

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

HEARING March 1, 1971

The hearing began at 3:04 p.m. Present: Messrs. Fry, Lowman, Kean, Dreyer, May, Olsen and Torvinen. Absent: Miss Foote and Mr. McKissick. Also present: Senator Foley of the Senate Judiciary Committee.

Under discussion: AB 107 - Enacts Uniform Controlled Substances Act.

Testimony from THOMAS HARMON, ATTORNEY FOR PHARMACEUTICAL MANUFACTURERS ASSOCIATION, WASHINGTON, D. C.: Mr. Harmon explained the provisions of the bill, and stated there are two amendments needed, as follows:

On page 42, Section 124, lines 24 and 28, the brackets have taken out "other restricted" and "narcotics and dangerous" but "drugs" has been left in. This creates double legislation. The word "drugs" should be left in here and he requests that either "drugs" be taken out or "drugs" be changed to "controlled substances".

GRANT DAVIS, LEGISLATIVE COUNSEL BUREAU, suggested the better way is to refer to controlled substances.

MR. HARMON suggested a second amendment:

Amend Section 29, page 5, line 11, by adding a new paragraph 7 to read as follows:

"7. The Board shall exclude any non-narcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and Section 454.220 of the Nevada Revised Statutes, be lawfully sold over the counter without a prescription."

Mr. HARMON concluded that he had seen every bill in the country, of which there are 20 pending, and this is one of the best in terms of drafting and bringing it into uniformity with the Federal law. He anticipates 40 states will introduce this legislation by the end of the year.

Mr. Kean stated he looks at ^{is} as a policing act and wondered about the agency administering it. He asked Mr. Harmon what the other states provide for administration.

Mr. Harmon stated it varies in almost all states and depends on the philosophy of the proposers and drafters of the

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bill. In some states it is an enforcement measure and will be under the Attorney General's Office or a police agency. In some it is a matter of public health and will be administered by that department. In other states it is viewed as a matter for the pharmacy board because of the technical matter of the schedules.

MR. FRANK TITUS, STATE PHARMACY ASSOCIATION, regarding Mr. Harmon's proposed amendment, suggested changing the wording to say the board "may" exclude any non-narcotic substance rather than "shall". If it is found to be injurious to public health they should have the right to put it under controlled substances.

Mr. Harmon explained the language takes it into account now in Schedule 5, on page 10, Section 38. In the event the Board finds something should be scheduled they have the authority to do it. The amendment is to bring the law into line with the Federal law as to what could be sold over the counter without a prescription.

MR. BILL LAWTON, STATE BOARD OF PHARMACY: Supported Mr. Titus's suggestion that the word should be "may" instead of "shall".

GRANT DAVIS explained the bill by sections, with questions from committee members as follows:

Mr. Davis stated it is an attempt to unite the Federal model act and the provisions existing in the Nevada law. Mr. Fry asked if the first 70 sections substantially change the Nevada law.

Mr. Davis replied they do, in a way. They give quite lengthy definitions of the drugs which we don't have now. The penalties from Sec. 11 on are tuned into the different schedules. Schedule 1 defines drugs which have no accepted medical use in treatment in the United States so that would get higher penalties. In the different schedules the penalties become somewhat less. In Section 29 the precursors are taken care of. People selling chemicals have the problem of purchasers turning chemicals into dangerous drugs.

Mr. Kean stated he is strongly in favor of this provision of the bill.

Mr. Lowman asked if this were put under the administration of the Attorney General's Office, would it still be effective? Mr. Davis said it would. The Attorney General is required to follow the administrative procedure act.

Mr. Davis noted that lines 37 to 47 on page 15 follow the requirements of the United States Supreme Court cases for issuance of a search warrant. Mr. Kean asked if the Bureau of Narcotics asks for a warrant who issues it? Mr. Davis replied it would be issued by a magistrate, and that 169.105 includes this.

Regarding Section 56, Mr. Fry asked why it provides for just the District Court in Carson City. Mr. Davis explained that is the bill drafter's prerogative, and if the committee wants it changed they can change it to provide for the district court in the jurisdiction of the person under hearing.

Mr. Davis stated he thinks there is a mistake on line 1 of Section 17, and he will check it out. He further noted the Federal act contemplates one division administering the act.

Mr. Torvinen asked if the provisions of 453.210 have been put in Section 62. Mr. Davis said that is right.

Mr. Torvinen noted there should be a difference made between regular amphetamines which are contained in many weight reducing pills, and bulk amphetamines, which are called "speed" and are dangerous.

Mr. Fry noted regarding the provisions on page 21, beginning with line 39, stating that if probation is satisfactorily served, the accused's possession is not considered a crime. The law has a similar provision now, but this seems to go further.

Mr. Davis stated this is the rehabilitation theory the Federal government has adopted and is in Sections 401 and 407 of the Uniform Controlled Substances Act which permits the court to hospitalize a person, as a term of probation. This is not a necessity of probation, however, and the court has the authority to do so if it feels justice so dictates.

MICHAEL FONDI, ESQ., CARSON CITY DISTRICT ATTORNEY, asked Mr. Davis if it is the intent in Section 74 to leave the penalty as a misdemeanor, and if this is omitted from Section 75.

Mr. Davis stated that in Section 75, line 41, page 23, the first figure "73" should read "74". That is presently a felony for a halucinogenic drug and in the dangerous drug category it is a gross misdemeanor.

Mr. Fondi questioned then if the penalty is increased. Mr. Davis said it is increased from a gross misdemeanor to a felony for a dangerous drug.

MR. PETE KELLY, representing BOB PEARCE, PRESIDENT OF THE NEVADA RETAIL ASSOCIATION, stated the association supports the proposed amendment offered by Mr. Harmon.

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Another provision the association would like to point out is that the bill would repeal Section 454.220 of existing law. That repealer calls into question the state's power to place an item on prescription. The state should retain the power and this section should not be repealed.

Mr. Kean asked what Mr. Kelly meant by "state" and Mr. Kelly replied, "State Board of Pharmacy".

Mr. Davis noted the Federal act gives the power in the first 70 sections to require drugs to be placed on prescription status and the amendments after sections 70-85 are in the same area. He feels there is no problem with this.

MR. GEORGE BENNETT, INSPECTOR, STATE BOARD OF PHARMACY, stated that Bob Groves, Deputy Attorney General, had suggested the following amendment:

"Sec. 8. 'Controlled substance' means a drug as defined in Sections 16 and 17 of this act, substance or immediate precursor in sections 31 to 40, inclusive, of this act.

Sec. 16.1(e) Approved by the Food and Drug Administration for general distribution and which bears the label: 'Caution: Federal law prohibits dispensing without prescription.' "

Mr. Bennett felt these amendments should be added to make the law more inclusive.

Mr. Torvinen noted this second suggestion would make the possession of any drug on any prescription list a felony, and if a person had penicillin in his possession he would be guilty of a felony.

Mr. Davis said that is possible. He noted that Section 3 defines terms so it doesn't have to be set out on page 2. If subsection (e) is added you will have a lot of drugs added for which there are penalties for possession. He's not in favor of adding the subsection.

MR. BILL LOCKE, BOARD OF PHARMACY, stated he is very much in favor of the bill, and the suggested amendment. He stated it is illegal under Federal law to have anything with the caution label without a prescription.

Mr. Torvinen asked if it provides penalties for possession. Mr. Bennett stated it is a misdemeanor. Mr. Torvinen noted this would change it to a felony. Mr. Titus said they don't want it changed to a felony.

KEITH LEE, ESQ., DEPUTY DISTRICT ATTORNEY OF WASHOE COUNTY,
on behalf of ROBERT ROSE, DISTRICT ATTORNEY:

The District Attorney's office is in favor of AB 107, with exceptions: One of the least desirable provisions of the bill is setting up the State Board of Pharmacy as the board to administer it. The State Board of Pharmacy is the correct body to classify the schedules as new information comes forth, but from a law enforcement standpoint the State Board of Pharmacy is not the correct agency, nor is the Narcotics Division of the State Department of Probation and Parole. This act should be placed in a separate division or state agency.

Mr. Kean asked if he would recommend that the Attorney General's office administer the act.

Mr. Lee stated he thinks the State Board of Pharmacy should be a portion of the agency as far as setting up schedules. The Attorney General is too much involved from a law enforcement standpoint. The powers of the administering body would also have to be educating people about the drug problem. The educational function should be part of the separate agency and it would overburden the Attorney General to make his office responsible.

Mr. Lee said AB 83 should be given consideration in relation to penalties for first offense in conjunction with AB 107, and that AB 83 might be a more realistic approach to the problem.

Mr. Kean asked what percentage of high school students are drug users. Mr. Lee replied between 35%-40% of high school students, including hard core users and experimenters.

AB 128 - Prohibits possession of paraphernalia for narcotic drug use. Mr. Lee stated AB 107 cannot be considered in its entire scope without discussing AB 128. He questions the constitutionality of Paragraph 2 providing any collectors are exempted. The burden of proving a person is not a collector is placed on the law enforcement people. He feels this might just create another law for the drug users to abuse.

Mr. Kean asked what Mr. Lee thinks of a felony penalty for youngsters. Mr. Lee said in educational programs for youngsters, law enforcement personnel stress the effects of having a felony on the record, and it may be a deterrent. He stated in California the judge has the discretion of treating it as a misdemeanor or felony, and this is a realistic approach.

Mr. Fry asked if there is discretion to the court, how does one get around the provisions of the Lapinski case? Mr. Lee said he didn't know, but he is not sure if the question would ever be raised.

Mr. Fry observed it would be raised when a judge in his discretion finds an individual guilty of a felony. Mr. Lee stated it would pose a problem of setting out guidelines for judges, and AB 83 has tried to set forth guidelines.

Mr. Fry asked Mr. Lee if he felt the guidelines in AB 83 were sufficient. Mr. Lee replied there is a problem of defining rehabilitation potential, but it is a step in the right direction. The judge could obtain a pre-conviction report from the probation department.

MRS. JEAN FORD, STATE PRESIDENT, LEAGUE OF WOMEN VOTERS presented "Juvenile Delinquency Consensus Statement" to committee members. The league feels that first offense possession of marijuana should be reduced to a misdemeanor with judicial discretion to use alternatives to sentencing. This could be carried out with passage of AB 203, providing for probation subsidy.

Mrs. Ford suggests that on page 22, the law be amended to conform to the Federal law regarding expungement of first offense possession convictions for those under 21.

On page 28, line 31, the definition of "drug addict" should be specifically defined.

Mrs. Ford discussed AB 130, and suggested "identification" should be clarified, as should "witness qualified to make such identification".

Mr. Fry asked if Mrs. Ford had any suggestions for defining amounts in possession. Mrs. Ford said other states have suggested definite various amounts, such as 2-1/2 grams, 8 ounces, less than one pound, all referring to marijuana.

Mrs. Ford also suggested that a driver's license should not be taken away as a penalty if the youngster is gainfully employed and needs his automobile to get to his job. Mr. Kean noted the driver's licensing law has a provision for issuing limited license which would provide for driving to work. Mr. Torvinen suggested the wording be "suspended" and the Motor Vehicle Department would have discretion.

Mrs. Ford suggested the provisions on page 3 of AB 83 should provide for 2 to 3 years probation instead of 5 years. She said the league would prefer to see an all-encompassing expungement law rather than one just relating to drugs.

FRANK TITUS, STATE PHARMACEUTICAL ASSOCIATION, regarding AB 107, stated he supports the bill without amendments. He feels the State Board of Pharmacy is the only body set up and able to administer the bill at this time. Later on a new department may be formed.

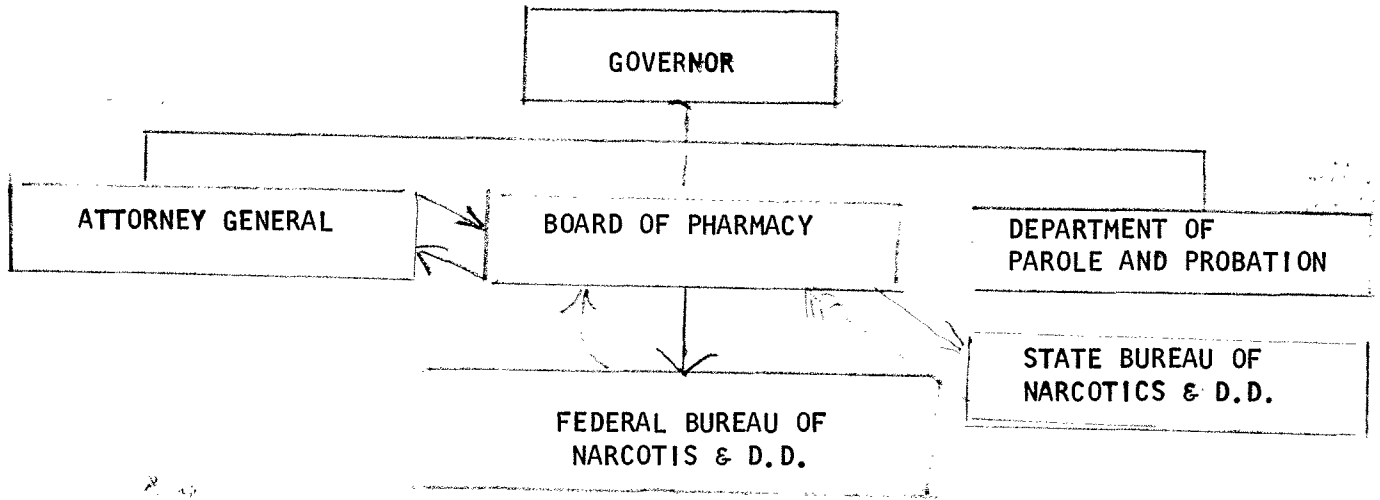
Speaking in opposition to AB 107:

IAN STEVENS, Ad Hoc Committee on Drug Education, Reno:
Mr. Stevens distributed a report on marijuana to the committee. He stated the committee (ad hoc committee) is concerned with Section 65 of AB 107. He said the present drug education programs are a failure in controlling drug use. He urged that the penalty for possession of small amounts of marijuana be a misdemeanor. He further stated that realistic approaches to the drug problem would repair the tarnished image of the system in the eyes of youth. He noted the Federal government and 27 other states make the penalty for possession of marijuana a misdemeanor.

The hearing recessed at 5:10 p.m., to commence again the following afternoon.

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FACTS CONCERNING A.B. 107



Board of Pharmacy members are appointed by the Governor and the Board of Pharmacy reports to the Governor.

Board of Pharmacy supplies the administrative function and the expertise required in the areas of professional interpretation of this act.

The Attorney General is relied upon for legal counsel.

Undercover and illicit phases of drug abuse control is referred to, and handled by the State B.N.D.D.

Seizures of vehicles, drugs, etc. is, and can be, handled by either State B.N.D.D. or Federal B.N.D.D.

Law enforcement phases of the act can (and have been) performed by local police, sheriff, State B.N.D.D., or Federal B.N.D.D.

Interchange of information and coordination of functions between all these agencies is (and has been) on a smoothly working basis.

The Board of Pharmacy, which is completely funded by license and examination fees, has the administrative machinery and funds to administer A.B. 107 without cost to the taxpayer.

Board inspectors are trained in pharmacy operations and perform very effectively in this field. The agents of BNDD are law enforcement agents and are trained in the criminology of illicit drug traffic and clandestine activities. Each is a specialist in his field and will operate with full liaison and cooperation of each department.

Narcotics and dangerous drug laws have always been logically and effectively administered by the Board of Pharmacy because of their expertise in this field.

The passage of A.B. 107, which merely rewrites the law and reclassifies these same substances, should not justify the creation of a new and costly agency and in effect, a second Board of Pharmacy which would be necessary if A.B. 107 were to be administered by the Office of the Attorney General as presently amended. This amendment would require new and substantial state appropriations for its implementation.

The costs of law enforcement are presently (and would be under A.B. 107 if administered by the Board of Pharmacy) borne by State BNDD or local law enforcement agencies, again with no additional cost to the taxpayer.

Under the present amendment, the Attorney General would need additional personnel to administer both the law enforcement portion of this act and also to handle the routine duties such as licensing, inventory control, filing and labeling of prescriptions, revocation and suspension of licenses, accountability checks and

FACTS CONCERNING A.B. 107 (Continued)

and other record keeping activities of pharmacies, hospitals, manufacturers, wholesalers, etc. which are presently being handled by the Board of Pharmacy, at no cost to the state.

Only 10% of A.B. 107 (4 of 47 pages) is concerned with law enforcement. (Sections 52, 53, 59, 60 and 61)

90% of A.B. 107 (43 of 47 pages) is concerned with the routine legal aspects of "Controlled Substances" such as; the determination of "what is a controlled substance", inventory control, licensing, drug categories, labeling and filing of prescriptions, revocation and suspension of licenses, routine inspections and accountability checks, etc., all logically within the purview of the Boards of Pharmacy since their inception.

The agency that determines what substances should be placed on the various schedules should also be the licensing and registering agency because of the registration of manufacturers and the granting of permission for research projects. The agency granting these privileges should be constantly aware of what substances are controlled.

The Board of Pharmacy, historically and academically, has been and is presently, administering our existing "model" narcotic and dangerous drug laws and has worked tirelessly over the year to upgrade drug legislation.

The transfer of the administrative structure of A.B. 107 to the Office of the Attorney General would necessitate the creation of a new BNDD Bureau with all of the problems of reorganization and the suggestion of a "state police force".

OPINIONS ON A.B. 107

The Board of Pharmacy believes that all laws and regulations concerning "controlled substances" should (as presently) be under the administrative control of the Board.

The law enforcement sections of A.B. 107 (as presently) should be under the jurisdiction of the State BNDD.

The legal counsel and legal interpretation should (as presently) rest with the Attorney General.