Yes, there have. It is currently an issue right now whether nurse observers can come to those examinations. We have had other situations where the doctors—I should not speculate why—have turned away someone from attending the examination. Similar to what you are saying, when it is a stressful appointment that you are going to, and this is a much different

context because again, it is not for treatment. But it is a stressful situation because people are going there knowing that this doctor is examining them to make a determination if they are entitled to either benefits that they have paid for or to reinstate a license so they can go back to work. That is a stressful situation. It is our position that it is very similar to the experience you were sharing where it is stressful. People, when they walk out of stressful doctor's appointments, sometimes say, I do not even remember what just happened; what did the doctor say to me? If we would do that in normal life, why would we not give that same protection to people who are simply trying to exercise their right, and it is about this invasion of our bodily autonomy. We should be able to go to doctors whom we feel comfortable with and for treatment purposes, and when we are forcing people to do an examination under other circumstances, I think we should give them the same rights that we would if we were helping a family member through a tough medical situation.

George Bochanis:

Let me just add this, Assemblywoman Newby, and our condolences to you. The situation you just described highlights to us the importance of allowing observers at these types of examinations. I cannot think of the person's state of mind who is being subjected to these types of examinations not being allowed to have a loved one or advocate or someone protecting their rights during these examinations. That is why this bill is such a substantive right and so important for your consideration.

Assemblywoman Hansen:

This is really quite complicated. In 2019, the bill, in a different form passed, was overturned. Could you explain to us, and I was here for that, because you mentioned that the Supreme Court felt that this was getting a little bit into their territory and the courts—could you explain for those who were not here in 2019 to understand what are the differences of that law versus what this bill is trying to do now?

George Bochanis:

We appreciate that question and I think it is a great point to highlight the differences between the two. *Nevada Revised Statutes* Chapter 52 was overturned by the Supreme Court as it only applied to NRCP Rule 35. The Supreme Court said that if we are going to make a statute regarding one NRCP rule, you are invading our province. I happened to bring the case with me because I thought this was going to come up today. Basically, what they said was, outside of civil discovery, that statute had no application.

This bill that we are presenting to you today has many applications outside of civil discovery. It has to do with examinations for disability insurance, which have nothing to do with civil discovery. It has to do with examinations for health insurance; nothing to do with civil discovery. It has to do with—Alison mentioned a pilot examination, which has nothing to do with lawsuits. It also has to do with—if you have an auto insurance policy and you want to receive what is called "medical payments benefit or underinsured motorist benefits," your insurance company in every one of your policies has a provision that requires you to submit to an exam by a doctor chosen by your insurance company. You have no choice in who that

doctor is, and you have no say in how many times you are examined; that is outside of the civil discovery process. This bill would apply to those types of situations also.

It has become an apples and oranges type of comparison from the prior statute to what we are presenting you with today. The Supreme Court also said that the only relief a party can obtain under the privacy statute is a protective order under the *Nevada Rules of Civil Procedure*. We took care of that with subsection 3 of A.B. 244, where it creates a cause of relief if A.B. 244 is violated. That was not present in the prior statute. That is why I appreciate the question, Assemblywoman Hansen. It is two entirely different situations. This is far wider and broader in scope. The prior statute had to do with just one rule. I hope that answers your question in a long-winded way. I tried to keep it as non-lawyerly as possible.

Assemblywoman Summers-Armstrong:

You mentioned that these are examinations that are compelled, meaning that they are demanded by someone to go see a doctor. These particular physicians, are they general practice, or are they specialized folks whose business model is to conduct independent examinations? Can you explain that?

Alison Brasier:

It depends on what type of examination is being performed. More and more in the civil context, we are seeing that it is doctors for whom the majority of their income is coming from doing these examinations. And again, I think the important part to emphasize is that these are doctors where there is no doctor-patient relationship that is established. It really could be an array of different doctors, but it is doctors who are specifically applying to be on that panel to do these exams. Mr. Bochanis can speak more to that in the workers' compensation system.

Assemblywoman Summers-Armstrong:

Can you talk about the range, or is there a set price or cost that goes along with these types of examinations, and how often do the same people end up showing up conducting these exams?

Alison Brasier:

I have seen just for the examination the charges range on the low end, \$7,500, but I have seen bills that go up to \$20,000 to \$30,000 with the examination and records review that go along with it. It is not that you are going to the general practitioner and it is a \$250 exam. There are many doctors in this state and also in California who are licensed here who make millions and millions of dollars doing just these examinations.

George Bochanis:

I would also add to that we have seen bills from these doctors with many of these compelled examinations. I have never seen an examination and a report for less than \$5,000 to \$10,000. That is per report. We have had testimony from doctors that one could say specialized in these types of compelled examinations, and I have never heard of their earning income less

than \$300,000 to \$400,000 a year conducting these types of examinations. I will tell you that is the low end of the spectrum.

Assemblywoman La Rue Hatch:

I was very happy to see "interpreter" included in there. I teach at a school where many of my students' parents do not speak English. We have a student currently who has a very serious illness who is not getting treated because when she goes to the doctor, she has to be the translator for her parents, and that causes all kinds of issues with their home care. Can you speak to that issue and let us know if people are being prevented from having an interpreter now, and what kind of ramifications result from that?

Alison Brasier:

I have not seen it in my own experience in the civil world. I have not seen it where they are being prevented, but we wanted to make sure that it was enshrined as a right so that if it ever was challenged, it would be there, and the protection would be there for many of our citizens, similar to what you have explained.

George Bochanis:

We looked at this section as kind of preventative maintenance. We want to make sure that those members of our society are protected and that there is no issue whatsoever involving the need for an interpreter. We wanted it there in writing just to make sure, and that is the main purpose of that section.

Assemblyman Gray:

The intent is to protect the patient in this case. I am wondering why you did not include a provision here to prevent bias upon the examiner who is obviously representing the compelling party to allow the examiner to be a mutually agreed upon person between the patient and the party, like you do with arbitrators, or you usually get a list and can select. The other thing is why is the fine so low? I would think to keep somebody from violating somebody's rights like this, you would actually have a punitive fine ten times that amount.

George Bochanis:

Those are great points. First of all, as far as being able to choose a doctor, a lot of times this is a private contract that compels it and the person signing that private contract, like an insurance policy, has no say in the terms of that policy. That is why this bill is necessary, because the person who is being compelled is starting from a position basically of weakness. This is a policy that they had to agree to, and they do not have any right to negotiate the terms of that policy. That is why they do not have the right to choose that doctor, which is perhaps the subject of future legislation. That is something that could be considered, but that is why there is not that right to choose, and that is why this bill is really necessary.

Your second point with respect to the dollar amount, we wanted to try to make this as palatable as possible to everyone across the spectrum. We purposely did not go probably as high as we could have. Of course, we would be open to suggestions from this Committee as far as raising that amount and would, of course, be open to it. But we tried to make it

something that would be acceptable to as many people as possible and did not want that to be a factor for people not supporting this bill. Those are points that we thought about a lot and appreciate the commentary.

Assemblywoman Considine:

I know this has been touched on a little bit, but I just wanted to ask. Looking at this, you have both "mental" and "physical," and we are talking about people of all ages. I am thinking of a senior who is going to one of these compelled examinations that might already be nervous; if this is an examination that includes a mental examination, whether or not this person who can be in the room with them—who is, I am assuming there to help them stay calm and just to have that other person there sort of ground them—are they just in the room observing? I am assuming they do not answer questions for anyone but is just there to help that person who is in an unfamiliar place and having someone unfamiliar asking these questions. Is that the purpose for this? I am thinking just specifically about seniors.

Alison Brasier:

Yes, we have dealt with this before this bill came up as far as the mental examinations because there was a concern about having an observer in the room and does that affect the testing. We have had compromise situations where the observer comes, but during the actual testing sits behind a one-way glass so that they are not affecting or trying to encourage certain answers or affect the person's responses to things. There are definitely workarounds to address any concerns that the observer might be influencing the examination. Again, to your point, seniors are a vulnerable population. People who are going for a mental health exam or people who have a traumatic brain injury (TBI), those are also vulnerable populations. That is why we really want to put these protections in and to include the mental health part of it too, because we interact with a lot of clients who have TBIs and if they were just to go into an examination and there is no observer, there is no objective record of it, and they say, Oh, I do not remember that happening, and you have a doctor who says, Well, it did, how is that going to weigh out? What Mr. Bochanis was saying, this is kind of the fairness act, to level the playing field for our vulnerable people who are being examined so that we can make sure that things happen the way they are supposed to.

George Bochanis:

I think it bears importance that why would you not want an observer in one of these examinations. If a person is telling you that an observer should not be at one of these forced or compelled examinations, what is the motive of not having an observer at this? What is the motive in making sure that what occurs and what is done at these types of examinations is not out there on the record? This is what the transparency portion of this is about. Why would you not want an observer or recording of these types of examinations? What could be the possible motivation? Observers also come in different forms, as we talked about too. An observer is there potentially for emotional support over a stressful situation of being compelled at an examination like this, or an observer can be a professional, like a nurse, to make sure that the examination is conducted in a certain manner and way and it is properly done. Observers take various forms and observers are really necessary if the person wants one for this type of substantive right, and that is why this is a fairness act.

Chair Miller:

Assemblywoman, did you still want to follow up?

Assemblywoman Considine:

Yes, please. We hear a lot of acronyms in here. I wanted to make sure that TBI is traumatic brain injury.

Alison Brasier:

Yes, I am sorry.

Assemblywoman Gallant:

I am curious about the 21 days and how that would play out with somebody who is detained. Maybe they are a possible harm to themselves or others, like a suicide watch, and insurance now needs to do some type of exam; or maybe they are detained, like in custody, and there needs to be some type of mental exam before they can be released. Would that fall under this? Would they have to wait those 21 days before they could have that exam?

Alison Brasier:

These are all rights that the person can exercise. We are not saying you have to wait 21 days to do it, but if it is going to be a compelled exam, then you have the right to do that. I wanted to say that before I say this is not intended to cover those situations where it is an involuntary examination because of mental health or safety threat and holding someone 72 hours for an evaluation. We have had some concerns about what would happen in the criminal context, and we are going to work with those stakeholders to craft an amendment, because the intent is to provide substantive rights to individuals. It certainly is not to invade any kind of public safety or individual safety concerns that law enforcement might have.

Assemblywoman Hardy:

I think it might be helpful if you could just give us a definition of what "substantive rights" is. It has been mentioned quite a bit. Also, in section 1, subsection 1, paragraph (b) it says, "any other person hired." I am just wondering, does the observer, the interpreter, or somebody taking notes have to be someone that the individual hires, or can it be a family member?

George Bochanis:

Let me take the easy question first and then I will grapple with the second one. Yes, the person who is being compelled for the examination has the right to hire or retain an interpreter, a nurse practitioner, or any other type of observer they would want. Now keep in mind, the observer is not there to get involved in the examination, and that is why they are called an observer. But they are there to observe—to basically watch what occurs, how it occurs, how things are done, and things like that. Yes, that person has that right to retain any of the above, that whole spectrum of different types of observers that this type of an exam would involve.

To the substantive right, because have you noticed we have said that more than once, the U.S. Supreme Court has stated that a substantive standard is one that creates duties, rights, and obligations while a procedural standard specifies how duties, rights, and obligations should be enforced. What happens to a person and how a person is examined is a substantive right, and that is why A.B. 244 involves those types of situations—what happens to a person's body basically during this is what is happening during these examinations. That person's physical or mental state is being subjected to an examination by a doctor that you have no doctor-patient relationship with whatsoever, that you have no choice with whom you are in an examination room with. That is a substantive right.

The Nevada Supreme Court said it was important that a substantive right creates a claim for relief if you violate that substantive right. That is why we have subsection 3, because if you violate the substantive right there is a price that comes with it. As Assemblyman Gray said, maybe \$1,500 is not enough, but that also covers that type of section. This does not have to do with civil discovery; this has to do with things outside. It involves things inside and outside of our civil discovery system and of the examples we gave you—with the disability exam, health insurance exam, your insurance policy, medical payment, or uninsured motorist exams. I hope that answers your question.

Assemblywoman Mosca:

I was going to ask a question about section 1, subsection 1, paragraph (a) about the 21 days. Currently, do we give notice? We know that hourly workers cannot just get off work so easily. I am wondering about the notice we currently give.

Alison Brasier:

In the civil litigation system, we often work with the courts or other attorneys to come up with a mutually agreeable date, because like you are saying, most of our clients are hourly workers, they cannot just take off at a moment's notice from work. Because this bill expands to rights in any context, that is why we wanted to put that 21-day notice in to provide people the opportunity to either take time off of work or do whatever they need to do so that they are available for this examination. Outside of the civil litigation context, unless it is prescribed by maybe the contract, there really is no time frame. I should clarify what I am saying. Civil litigation was not specifically the right word. In workers' compensation, we do have some time frames. They are 10- and 15-day time frames. We have heard from the workers' compensation people that we might need to add an amendment to make this bill and those existing time frames work cohesively together.

Assemblyman Orentlicher:

Mr. Bochanis, I think you said you have had lots of experience with this kind of a right in the context of workers' compensation, and we have also had experience in other states. From what we know with implementation of this kind of a right, it has worked very well. Am I remembering that correctly?

George Bochanis:

Yes. In the workers' compensation context, whenever a client concludes his workers' compensation case, that person is then entitled to a permanent partial disability evaluation if that person has any signs of permanent impairment after they finish treatment. I would say my office has had over 1,000 of these over the years, and we send either a family member or a member of my office; and nurses attend some of these exams at times. We have not had one problem with an observer at any of these types of examinations, and this procedure has existed in the workers' compensation system before I came along. I am comfortable in saying it has been 50 or 60 years that this type of procedure has been allowed in Nevada in workers' compensation cases. This Legislature has never seen one bill or any type of complaining of any type regarding observers at these types of examinations. It begs the question obviously, Well, why would there be a problem now in this context?

Assemblywoman Hansen:

Actually, you just kind of got there a little bit with what I had wanted to have clarified earlier if we are doing this in workers' compensation. What is the difference? But as I refer to my notes from 2019, and this might be answered from testimony, but maybe if you could address it too—I had a note that one of the concerns had been with the observer who is supposed to observe and not get involved and not have a confrontation. There was a concern, perhaps not fair, that defense counsel could not be present at the examination, only plaintiff's attorney. Is that an issue? It was then; it was brought up in 2019 because maybe sometimes there could be some sort of confrontation. It sounds like from workers' compensation that does not necessarily happen. But I just know that that was kind of a big deal in 2019, by my notes, and I am just wondering, are we still having that kind of pushback with this newer, broader version of the bill?

George Bochanis:

As you know, I was here in 2019 on that bill and yes, that was an issue. The way we responded to it back in 2019 was the fact that the defense already had a representative in the doctor who was—I am going to not say doing their bidding because that is too harsh—selected by them already. That doctor was well representing any rights of that entity, and that is why an observer was actually necessary to kind of level the playing field so that you had the doctor who was the employee of the compelling party, and then you could have someone there basically just observing for the rights of the person who was being subjected to the compelled examination. This bill goes beyond that in that it now creates a subject of examinations outside of litigation, outside of legal cases, includes them, but it goes way beyond those now too. It is our position that the same arguments remain, and our same response remains. This goes beyond that one situation we had with the prior bill. To compare the two is not accurate, it is just not accurate. That is why it is still necessary and that is why it is a substantive right, because we are creating the right to have an observer and to have recordings there during these compelled examinations.

Assemblywoman Cohen:

I want to talk about compelled mental and physical examinations under Title 11 [of *Nevada Revised Statutes*] because that is where domestic relations live, and we do have them, but

those are much different situations. Is this bill intending to capture that? Are we going to be seeing a carve-out amendment coming, or where are we with that?

Alison Brasier:

I actually had that written down that I intended to mention that in my presentation. Thank you for bringing it up. Yes, we do intend to work on amendment language that would address examinations of minors that occur in the family law context because we recognize that there are different interests at stake in that context. We will continue to work with Assemblywoman Torres and the domestic committee to make sure that language addresses concerns in that context.

Assemblywoman Cohen:

Thank you for that. Will that also include adult litigants in the domestic space as well, because they can also be compelled to have examinations? It is not just minors, it is also the adults, like parents in a custody dispute, that type of thing?

Alison Brasier:

Yes, we do not intend for this to stray into the criminal context where there are safety concerns, or into the family law context, where there likely are a lot of safety concerns or mental health concerns, if an examination is being compelled. We are definitely open to the continuing conversation to make sure the amendments alleviate concerns in those areas.

Chair Miller:

Before, you stated that doctors can receive on average between \$7,500 upwards to \$30,000 for an examination based on the type of examination. I am understanding the exams and the reports are paid for through that insurance company or whoever. If an individual were able to have an observer or an interpreter with them, would those companies also absorb the cost for the recognized observer? Again, it could be a professional nurse or a language interpreter. Who would cover those costs for that individual?

Alison Brasier:

Traditionally, it has been borne by the examinee, especially if you are going to hire a nurse observer. We are not trying to pass those costs along to a different party. If you want to exercise the rights, traditionally, it has been the financial responsibility of the person to put in those safeguards.

Chair Miller:

Okay, thank you for that. With that, I will open it up for testimony in support of A.B. 244. [There was no one.] Is there anyone who would like to testify in opposition?

Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber:

The Vegas Chamber is in opposition to Assembly Bill 244, which is based on feedback we have received from our members who are concerned about the adverse impacts it could have on businesses that are defending themselves in civil lawsuits. Our members are concerned that the bill would allow for private right of action against anyone who allegedly violates the

provisions of the statute. They also have expressed concerns that this litigation would allow the plaintiff's attorney and plaintiff's medical experts to attend the examination as well. They also have concerns that the bill would dissuade defense experts from participating, and members also believe that if A.B. 244 passes, doctors may be sued by the examinees. These are some of the concerns our members have shared with us about the bill, and we appreciate the Committee's time and consideration today.

Misty Grimmer, representing Nevada Resort Association:

In the interest of time, for the most part, I will say ditto to what the Chamber just said. We have the same concerns. We want to look further into what the ramifications of moving what is a civil procedure into NRS Chapter 629, which relates to the overall practice of the healing arts and what broader ramifications that could have. We continue to look forward to working with the bill sponsor and thank you for your time.

Chair Miller:

Is there anyone else who would like to testify in opposition?

Lauren Chapple-Love, President, Nevada Psychological Association:

On behalf of the Nevada Psychological Association, a few points in reference to A.B. 244 this morning. This is, of course, specific to the psychological aspects of, in particular, forensic testing, whether a person be within custody or without custody. Certainly, a 21-day notice may not [unintelligible], a concern in particular for people who are currently incarcerated.

Chair Miller:

Excuse me, doctor. The connection is really poor on our end, and it is coming in and out. Would you mind calling back because we want to make sure that everyone is hearing what you are saying?

Lauren Chapple-Love:

We are a group of psychologists throughout the state of Nevada. We value very much the opportunity to be able to speak relating to A.B. 244. Unfortunately, we do have some pieces of feedback. We are hoping to work with everyone as stakeholders, of course, and just wanted to speak to the specific feedback. The existing statute likely provides more protection to the examinee and examiner at this time. That is, of course, speaking to the psychological components of any type of examination, in particular forensic. I, for example, am a psychologist in the state that does forensic examinations oftentimes with people who are in custody. A 21-day notice may not be feasible and could conflict with legal holds and other safety regulations that are there to protect facilities as well as, of course, the people inhabiting the facility at the time.

Any observer might make even a small comment such as, Hey, you can do this, or, You know this answer, which unfortunately, for a lot of psychological testing, really impacts, if not invalidates, results. Speaking, of course, to the motive or what is the utility of wanting potential limitations for observers, I think some of those considerations can be brought up in

our hopes to have a meeting with Assemblywoman Torres and other people who are involved with this bill. Any observer, of course, without limitation of a significant problem as it will likely impact the way a person responds to questions and overall validity of the answers, while we are trying to encourage comfort and relative safety within any type of testing facility especially if a person has a friend or a family member. Also with regards to an interpreter, the examiners are already ethically obligated on the psychologist's licensed side to have an interpreter, if needed, where we, the doctors, are being required to provide them and not the examinee. Leaving this up to the examinee can, again, potentially create problems with validity for testing, which is of course, the entire purpose of our meeting with them.

Taking notes or recording the examinations can also jeopardize testing security which are big concerns, of course, on the psychologist's side because there are no legal safeguards as to how the notes and/or recordings will be stored or will be used, the major concern being protecting confidentiality of the evaluatee and if taken by someone not ethically bound to confidentiality. Typically, lawyers might be allowed in some of the examinations, and those are examples of people who are already ethically bound for confidentiality.

In closing, in the repealed section there were safeguards as to the disruption of the examination, and if it is taken out, it may allow an observer to disrupt, coach, or otherwise interfere with the examination. That is all I have for today, and we look forward to meeting and discussing any potential feedback because it is our hope that this can really be able to help Nevadans and we definitely want people to feel safer in the evaluation room. Thank you for your time and the continued consideration for my technology here today.

[[Exhibit C](#) and [Exhibit D](#) were not discussed during the hearing but were submitted in opposition to [Assembly Bill 244](#) and will become part of the record.]

Chair Miller:

Is there anyone else on the phone for opposition testimony?

Matthew B. Walker, Deputy City Attorney, City of Las Vegas:

I think Dr. Chapple-Love hit on a lot of the same concerns we had, and it sounds like, in listening to Ms. Brasier, the bill sponsors are well aware of the public safety concerns in the context of forensic examinations. I just wanted to weigh in and basically second what Dr. Chapple-Love said. We have concerns about public safety considerations for observers in correctional facilities as well as the security of the production as such with the bill in the form that has been drafted.

Chair Miller:

Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I welcome the bill presenters back to the table for concluding remarks.

George Bochanis:

First of all, I think we were very clear that the intent of this bill is not to involve incarcerated individuals or matters within the criminal justice system. I do not know how else to describe that except by just stating that very clearly. The final remark I would have is that when considering this bill, I think it is very important that if you see that this bill is appropriate and serves a useful purpose, which we feel it does, this bill is recognized as a substantive right. It is important that this is part of the record of your deliberations. As I stated earlier, substantive right is one that creates a right that is not there right now. That is what this bill does; it creates a right for a person who is subject to a compelled exam to have an observer and to have that examination recorded. Those are the rights that this bill creates. That is what causes it to become a substantive right as opposed to a procedural one. In the event this bill is approved and reviewed at a later date, I think it is important for the fact that it is a substantive right to be part of any deliberations about it and we appreciate everyone's time, attention, and the questions were excellent and appreciated also. If I can answer anything else, I am more than happy to.

Chair Miller:

I will close the hearing on Assembly Bill 244. I will open it up for public comment. [Public comment was heard.] With that, I will close public comment. Just an announcement about tomorrow, we do not have a meeting scheduled. Our next Committee meeting will be at 9 a.m. on Monday morning. Have a great weekend, everyone. This meeting is adjourned [at 10:07 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Garrett Tamagni
Recording Secretary

Traci Dory
Transcribing Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated March 8, 2023, submitted by Mark Sektnan, Vice President, American Property Casualty Insurance Association, in opposition to Assembly Bill 244.

[Exhibit D](#) is a letter dated March 8, 2023, submitted by Christian John Rataj, Senior Regional Vice President, State Government Affairs, Western Region, National Association of Mutual Insurance Companies, in opposition to Assembly Bill 244.