

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

Hearing March 2, 1971

The hearing began at 3:15 p.m. Present: Miss Foote, Messrs. Fry, Kean, Dreyer, Olsen, Lowman, McKissick and Torvinen. Abenst: Mr. May.

LT. J. O. SMITH, LAS VEGAS POLICE DEPARTMENT: Regarding AB 83, he suggests the proposed amendment to NRS 453.210, Sec. 5 is unrealistic and unenforceable, for the reason that during 1970 there were 812 Nevada operator's licenses suspended through the point system and an additional 806 suspended through court actions and revocations, but during an eight month period in Clark County, 86 persons were cited for operating a motor vehicle while license was suspended, without a single conviction.

In 1970 the number of adult males arrested for marijuana violation rose 2.53% over 1969, and adult female arrests decreased 28.57% under 1969. Male juvenile arrests in 1970 increased 341.43% over 1969, and female juvenile arrests increased 650% over 1969.

Lt. Smith stated that the Uniform Controlled Substances Act is the greatest step forward the department has seen and he recommends passage.

Speaking in opposition to AB 107 was IAN STEVENS, Ad Hoc Committee on Drug Education, Reno: He read a statement from FATHER JOHN CARROLL stating that punitive legislation will not solve the problem of drug use. It is intemperate to classify use of marijuana as a major crime.

Speaking for his committee, Mr. Stevens stated the latest report from the United States Department of Mental Health states that marijuana has been used effectively to relieve the anxiety and enhance the appetite of terminal cancer patients.

Mr. Torvinen noted testimony in the case of Commonwealth v. Weiss in the Massachusetts Superior Court indicated that every country where marijuana had been used openly had eventually outlawed its use.

Mr. Stevens said the Mexico Supreme Court had legitimized the use of up to 40 grams of marijuana for personal use.

Mr. Torvinen stated studies have indicated that in Asian countries where marijuana is freely used, the population has become indolent and non-motivated, depending on others to support them.

Mr. Stevens stated information on these subjects appears in the booklet given to the committee. Mr. Stevens finds no decreasing penalties in the schedules of Section 65, AB 107.

Mr. Fry replied Section 65 is not the entire penalty provision.

MR. BRIAN FIRTH stated he is opposed to AB 107 in toto.

MRS. LOUISE REESE, speaking as a mother of four, said children feel the government has created a credibility gap in harshly penalizing marijuana use. She requested that penalties for marijuana be separated from those for hard drugs. She suggests that if the penalties for marijuana aren't strict, and penalties for hard drugs are very strict, young people won't risk using hard drugs.

Mr. Torvinen, Mr. Kean and Mr. Locke all advised that the chemical THC which is dangerous, can be extracted from marijuana.

A. A. CAMPOS, DEPARTMENT OF PROBATION AND PAROLE: Mr. Campos stated there is a transposition between line 43 on page 19 to line 46, compared with Line 3 on page 20. It makes the penalty for persons under 21 more than for persons over 21, which isn't correct.

Mr. Lowman suggested re-wording of these sections to show the age stated indicates the victim, not the pusher.

ROBERT LIST, NEVADA ATTORNEY GENERAL, said the majority of law enforcement people are nearly unanimous that the marijuana category should be the same as for other drugs. The harmful effects of marijuana are substantial enough that it should continue to be prohibited and offense for possession or use should be a felony.

He noted that peyote is outlawed in the bill, and wondered if there shouldn't be an exclusionary provision for use in the Native American Church. Mr. Kean said there is an amendment for religious purposes.

Mr. Dreyer asked Mr. List's feelings about the act coming under the jurisdiction of the Attorney General's Office.

Mr. List said there is an important place for the Board of Pharmacy in the act, in the position of making chemical adjustments, but questioned if the Board should get into the enforcement field. Wherever the responsibilities are delegated, this committee and the Ways and Means Committee will have to consider the appropriation of funds for staff. The Attorney General's Office does not presently have staff to handle it, and Mr. List requests that he be given more help if his office administers the act. He would then have no objection to his office handling it.

Regarding AB 71, Mr. List said the intent is meritorious, but the language added doesn't contain a reasonable cause provision that the preceding subsections in the present law do. Reasonable cause precautionary language should be added, unless the Legislature intended to leave it out.

Regarding AB 83, Mr. List is concerned about the portion of the bill reducing the penalty, and opposes that portion, in Sec. 5(d). He states there is a provision in the law now for a person to be granted probation, serve his probation, and have his record cleared. The provisions of that section of AB 83 would not serve the interests of justice, the public, or the accused.

Regarding the first portion of AB 83, Mr. List said reference to 171.124 (f) should be included.

Mr. Lowman asked if Chapters 453 and 454 would both be repealed by AB 107. Mr. List said if AB 107 is passed, the Legislative Counsel Bureau would conform it.

Mr. List noted that AB 107 contains no provision for attempts to obtain drugs. The general provision is in the criminal law concerning attempts and probably would apply, but AB 126 makes a special provision for attempts by fraud or deceit. This should be spelled out as a specific crime and AB 107 doesn't do that.

Mr. Kean asked if it would be better to amend AB 107 to include that or to perfect AB 126. Mr. List replied there is no way to know if AB 107 will pass, and if it does, AB 126 could still be amended to say "controlled substance".

Mr. McKissick said general law covers attempts. Mr. List stated that it does, but the situation AB 126 is aimed at is people giving false symptoms to doctors to obtain particular drugs. These are difficult crimes to establish before a jury, and Mr. List recommended a penalty for the offense of 1-10 years.

Mr. List said the District Attorneys Association endorses AB 127.

Mr. Kean asked if AB 107 would have to be amended to permit the provisions of AB 127. Mr. List replied that AB 127 would amend Chapter 433 and wouldn't have to be a part of AB 107.

Regarding AB 128, Mr. List felt the language, "used in unlawful smoking" adequately clarified the law to avoid penalizing collectors, and the bill is worthwhile. Mr. Lowman noted that previous testimony indicated it would be difficult to define a collector. Mr. List replied it would be up to the jury to decide if the person accused was using the paraphernalia for smoking, or was a collector.

Regarding AB 129, Mr. List stated the District Attorneys Association supports the bill, believing the measure would speed up the criminal justice system. There is a tremendous problem of availability of expert witnesses, who find themselves spending a great deal of time sitting in a courtroom waiting to testify.

Mr. List felt AB 130 is a useful bill because it sets a standard for the courts in making rulings upon admissibility of testimony. He sees no controversy about the bill.

Mr. Fry stated that last session a similar bill lost because the committee felt it wasn't a very good standard. Mr. List said the prosecutors feel that if a suspect had traces of marijuana there is the assumption that he has consumed it or disposed of the rest of it to someone else.

Mr. McKissick asked Mr. List's opinion of the driver's license suspension provision of AB 83. Mr. List said he feels it is worthwhile.

GEORGE BENNETT, INSPECTOR, STATE BOARD OF PHARMACY, asked if Mr. List advocated including in AB 107 the State Bureau of Narcotics and Dangerous Drugs as the law enforcement agency. Mr. List replied his office would be willing to undertake the supervision of enforcement if the committee desired, but his office would require additional staff.

THORNE BUTLER, M.D., TOXICOLOGIST, LAS VEGAS: Stated he is in favor of AB 129 and AB 130 because testimony in court hearings would be simplified. He requested that testimony regarding blood alcohol analysis for traffic violations be added to AB 129, since the chemists spend more time testifying about blood alcohol than drugs.

Regarding AB 107, Dr. Butler stated that Section 65 should adopt a basis for allowing rehabilitation methods to be established. The addict is more interested in fulfilling his needs than he is in penalties.

Dr. Butler stated that Section 95 provides that sleeping pills and tranquilizers are included in the list of drugs, and that an epileptic who uses phenobarbital could be considered an addict under that section.

Dr. Butler pointed out a contradiction on page 32, Sec. 105: If a person is flying an airplane he is guilty of a misdemeanor, but if he is walking down the street he is guilty of a felony. He suggested there may be other contradictions such as this.

KEITH LEE, DEPUTY DISTRICT ATTORNEY, WASHOE COUNTY: He feels that in AB 71, section E is unnecessary because Sections B and C provide a person may be arrested without a warrant when a

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felony has been committed in the officer's presence. The felony act would take care of the drugs defined in AB 107. He suggested a reasonable cause provision might be added as a safeguard.

Regarding AB 83, Mr. Lee felt the judge should have the discretion regarding the penalty provisions. Regarding the provision for revocation of a driver's license, Mr. Lee stated a youth will be inclined to drive whether or not he has a licence, and the provision will engender more disrespect for the law.

Mr. Lee felt AB 126 is a good and necessary bill, but noted that if is the legislative intent to make the term 1-10 years for attempt, it would have to be taken care of.

Mr. Lee wondered if AB 127 is necessary, since Chapter 443 currently provides any person may make application to the judge. He said he would question if the bill is constitutional, in that is providing that upon state's motion the trial may be extended, it may deny right to a speedy trial as provided in the Constitution. The defense attorney should make the motion for treatment of the accused, since he has more information about the accused, and it would solve the problem if the defense made the motion.

Mr. Lee said AB 129 is a very good bill. He stated that as a practical matter, the expert should be actually qualified as an expert by the district court, and then could so state in his affidavit. On page 2, Sec. 4, line 5, Mr. Lee suggested that two days is not a workable time and 30 days would be better, or even 15 days if there would be a problem with right to a speedy trial.

Mr. Lee felt AB 130 is a good bill, and discussed a possible treatment center that is being considered in Washoe County by law enforcement agencies.

MR. DON WEBBER, Ad Hoc Committee on Drug Education, Reno, stated the committee is not opposed to AB 107, but is concerned with the heavy penalty for possession of marijuana. He referred to the statements that are covered in the booklet given to the committee members. Mr. Webber said that before marijuana is considered a dangerous drug, proof should be submitted for that theory. He stated criminalization is more harmful than the effects of marijuana, and felt that reduction of penalties would aid in drug education. He said the burden of proof of the dangers of marijuana rests on the advocates of harsh criminal penalties to users, and said his committee had presented sufficient evidence to indicate otherwise.

VERN CALHOUN, CLARK COUNTY, DEPARTMENT OF DANGEROUS DRUGS: Regarding AB 107, he stated classification of marijuana as a

narcotic is a matter of semantics. The Narcotics Officers Association is 100% in agreement that the bill is needed. It is their opinion marijuana offenses should remain a felony. He stated that law enforcement officers have provisions for dealing with youthful offenders, and usually try to work with them without arresting and trying for a conviction for first time experimenters.

Mr. Calhoun said his officers all feel marijuana is dangerous, and has all the information available from the United States Department of Mental Health which indicates this is so. The advice of experts has to be taken in this matter.

Mr. Torvinen stated a preliminary report by Dr. Wesley Hall of the American Medical Association indicates there is a higher incidence of birth defects with women who have used marijuana, and a higher incidence of mental health problems.

Mr. Calhoun observed that any substance which caused people to become unpredictable would have to be considered dangerous.

MRS. JEAN FORD, STATE PRESIDENT, LEAGUE OF WOMEN VOTERS:
No one is advocating that marijuana be legalized, but emphasizes that the penalty for marijuana should be lowered from a felony to a misdemeanor. Although the first 61 sections of AB 107 conform to the Federal act, the penalties don't conform. The entire bill should conform. Twenty-seven other states have moved in the direction of lowering the penalty for marijuana use.

Mr. Kean stated the bill doesn't conform with penalties in the Federal law because the bill drafter felt he was not the correct person to form policy, so he picked up the present penalty statutes for the proposed legislation, feeling that it would be up to the Legislature to decide about the penalties.

Mr. Bennett said it is classified as dangerous because it has no known medical use. Mrs. Ford said that on page 11 in Schedule 5, a drug currently accepted for medical use in treatment in the United States will be subject to a felony penalty in the bill.

BOB TUCKER, STATE BOARD OF PHARMACY stated there has never been a beneficial medical effect found for marijuana because the ill effects are greater than the good effects, and that not all the dangerous effects of marijuana have yet been found, but research is being done on a continuing basis to this effect.

IAN STEVENS asked: Does the punishment fit the crime? Is possession of marijuana as serious a crime as arson?

Mr. Torvinen said there is another side to the coin, and the Legislature has to consider the burden on society if the

punishment is reduced, and the rights of society as a whole have to be considered.

There being no further testimony, the hearing adjourned at 5:48 p.m.

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