

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
April 20, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:32 p.m. on Thursday, April 20, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Blain Jensen, Committee Secretary

OTHERS PRESENT:

John T. Jones, Jr., Nevada District Attorneys Association
Mike Morton, Office of the Attorney General
Serena Evans, Nevada Coalition to End Domestic and Sexual Violence
Mike Cathcart, City of Henderson
Liz Ortenburger, SafeNest

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Nic Ciccone, City of Reno
Jason Walker, Washoe County Sheriff's Office
Beth Schmidt, Las Vegas Metropolitan Police Department
Zach Bucher, City of Las Vegas
Pamela DelPorto, Nevada Sheriffs' and Chiefs' Association
Kathy McKenna, Executive Director, Nevada Outreach Training Organization

CHAIR SCHEIBLE:

I will open the hearing on Assembly Bill (A.B.) 51.

ASSEMBLY BILL 51 (1st Reprint): Makes various changes relating to public safety. (BDR 14-426)

JOHN T. JONES, JR. (Nevada District Attorneys Association):

Assembly Bill 51 before the Committee is a compromise piece of legislation resulting from a stakeholder group put together by the Nevada Attorney General's Office. Stakeholders include Attorney General Aaron Ford, Nevada Coalition to End Domestic and Sexual Violence, public defenders, law enforcement and others that developed three major components to A.B. 51.

The first component gives law enforcement up to seven additional days to effectuate an arrest for battery domestic violence when the alleged perpetrator is not at the scene of the initial call. Second, it cleans up an enhancement when a crime is committed while under a protection order. Finally, it makes domestic violence nonprobation again.

Sections 1 through 3 give law enforcement up to seven days to effectuate an arrest for battery domestic violence. Under current law, when law enforcement responds to a domestic violence call, they must arrest the perpetrator within 24 hours after the incident if officers have probable cause. If the perpetrator has fled or otherwise cannot be located, officers only have 24 hours to locate the individual to make an arrest, or law enforcement must seek an arrest warrant for anyone it does catch within that 24-hour period. For example, if an alleged perpetrator shows back up at the victim's residence 25 hours after the incident, law enforcement cannot effectuate an arrest and must instead submit for an arrest warrant.

The arrest warrant process takes time because officers have to finalize all the reports, obtain photographs, 911 recordings and witness statements from the

incident and give this information to the prosecuting agency that may be the city attorney's office or district attorney's office. Once received, all evidence is reviewed to determine whether to seek a prosecution. If so, a prosecution is approved and submitted to a judge who reviews all this information prior to deciding whether to issue the warrant of arrest. After the judge makes that decision, it is then sent back to the prosecution agency and law enforcement for entry into the warrant databases. The Committee can imagine all the time to process; with domestic violence cases, the earlier we intervene in these cases, the better the outcomes.

Domestic violence calls are high priority and remain high priority under A.B. 51. Our goal with this bill is not to alter law enforcement's obligation to arrest the alleged perpetrator for domestic violence when located at the scene or within the current 24-hour window. But it is not unusual for suspects to flee. In those instances, A.B. 51 will give law enforcement up to seven additional days to locate the alleged perpetrator, thereby avoiding the cumbersome arrest warrant process. In reviewing the bill, law enforcement and public defenders said we can tighten up the word "encounter." It says if law enforcement encounters the alleged perpetrator, then he or she does not get the seven days. I would anticipate a proposed amendment once we work with the stakeholders on tightening up that language.

Sections 14 and 16 of A.B. 51 are both cleanup measures. Section 14 amends *Nevada Revised Statutes* (NRS) 193.166 if somebody commits that felony while in violation of a protection order. Statute says the person can be punished by an additional 1 to 20 years. However, if the underlying crime is punishable as a Category A or B felony, the most serious felonies, then the person must additionally be punished by imprisonment for a minimum term of one to five years. It is clearly flipped in statute and should be 1 to 5 years if it is a Category E, D or C felony and 1 to 20 years if it is a Category A or B felony similar to other criminal enhancements. Assembly Bill 51 makes that technical correction.

Section 16 makes felony domestic violence nonprobation again. Assembly Bill No. 42 of the 81st Session was amended a few times as it progressed through the legislative process. In some of the final amendments, changed language inadvertently made felony domestic violence probationable. This was not listed in the title of the bill, and it was not discussed during legislative testimony. Assembly Bill 51 would fix the inadvertent mistake. I do want to note that

felony domestic violence has always been a nonprobationable offense, and section 16 would return that language into statute.

MIKE MORTON (Office of the Attorney General):

The proposed amendment ([Exhibit C](#)) remedies inadvertent pieces of legislation left out of the bill. Sections 3.6 and 3.8 in the proposed amendment clarifies privileges for victims and their advocates of human trafficking and domestic violence. However, proposed new language in section 3.2 delineates the types of training required for victim advocates to take toward obtaining that privilege.

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

The genesis of this amendment, [Exhibit C](#), and [A.B. 51](#) is to professionalize victim advocacy. We have heard from victim advocates around the State that when they get subpoenaed to court, questioning occurs sometimes of what training they completed to claim that privilege. This is the first step in professionalizing victim advocacy by clarifying the training needed to prove they are good stewards of privileged, confidential communication and things like that.

SENATOR NGUYEN:

Mr. Jones, you discussed how burdensome and time-consuming it was to obtain arrest warrants. Could you speak to what the length of time is and where those holdups are coming from? I am assuming those arrest warrants are generated from the police officers who responded to the initial call.

MR. JONES:

We can expedite arrest warrants, especially in certain situations, but we are still dealing with a bare minimum of a few days. What we require at the district attorney's office in terms of an arrest warrant packet is the declaration of arrest, all witness statements, uploaded bodycam footage and anything else needed to prosecute the case. Once we get that case from law enforcement, we review it for charging determination. Once a charging determination is made, our secretary types up the proposed criminal complaint, and it is sent to the judge's chambers. From that point, the turnaround time is up to the judge on how quickly to respond. The judge reviews the complaint and must agree in order to issue an arrest warrant. We enter that answer back into the warrant system. On average, it is about a 30-day process.

SENATOR NGUYEN:

I was not prepared for you to say 30 days; that seems like an incredibly long amount of time to do that. Do we have any information on whether someone is arrested right away once that arrest warrant goes into the system? I imagine there are so many of these domestic violence arrest warrants. How many of them just go into the system, and how many people are being pursued on those arrest warrants?

MR. JONES:

I do not have those statistics, but I can tell you the largest chunk of our misdemeanor arrest warrants are battery domestic violence. Our hope is that A.B. 51 will take some of those cases out of the arrest warrant category and place them into the arrest category by moving faster with an arrest because of how the process is designed, stabilizing people in their domestic situation, getting batterers into treatment faster and leading to better outcomes.

SENATOR NGUYEN:

I am happy to see this amendment that revives training language in this bill.

SENATOR HARRIS:

Can you explain why you must get an arrest warrant in the first place under current law?

MR. JONES:

Nevada law limits when an officer can arrest an individual based on a misdemeanor offense. Battery domestic violence under current law is excepted from the arrest prohibition for misdemeanors. In other words, an officer can arrest somebody accused of battery domestic violence for which there is probable cause up to 24 hours after the incident. If an officer comes across a suspect who committed battery domestic violence within the preceding 24 hours and the officer has probable cause, he or she is authorized to effectuate an arrest. If law enforcement is outside the 24-hour window, then the remedy is seeking an arrest warrant. Those are the two avenues in which you start a case when somebody is accused of battery domestic violence.

SENATOR HARRIS:

Am I understanding you correctly, it is because this is currently a misdemeanor and Nevada law limits when someone can get arrested on a misdemeanor without an arrest warrant. Is that right?

MR. JONES:

With battery domestic violence, that is correct.

CHAIR SCHEIBLE:

I want to clarify that we are talking about misdemeanor domestic violence because with felony domestic violence, technically, an officer can arrest with probable cause whereas to misdemeanor domestic violence must be committed in the officer's presence for an arrest. If there is a felony domestic violence situation, the perpetrator has fled the scene and then comes back after the 24-hour mark and the same officer happens to be on duty or available, that officer still is authorized to go arrest the person at any point with probable cause.

MR. JONES:

That is correct.

CHAIR SCHEIBLE:

I am interested in section 1, subsection 1, paragraph (b), subparagraph (9), sub-subparagraph (III), "the person will not be admitted to bail sooner than 12 hours after arrest." My experience as a practitioner is that when people are arrested on the scene within 24 hours, the 12-hour, cooling-off period makes sense. If the perpetrator is arrested five or six days later, he or she still must do the full 12 hours. One of two things happen, either a release before the 12 hours is up and the perpetrator has to come back to serve it later, or that 12 hours escalates the problem with another day of missed work because of being incarcerated four days after the incident has concluded. I would be interested in seeing an amendment that kept the 12-hour, cooling-off period for an arrest within 24 hours, still allowing the arrest within seven days but not requiring the 12 hours of cooling off if the arrest was more than 24 hours after the incident.

MR. JONES:

That great point has not been brought up before, but I understand what you are saying. I will work with the public defenders and others on an amendment.

MS. EVANS:

The 12-hour period is critical to serve emergency protection orders. We need to walk that fine line of making sure there is ability to serve the perpetrator with a

protection order and not hold someone longer than need be. We are open to working on that language.

SENATOR HARRIS:

Why is it so important to keep this as a misdemeanor? If we got rid of that, might it also solve the problem you are looking to solve?

MR. JONES:

Are you talking about increasing domestic violence to another level of offense like a gross misdemeanor or making it a felony?

SENATOR HARRIS:

When a misdemeanor is committed, law enforcement has to catch the suspect in the act, but NRS has given officers 24 hours when the misdemeanor is battery domestic violence. Why not just up the charge and then problem solved?

MR. JONES:

There have been prior efforts at the Legislature to raise the penalty for battery domestic violence. If this Committee is willing to have that conversation, we are willing to engage in it. But I am not prepared to take a stand at this time.

SENATOR HARRIS:

That is not what A.B. 51 does, but it seems like this is the problem you are trying to solve; it is not like other misdemeanors which is why you want to have a longer period of time. We are all dancing around it, when it appears we are working hard to keep it as a misdemeanor. I would be willing to entertain an amendment that fixes it.

CHAIR SCHEIBLE:

Historically, driving under the influence and domestic violence charges have always been treated differently. They are the only misdemeanors that can get an enhancement I have ever encountered, although there may be others. In Nevada law, that is a long-standing tradition to treat those two misdemeanors differently from other misdemeanors.

SENATOR OHRENSCHALL:

Mr. Jones, section 16 on page 12 of the bill was amended in the Assembly to delete the language in subsection 11 regarding the diversion court for members

of the military. I want to make sure I understand this correctly; that subsection would potentially survive if offered, or would this be done away with?

MR. JONES:

Battery domestic violence defendants are now allowed into misdemeanor veterans court programs or similar programs if the justice court does not have those cases transferred to the district court. This would not change felony domestic violence as ineligible for the program because it is nonprobationable and would not change anybody who is eligible for those programs.

SENATOR OHRENSCHALL:

The prohibition on felony domestic violence would still apply to whether it is a third offense in seven years that makes it a felony—or whether it is a felony strangulation, felony battery, felony substantial bodily harm and all the felonies across the board?

MR. JONES:

All felony battery domestic violence would be nonprobationable. That includes domestic violence battery third, meaning it is a third conviction within three to seven years of battery domestic violence of strangulation, battery domestic violence of substantial bodily harm. All of those remain nonprobationable.

SENATOR STONE:

Are there any gross misdemeanor crimes for battery domestic violence?

MR. JONES:

I believe a battery domestic violence on a pregnant person is a gross misdemeanor.

SENATOR STONE:

How would that be handled under this bill?

MR. JONES:

Since that is a gross misdemeanor, this would not change anything with respect to that charge.

SENATOR STONE:

What is the period of time that an officer can arrest a person of allegedly committing that crime?

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MR. JONES:

If I am not mistaken, it is anytime within the applicable statute of limitations period of one year on that offense.

MIKE CATHCART (City of Henderson):

We support A.B. 51.

LIZ ORTENBURGER (SafeNest):

We work with over 20,000 clients, abusers and children affected by domestic violence and sexual violence every year. What we see on the ground—because we respond on scene with Las Vegas Metropolitan Police for any calls in which there is an arrest or probable cause for an arrest—is batterers flee about half the time. It is one thing to hide for 24 hours at a buddy's house and another thing to hide for seven days, and they do hide. We like the language of A.B. 51 and are in support.

To answer Senator Scheibel's question about the expedited temporary protection orders, it is critical for that 12-hour cooling-off period. We process all the protection orders for Clark County. Family courts and jails take a minute, and the survivor or victim is not alerted when the perpetrator is arrested. If the arrest is at another location, it takes a while to coordinate the process for an expedited temporary protection order, so that 12 hours is critical.

NIC CICCONE (City of Reno):

We support A.B. 51.

JASON WALKER (Washoe County Sheriff's Office):

We support A.B. 51.

BETH SCHMIDT (Las Vegas Metropolitan Police Department):

We support A.B. 51. A lot of work went into this, and we appreciate bringing the language in from the amendment of professionalizing the victims' advocacy.

ZACH BUCHER (City of Las Vegas):

We support A.B. 51.

PAMELA DELPORTO (Nevada Sheriffs' and Chiefs' Association):

We support A.B. 51.

KATHY MCKENNA (Executive Director, Nevada Outreach Training Organization):
We cover the Fifth Judicial District in Nye and Esmeralda Counties. Much like SafeNest, although smaller, we serve several hundred victims of domestic and sexual violence in our community. We support A.B. 51 both for the extension in time, as well as the advocate training that we go through. The time extension is important for us because we are having difficulty obtaining temporary protection orders and expedited protection orders from our justice court judge. That extension of time will greatly help in our community.

CHAIR SCHEIBLE:

That concludes the hearing on A.B. 51, and I will open the hearing on A.B. 291.

ASSEMBLY BILL 291: Revises provisions relating to the prosecution of certain crimes. (BDR 15-473)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Assembly Bill 291 updates twentieth-century law to the twenty-first century in the era of Internet financial crimes. The impetus from this bill was an individual who reached out to me because he has a business in both Nevada and out of state, operating in online commercial lending. With him, the loan originated from Tennessee and the borrower in Nevada filled out fraudulent documents and submitted them online. When it was found to be fraudulent, the lender already funded the loan. The lender was having issues getting law enforcement interested in the case due to potential jurisdictional issues being that the entire crime did not happen within Nevada with its nexus to other states. Some members of the Committee may have had this happen to you as well. Personally, I had times where my credit card was used in other states, and I get a notice that someone went to Walmart in Arkansas and charged a bunch of money to my card. That raises questions about who has jurisdiction.

Assembly Bill 291 has new language on page 2 that indicates:

the State is not required to establish that all of the acts constituting the crime occurred in this State or within a single city, county or local jurisdiction of this State, and it is no defense that not all of the acts constituting the crime occurred in this State or within a single city, county or local jurisdiction of this State.

Laws already in place include this language, but we are having a problem putting this language into NRS 205.370 to make it clear both to law enforcement, in conducting the arrest and filing the report, and to prosecutors that if any of the crime happened in Nevada, they would have jurisdiction to prosecute.

There are always some logistical considerations by law enforcement with limited resources. Therefore, it prioritizes what to prosecute. In the right case, this would give law enforcement some assurances it could initiate a case here in Nevada that would not be a defense for someone to come in and say, "Well, that did not happen here in the State." Initially, law enforcement has to have jurisdiction over that person, so the defendant must be in Nevada under arrest and extradition for that prosecution to happen.

CHAIR SCHEIBLE:

I am familiar with this language in other statutes, and I am hoping you can help us understand what double jeopardy protections exist. Therefore, that one person is not being prosecuted for the same crime both in Nevada and another state at the same time.

ASSEMBLYMAN YEAGER:

That is a question that legal counsel would be good to answer. Generally, there are double jeopardy protections. There would likely be coordination between the states to decide, but double jeopardy is applied on the state side. Now, if the perpetrator commits a crime that is also a federal crime, he or she is not protected from double jeopardy, federally. In the example of mortgage fraud, the offender could be prosecuted by both jurisdictions.

In Nevada, there is usually coordination between our local offices and federal prosecutors to decide who takes that case. It is a lot harder to get the federal government to be interested in prosecuting; according to testimony from one of my copresenters, the issue is being small loan amounts. He would report them, federally, but unless you were talking in the millions or tens of millions of dollars, federal prosecutors were not interested.

All those normal rules about double jeopardy would still apply; I do not think we would be in a situation where someone would be prosecuted twice. The states would coordinate to figure out where prosecution happens. Truthfully, the case will probably happen where law enforcement finds the defendant. In my

example, if the defendant gets arrested in Tennessee, more than likely that state will prosecute there. If it is in Nevada, we will probably prosecute here, but prosecutors are not facing the issue of saying, "Well, we do not know who has jurisdiction and who can rightfully prosecute."

Ms. SCHMIDT:

Prior to my assignment in intergovernmental services, I spent three years in financial crimes, and A.B. 291 is terrific. Keep in mind that, nationally, Nevada is No. 3 for fraud and it is No. 5 for identification theft. A lot of that is done online, and this gives us the ability to investigate those crimes.

MR. JONES:

The Nevada District Attorney's Association supports A.B. 291.

Ms. DELPORTO:

The Nevada Sheriffs' and Chiefs' Association supports A.B. 291.

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CHAIR SCHEIBLE:

I will close the hearing on A.B. 291 and adjourn the Senate Judiciary Committee at 2:18 p.m.

RESPECTFULLY SUBMITTED:

Blain Jensen,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 51	C	4	Office of the Attorney General	Proposed Amendment