

SENATE JUDICICARY COMMITTEE

PUBLIC HEARINGS ON:

S.B. #32, S.B. #43, & S.B. #11

February 9, 1971

Chairman Monroe called the meeting to order.

Committee Members Present: Chairman Monroe
Senator Close
Senator Foley
Senator Dodge
Senator Swobe
Senator Wilson
Senator Young

Guests: Senator Proctor Hug
Ed Reed, Private Attorney
Randy Wright, Legislative Intern
to Senator Monroe
Roy Woofter, District Attorney
for Clark County
Grant Davis - Legislative Counsel
Bureau
Curtis Blyth - Nevada Municipal
Association
League of Women Voters
Press

S.B. #32 - Permits expunging records of juveniles in
certain circumstances.
Senator Hug

Senator Hug reminded the committee of the amendments
desired by the League of Women Voters and introduced Mr. Ed
Reed, a private attorney in Washoe County, who commented on
the bill and the suggested amendments.

Ed Reed: I'm not representing anybody, and not being paid for
this appearance. I became interested in this problem in my
practice of law and also in school board work. The purpose
of this law is to permit a young person who gets in dutch to
clear his record. It's pretty tough when you're 17 or 18 years
old and you're arrested and you find yourself in a situation
where you can never clear your record. This very type of
person needs to have a second shot, needs an opportunity to
get a job, to get security clearance. I'm very pleased that
there is quite a bit of support for this bill.

Many states have bills of this sort. The State of California and the State of Utah have bills that are quite similar. As far as S.B. #32 is concerned, its modeled principally after the California law. It calls for a sealing of records as opposed to expungement. Those two terms are used interchangeably and you can debate back and forth as to whether there should be expungement or sealing. Expungement is actual destruction of the record; sealing we hope would be a sealing of the record so that no one could look at it and so the young person could then apply for a job and say he'd never been arrested or never convicted of a crime.

There have been a number of changes suggested in the bill, and for a minute I'd like to comment on those. First, on Line 7 and 22 of the bill, reference is made to the juvenile courts only, and there is some other broader language which talks about sealing records in the custody of other agencies and officials. It is my feeling that we be explicit on this and cover at least two other courts: The justice court and the district court. When young people are arrested, booked, and arraigned, they're first brought into the justice court, then they're brought up to plead in the district court. At that point a motion is made to have them treated as juveniles, referred to the juvenile court and processed through the juvenile court. However, the records in the district court and the justice court still remain. I would like to respectfully suggest that where we make reference in Lines 7 and 22 to juvenile court, we also make reference to justice court and district court.

Our chief probation officer in Washoe County, Frank Sullivan, has commented to me that he'd much prefer an expungement law to a sealing law. He feels that as long as the records are around somebody is going to figure out a way to look at them. Still, I think there's some merit to maintaining these records and I would very strongly endorse the change that has been recommended by the League of Women Voters in regard to putting a definition of "sealing" into the law. The definition proposed is that the documents in question would be physically sealed with wax, tape, or other device and removed to a separate place. I think that would give us a better chance that these records are not going to be opened to many people who get to look at records that would otherwise be confidential.

The next point raised is the matter of whether the expungement or the sealing should be automatic. Now, personally I think that this right of sealing should be something that is earned. I don't think it should be automatic; I think it should only be on petition to the court. I further think it ought to go before a judge who can look at the facts and decide whether this person is entitled to the privilege of sealing. There are a couple of other factors I hope the judge would take into consideration before making his decision. One would be just the public safety and the public welfare. Another is the problem of a security risk or an individual who wants a job as a policeman. Perhaps these should be looked at individually.

I would think that maybe five years is a rather long period of time to wait. The League has suggested going to two years. My own feeling is that it should be a sufficient period of time that we can be sure that this individual is rehabilitated. The individual, according to the way the law is drafted, would not be permitted to have any further arrests or convictions in the interim period. I'm inclined to think that something like 3 years is closer to my own point of view. In Arizona and Indiana it is two years, in California and Utah it is five years. Under Nevada law, however, as proposed here, it would provide for this petition to be made when the individual reaches the age of 21 also. These people are in trouble when they're around the age of 18 to 21, and this is the time when they need the boost, the time when they need to get their records clear; and therefore if you make the time period too long, you really defeat one of the essential purposes of this statute.

Now, I wouldn't favor sealing records to some people and not sealing to other people. I think it should be an absolute and complete sealing, there should be no differentiation made. By the same token, I think it ought to be up to a judge to decide this. Maybe we could see how it works this way, and perhaps there could be some areas where it could be automatic. It has been suggested, for example, that it be automatic in cases of neglect or dependency of a juvenile. But sometimes I think those offenses are interwoven with other types of more serious offenses.

Chairman Monroe: Suppose the fellow is under a security investigation by the Federal government, and the agent checks his references, and several of the references bring forth the information that this person was arrested and was charged with a felony at one time in his career. What effect does all the sealing of records and the exclusion of the records by petition have since the investigator knows he had a record?

Ed Reed: The only answer I have to that Mr. Chairman is that the law as proposed in Section 6 would allow the juvenile to petition to have the records opened. Let's assume he was convicted for dependency or something that's not really of great importance, at least the individual could go to court and ask that these records be opened so the investigator could take a look at it.

There are some records which I don't think we can seal. For instance, F.B.I. records in Washington, D.C. are not going to be sealed by virtue of our law. The individual will be caught on the horns of a dilemma if he answered the question as he's permitted by this law "No, I haven't been arrested or convicted", but then the investigation discloses that he was.

Senator Dodge: I raised a question of Mrs. Ford of the League of Women Voters the other day about the language on Lines 7 and 8, involving records not only of courts, but of any other agency or public official might not be too broad. I specifically asked her if she thought that we ought to exclude from sealing or expungement, driving records. She said yes. What's your idea about that? A driving violation would prejudice a young person's opportunity to get a job, and therefore, do you think this procedure should apply to driving violations too?

Ed Reed: I think you raised a good point I have no answer for. I do think that driving violations for something serious, like drunk driving, could prejudice a young person's opportunity to get ahead. Under this law, there would be a period of time passed, a 5-year period if you left that in, or at least until the child reached the age of 21, before he could make the petition to have this expunged. You might get a bit of an overlap there with the hope that the effect of the driving violation as far as the state record keeping would be concerned would be of no further particular importance.

Senator Young: Would you include municipal courts in this also, and what about a supreme court case involving a child?

Ed Reed: I had decided to include district and justice court, but thought the Supreme Court would be going too far. I don't see how we could seal a Supreme Court opinion. As far as municipal courts are concerned, a person under 18 would still be processed through the juvenile courts.

Senator Wilson: I don't think expungement so much means that it never happened. I think expungement means it's judicially erased. The young person can say, yes physically I was arrested, but judicially that fact has been cancelled, and I'm pardoned.

1- 10

Senator Foley: In regard to Section 6, it says the only way the record can be opened is when the court approves the petition of the juvenile himself. There might be circumstances where law enforcement officials might need this information.

Ed Reed: I think we wouldn't want law enforcement to be able to see it if we really meant what we said. If people in law enforcement could see it, it would defeat the purpose of the law. I would want to make it difficult to get expungement, but once you have it, I'd like it so that you would be able not to have people look at your records.

Chairman Monroe: The League of Women Voters' statement recommends a provision of extending the statute to cases of dependency and neglect. What's the significance of that?

Ed Reed: I suppose the League felt that those are rather unimportant and they shouldn't be held against a person. I feel that we ought to make expungement the same in every single case. Expungement in areas of dependency and neglect may involve other things as well and I think you might find yourself confusing the issue.

There are only a few more points here I would like to make. One suggestion by the League was whether the order should be appealable and I favor that. In case a judge would make an arbitrary decision one way or another, it seems to me it ought to be appealable.

There was another suggestion by the League that order of sentencing contain a notification that this law existed. I'm sort of opposed to that because there are a lot of things that apply to sentencing, and I don't know how much you should burden the judges by putting conditions on a sentence.

Chairman Monroe: Thank you very much for your testimony, Mr. Reed. Now I believe Mr. Swinney from the Sheriff's Department would like to testify.

Vincent Swinney: Thank you, Mr. Chairman. I'm Vincent Swinney, the Undersheriff of Washoe County, representing Sheriff Galley who couldn't be here this morning.

There are some mechanical difficulties with regard to this bill. What is the effect of the bill when mixed adults and juveniles are involved in the same case and may appear on case records other than a single juvenile action.

Also, I'm wondering about acts of violence committed at age 19. This bill says they may petition at age 21, unless we are referring strictly to those acts committed prior to the 18th birthday. Were we talking about acts prior to the 18th birthday, I don't see any problem.

I do see a problem in the record keeping function as police agencies are concerned, where a group of people are picked up there is a mixed batch of adults and juveniles. How can we mechanically separate the paper when all the names or all the process appear in several sheets of paper depicting the actions of both the juveniles and adults.

Then in the case numbering file there is a master index card that simply has reference to that case number and accounts for that case number in the processing of the department. I would see a need for some stipulation that this be perhaps color coded so they would remain in the alpha file. When you run across that particular color designation, this means a sealed record. But it still allows the department to account for that particular case number.

Section 4 indicates "The court shall send a copy of the order to each agency and official named therein." I'm wondering if there could be a time factor here as to return. Do you allow the agency only one day, two days, ten days? What is the process for return to the court that these records have been sealed?

Senator Dodge: Is 3 days sufficient, or 5 days? How much paperwork is involved?

Vincent Swinney: It depends on how far the agency is behind. 5 or 10 days should give them enough time to gather the records and physically seal them.

I would comment since I have worked the street for 4- $\frac{1}{2}$ years as a juvenile police officer, that the real weakness in this particular bill is the fact that a good officer retains his field notes and has access to them forever. A good background investigator or a good security investigator for the Federal government seldom goes to the official record.

We in law enforcement see some definite advantages in allowing a young person a second chance, and to the sealing of the records. My question is, how realistically effective is it?

Chairman Monroe: The sealing indicates that the authorities have credited the juvenile with reform and improvement; and therefore, its a good recommendation to that extent anyway.

Senate Judiciary Committee
Public Hearings on S.B.32, S.B.43, & S.B.11
February 9, 1971

Senator Dodge: Regarding your case numbering file, does that file contain the various things that happened in that case?

Vincent Swinney: No, it simply is a name; case numbers involved with that name; whether they were perpetrators, victim, witness, investigator, or whatever.

Chairman Monroe: Thank you very much Mr. Swinney. Now we'll take up and hear testimony on S.B. 43.

S.B. #43 - Authorizes certain taxpayer actions and provides for attorney's fees therefor.
Senator Young

Randy Wright: I'm Randy Wright, Legislative Intern for Senator Monroe. I talked to David Parraguirre and Chan Griswold of the District Attorney's Office of Washoe County to get their opinions of S.B. #43.

David Parraguirre thought the wording on Lines 4 and 5 was too broad and anyone could bring a case to court by establishing their own standards of what is an illegal expenditure, or waste of, or injury to, the state funds or property of the county. I asked him if there would be any solutions for establishing standards or guidelines for such actions and brought up an idea of a board to review such cases. He thought this might be a good solution. Have a board review such cases to see if there is justification to bring an action to court.

I talked to Chan Griswold in the D.A.'s office, and he thought, again, that the language was too broad and that these problems should be actually handled by the voters and not through the judicial process. As an example, he cited Black Springs Improvement District where they voted to have an Improvement District and if one person had objected, he could have gone to court and held up the whole idea of improving Black Springs. Also he doesn't think the idea of giving these matters precedence over other actions would work within the present court calendar since they would have to be heard within a 15-day period. I also brought up to him the idea of having a screening board and he thought that was a question of narrowly defining again the ideas of what is a waste and illegal expenditures of the funds of the county. He also thought such things concerning legislative policy decision might be involved with this, and are actually more of the commissioners prerogative and they shouldn't be concerned with such an action.

Chairman Monroe: Thank you Randy. Now I think Mr. Woofter would like to say a few words.

Roy Woofter: I feel we show bad faith in the governmental body as it exists before we even start by passing this bill. The Clark County government, I feel, is well planned. They have a planning commission that exists down there that any of these actions on the part of the county are processed, change of zoning or what have you, before it even gets to the commission for a vote so you have more or less a check point system. I was thinking Carl Lovell would be here. He's an attorney in North Las Vegas, and has had quite a bit of experience with just one or two taxpayers and would advise you of the congestion it has caused his calendar. I feel that there are just enough checkpoints in our system right now without adding to it, and there is enough recourse in our laws on the part of the individual taxpayers with the laws that now exist to correct any actions.

Senator Wilson: We can drift through this thing for a couple of days without getting anywhere unless we start talking about some specifics; namely, how far can a guy go now in filing his suit and then exactly what are we proposing by this bill, and is it a good idea and why. We've got to know where they can go now and where they can't.

Grant Davis: I gave Senator Young some citings on this point. It's never been decided in this state, it's up in the air.

Wilson: Would the commonlaw right be covered?

Senator Young: Apparently not, according to the Blanding case which was cited in 1929. Court quotes from an enclopedia: "settled in a court of equity will in a proper case enjoin an illegal or unauthorized act from a municipal corporation or its officers and any resident and taxpayer who sustains a special injury different from that of the public generally, may sue to enjoin the unauthorized or illegal act". This is the closest it comes to it. Based on this, unless there is a special injury over and above that of a general taxpayer, there is no legal basis for a taxpayers' suit in Nevada right now. That was the purpose of the act. Of course, this is a California act in essence.

I realize of course that the D.A. and city officials never like to think about suits and so forth, but it would actually provide a remedy for the general taxpayer, which doesn't exist right now, to sue for waste. There is always the possibility of abuses and people who are inclined to bring suits, but there is a certain therapy in legal fees that prevents that to some extent.

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Roy Woofter: Senator Young said the language seem to speak out that only a taxpayer can sue when its a special injury to him. There's a cemetary proposal in Paradise Valley where it seems like certain people had inside knowledge where the cemetary was going to go and bought up the property. Right now they're in the process of appealing the county commissioner's decision.

Senator Wilson: That's a zoning question though, that doesn't treat the question if somebody's acting with a conflict of interest. The questions we're talking about is should someone be able to bring a suit, not to challenge the decision on the zoning, but challenge the question of who didn't get the profit.

Senator Dodge: If that's the area Spike's interest in, and I'd like to offer a couple of comments that I discussed with Mike Evans, who is the President of the District Attorneys' Association in Nevada. He thought that in the main, probably the various provisions of the law with relation to activities of subdivisions of government would take care of it in those specific areas; like the purchasing act and some of these other things. Now, if you're concerned with conflict of interest, I think that this could be narrowed down and written into a conflict of interest statue, whereby this sort of action would lay with any person challenging the interest.

Roy Woofter: I agree with Senator Dodge. If its conflict of interest, we should zero in on that aspect.

But getting back to the expense of it, as of course Senator Young brought out, the D.A.'s Office would be the party that would probably be defending the governmental agency. I forsee a county the size of Clark County having to increase our civil side, or at least double it.

Chairman Monroe: Thank you Mr. Woofter. Curtis Blyth is here also and might like to speak on this bill.

Curtis Blyth: Seems to me this bill allows the taxpayer to file an action to enable the court to substitute its dicretionary judgement for that of the elected official. That is my main objection.

I would think it would be in order for the statutes to cover that particular area Spike's interested in, that of just plain old bad faith. I can not think off hand of one where that is not covered, but I would suggest if there are areas where that is not presently covered, we try to close them off.

I look at this bill as altogether too broad. As far as the illegal expenditure of public funds is concerned, I think that is taken care of pretty well in our local government budget act; if it is not, then it should be. We thought we had covered it.

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Chairman Monroe: Since Mr. Woofter is here now, we would like to save him another trip to Carson City by hearing his testimony on S.B. 11 at this time.

Roy Woofter: Clark County is having a large problem with unauthorized credit cards. I'm all in favor of the proposed bill. However, only reservation I have is that it encompasses too large of an area and there are several provisions in there I question whether or not they're too broad. For example, on Page 4, Section 17, Sub-paragraph 1, Line 7 -- I don't see any way you could prove this. It states "any person who possess and incomplete credit card or an identification card with intent to complete it without the consent of the issuer, is guilty of a felony." How would you prove "with intent to complete." You would have to have a third party to testify. Provisions of this one and several others, having experience of being justice of the peace and presenting testimony at preliminary hearings, I don't see how you could prove this in any fashion. What I would like, even though it is a fairly large bill, is to go through it and strike out certain ones and combine the language; consolidate it so to speak.

I would like to see a time element in there because there are some individuals who make a practice of unlawful use of credit cards who are wise to the fact that the criteria for a felony is when the amount goes over \$100, so they go to different stores and never steal goods totaling over \$100 in any individual place.

Chairman Monroe: Section 17 states "an incomplete credit card." What would an example of that be?

Roy Woofter: Well, something like presented a credit card that is not valid unless your signature appears.

Senator Young: Section 8, Page 2, defines incomplete credit card as being one in which any part of the matter, other than the signature of the cardholder, has not been stamped or written.

Chairman Monroe: The Attorney General has questioned Sections 15 and 16. He says: "I have reservations about the interplay of Sections 15 and 16 of S.B. 11, since these sections would give the D.A. discretion to prosecute the same offense as a felony or a gross misdemeanor. The Nevada Supreme Court ruled a similar discretion as constituting an unlawful delegation of the legislative powers." You would agree with that.

Senate Judiciary Committee
Public Hearings on S.B.32, S.B.43, and S.B.11
February 9, 1971

1-20

Roy Woofter: Definitely.

I might add here too on these credit card cases, what other problem we have is the expense of proving them in the preliminary hearing stage in that we have to subpoena the cardholder to come to Las Vegas to testify. You can imagine the expense we have in subpoenaing these people to fly in from Maine or Massachusetts just to testify at a preliminary hearing. Might keep in mind, that for the purpose of a preliminary hearing, an affidavit could be presented to the court rather than having the cardholder appear.

Hearing adjourned at 12:00

Respectfully submitted,



Eileen Wynkoop, Secretary

Approved: _____