Assembly Judiciary Committee
March 11, 1977
8:45 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mr. Sena
Mrs. Wagner
Mr. Ross
Mr. Polish
Mr. Banner

Chairman Barengo brought this meeting to order at 8:45 a.m.

Assembly Bill 209:

Mr. Bob Gagneer of the State of Nevada Employment Association, testified in favor of this bill which they requested the committee to introduce. He advised the committee that the bill simply provides that before any classified state employee may be dismissed, demoted or suspended, five (5) days before the effective date of that action, the agency where he is employed will give him an administrative hearing detailing the specific charges against him. He further detailed his feelings on the bill for the committee and there followed some questioning by the committee of Mr. Gagneer.

Mr. Jim Whittenberg, Personnel Administrator in the Department of Administration of the Personnel Division, then testified in opposition to A.B. 209 as it is currently written. He feels that there are some aspects in their proposal that are vague, for example, the term "administrative hearing" and the term "reasonable time". He indicated that most of the administrators in the state government that he has discussed this with are opposed to it. Their reason is that there is reasonable process now from the standpoint of the normal hearing process and there are not undue delays in that process. Thereafter followed more questioning from the committee. Mrs. Wagner requested that Mr. Whittenberg send her a copy of the Rules and Regulations that apply to this. At the conclusion of Mr. Whittenberg's testimony, Mr. Gagneer offered for purposes of clarification, the point that the average length of time now from the point of dismissal to the date of the decision by the hearing officer is ninety (90) days.

Assembly Bill 247:

Mr. Jesse D. Scott, Executive Director of the Nevada Equal Rights Commission, Mr. Mike Dyer, Deputy Attorney General and Mr. Edmund C. Miramontes, member of the staff of Nevada Equal Rights Commission began joint testimony on this bill. He stated that they feel that the kinds of confrontation that one citizen would have against another should be taken from the streets and brought to the conference table. This is what the Equal Rights Commission is all about, to hear and attempt to resolve the difference that people have. Mr. Scott stated that if they are given the statutory authority that they seek, they would have the latitude that they need and it would then be unnecessary for the various agencies of the federal government to come in as provided for in the 1964 acts relating to employment and housing. He advised that one of the items asked for in statutory changes is that of remedial action. The other points in the bill which he touched on were

temporary injunctive relief, compliance with Commission orders, extension of time to file in Court, investigation of complaints in housing. These three testifiers detailed these points for the committee, as well as, various sections of the bill that they questioned.

Mr. Clint Knoll, Nevada Association of Employers d/b/a Reno Employers Council, representing approximately 200 employers in northern Nevada who are subject to this proposed legislation, then testified in opposition to A.B. 247. He stated that employment seems to be one of the most predominant issues involved in the implementation of this act. They feel that this is a very bad piece of legislation as it is an over-reaction to something that does not exist. He advised that the employers that they represent want to cooperate and abide by the law in employing minority people on an equal basis and this they do. If there is an exception to the rule, the law as it is written gives the commission ample legal status to pursue a matter in an orderly fashion to give an employer his day in court. This legislation, he said, creates a super agency who are trying to make a judicial agency out of a commission. The employers have a great disadvantage in the administration of an agency of this nature. He elaborated on this point for the committee. He stated that they are particularly concerned with the removal of section 2 on page 2, wherein after the commission makes its determination, it goes through the Attorney General's office. They feel that this is the only way that the employer is going to get his day in court. Another point that they feel is bad in the bill, is the limitation of one (1) year. The other section which they are concerned with is section 7 on page 3. In regard to this, he said anyone who believes in open-meeting laws certainly could not believe in denying an employer his right to have access to information relating to the accusations made against him. He questions whether this is in compliance with our recently passed federal law relating to freedom of information.

Mr. Jesse Scott then interjected the point that in fifteen (15) years that this commission has been in existence, they do not have the kind of track record that Mr. Knoll seems to be portraying. He feels that they have a good relationship with the employers. Mr. Scott said that in something like 75% of all complaints that they received in the last year, they have found no probably cause. Thereafter several questions and discussion pursued amongst the testifiers and the committeemen.

Mr. Darrell Capurro, representing the Nevada Motor Transport Association and the Nevada Franchized Auto Dealers Association, then testified in opposition to A.B. 247. He stated that the provisions therein are a pretty radical departure from the powers and duties and responsibilities of the Equal Rights Commission as contained in current law. Part of their problem with this bill is that it extends extensive judicial powers to a commission that were not originally intended. He also stated that he does not believe, pursuant to the testimony heard thus far, that the provisions that are included under the penalty section are those that are spelled out in federal law.

Mr. Rowland Oakes, representing the Association of General Contractors, then testified on this bill, advising the committee of his contact with the Equal Rights Commission through the Construction Opportunity Trust. He detailed for the committee how this opportunity program works. He feels that, perhaps, the commission is doing many things that it does not

have to do. The specific objections that he has to the bill are the 180 days section (page 3, line 34) and the one year language on page 6, line 17.

Mr. Stan Warren, representing Nevada Bell, then testified in opposition to the bill as it is proposed. He stated that Nevada Bell does have a record of cooperation with the Commission. Attached hereto and marked as Exhibit "A" is Nevada Bell's proposed amendments to A.B. 247, which he detailed for the committee.

Chairman Barengo, at this time, appointed a sub-committee consisting of Mr. Ross, Mr. Coulter, Mr. Banner, Mr. Price and Mr. Barengo as an ex-officio member. Mr. Barengo wanted one member from the commission, perhaps Mr. Dyer, plus one representative from management to advise this committee and the Chairman appointed Mr. Price as Chairman of this sub-committee.

Assembly Bill 261:

Mr. Barney Dehl, Chairman of the Nevada Crime Commission, along with Mr. David Small, attorney at law who was on the ad hoc committee which drafted the Nevada Privacy and Security Plan, testified in support of this bill with amendments. Attached hereto and marked as Exhibit "B" is the outline of Mr. Dehl's remarks to the committee concerning A.B. 261. Attached hereto and marked as Exhibit "C" are their proposed amendments to A.B. 261 which, again, he detailed for the committee. A lengthy discussion followed with many questions asked of Mr. Small and Mr. Dehl by members of the committee.

Chief Justice Cameron Batjer then testified on this bill, stating that there was one particular thing which disturbed him about the bill. He stated that if they receive the personnel they hope to receive in the Court administrator's office, they will have to collect some of this material. However, his main concern is the wording of section 5, § 3 and 4, where the clerks of each of the courts are required to make this report and in the criminal section it says "any person who discloses any of this information which is part of the system is guilty of a misdemeanor". The Supreme Court is required, upon the disposition of all cases, an opinion is written and this is published in the Nevada Reports and the Pacific Reports.

Mr. Stan Warren, Nevada Bell representative, then testified on this bill and attached hereto and marked as Exhibit "D" is his testimony along with proposed amendments.

Mr. Frank Delaplane, News Editor, Nevada State Journal, then testified in opposition to this bill. His testimony is attached hereto and marked as Exhibit "E".

Mr. Joe Jackson, secretary-manager of Nevada State Press Association then testified in opposition to this bill and his comments are attached hereto and entered as Exhibit "F".

Mr. Don Digilio of the Review Journal and Nevada State Press Association testified in opposition to this bill stating that it is a bad bill for the newspapers and, therefore, a bad bill for the public.

Mr. Vincent Swinney, Undersheriff, Washoe County Sheriff's Department, then testified on this bill asking for a major revision of A.B. 261 as they did not like how it came out of the bill drafter's office. Further, that this bill would now give all appointive power to the LEAA rather than the governor. However, they are in support of A.B. 261 in that it would clear up the problem they now have with dispositions being required on records after arrest.

There being no further business to discuss at this time, the meeting was adjourned by Chairman Barengo at 11:00 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Secretary

FROM THE STATE CAPITALS

Published by Bethune Jones
321 Sunset Ave., Asbury Park, N. J.

A continuing impartial analysis of state and municipal legislative and regulatory trends of nationwide significance

3/1/77 - RD

RACIAL RELATIONS DEVELOPMENTS
AT THE STATE AND LOCAL LEVELS

New legislative and administrative developments affecting racial and other inter-group relations, as reported from state capitals and municipalities throughout the nation, include the following:

IDAHO: A bill to give the State Human Rights Commission statutory teeth to investigate and conciliate complaints of discrimination was introduced in the Idaho House of Representatives by its judiciary committee.

Commission Director George Kibbe told the committee that the bill would give the committee power by law to receive, initiate, investigate and conciliate complaints and tools to carry out that power.

Under the measure, the commission could require violators of the human rights laws to cease and desist unlawful actions, require them to take affirmative action to rectify what they have done, force them to make back pay awards for up to two years prior to the filing of a complaint and make periodic compliance reports.

To assist the commission in carrying out these powers the bill would give it power to make an investigative demand to produce evidence and take the matter to court for an order if the respondent refuses to comply. It would give the commission subpoena power on its own motion to force witnesses to appear before it and produce documents, applying to the courts for an order if necessary.

The measure would prohibit employers from retaliating against employes who produce evidence or give testimony, require complaints be kept confidential until they go to public hearing and provide a one-year statute of limitations for filing complaints. It further provides for judicial review.

Kibbe explained to the committee that the commission is "faced with the dilemma right now (that) when we have a public hearing we have no power to order witnesses to show up."

Rep. Mack Neibaur of Paul, said he felt the commission already has the means to carry out all of the provisions set forth in the measure. Kibbe countered that the amendments to the present law would allow the commission to function "more efficiently."

The following is a capsulized version of the bill as proposed by our agency. We appreciate your limited time in considering these items:

A. Remedial action - NRS 233.070 1(b)

This provision authorizes the Commission to order appropriate remedy for the Complainant after a Public Hearing has been conducted. Remedy includes, but is not limited to, backpay, rehire, restoration of fringe benefits and seniority. Backpay is limited for a period of two years.

Present State Statutes do not provide remedy to make the Complainant whole again, while the Federal courts have provided restoration of benefits and backpay.

B. Compliance with a Commission Order - NRS 233.070 Sec. 2

In the event a Respondent fails to abide by a Commission order, the Commission may apply to a District Court for compliance. The Court may award an amount not to exceed $1,000.00 for each violation if sustained.

C. Preliminary/Temporary Relief - NRS 233 Sec. 6

This proposal will permit the Nevada Equal Rights Commission to obtain a temporary restraining order in District Court. A temporary restraining order would permit the Commission the time to expeditiously investigate the circumstances of the case in order to reach a fair and impartial determination. This preventive tool would have an economic impact on both the Complainant and the Respondent. For the Complainant, a continuous paycheck or saving any associated cost of finding a new residence. The employer, by retaining the Complainant on the job, would not be liable for backpay if the determination was adverse to him. In the case of the landlord, he would not be liable for damages, court costs, etc.

If a determination was made that No Probable Cause exists to believe that an act of discrimination occured, the discharge or eviction could then be effectuated.

D. Investigation of Complaints in Housing - NRS 118.110 Sec. 11

This section has been rewritten to clarify the procedural administration of the affected Statute.

E. Extension of Time to File in Court - NRS 613.430 Sec. 15

The time allocated for a person to file in District Court after an alleged discriminatory act was increased from 60 days to one year. This proposal was contained to allow a citizen a more equitable disposition of justice. Often times persons who are discriminated against are not aware of their rights. The time extension would allow them access to the Courts for remedial action.

F. Explanation of Pendency - NRS 651.120 Sec. 18

The explanation of pendency will alleviate previously encountered problems with the term.

SUMMARY OF POWERS FOR NEVADA COMMISSIONS AND DEPARTMENTS

Fines (6 Total)

Labor Commission
Nevada Industrial Commission
Commissioner of Consumer Affairs
Oil and Gas Conservation Commission
State Sealer of Weights and Measures
Nevada Tax Commission

Injunction (7 Total)

Labor Commission
Nevada Industrial Commission
State Department of Agriculture,
Fertilizers and Minerals
Commissioner of Food and Drugs
Commissioner of Consumer Affairs
Superintendent of Banks,
Banking Division of the
Department of Commerce
Oil and Gas Conservation Commission

Researched by Ro'Berta' Allen 3/7/77

SUMMARY OF STATES LAWS

Injunctive Relief (15 Total)

Alaska
Arizona
California
District of Columbia
Idaho
Iowa
Kentucky
Maine
Maryland
Massachusetts
Minnesota
Montana
New Jersey
New Mexico
New York

Back Pay Award (33 Total)

Alaska
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Massachusetts
Michigan
Minnesota
Montana
Nebraska
New Hampshire
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Utah
Vermont
Washington
West Virginia
Wisconsin
Wyoming

No Statutory Provision of General Application (10 Total)

Concerning Equal Employment Opportunity

Alabama
Arkansas
Georgia
Louisiana
Mississippi
North Carolina
North Dakota
Tennessee
Texas
Virginia

Researched by Ro'Berta' Allen 3/7/77

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

LAS VEGAS BRANCH
1040 WEST OWENS AVENUE - LAS VEGAS, NEVADA 89106
PHONE: 648-2880-2881
AREA CODE 702

March 9, 1977

Hon. Robert Barengo
Assemblyman
Legislative Building
Carson City, Nevada 89710

Dear Assemblyman Barengo:

The Las Vegas Branch of the National Association for the Advancement of Colored People, in an Executive Committee meeting on this date agreed, by unanimous vote, to request that you utilize the influence of your office to support the enactment of the Nevada Equal Rights Commission's legislative proposals now before the 1977 Legislature.

As you know, NERC is not as effective as it could and should be, only because it lacks the authority to do what the 1961 enabling legislature intended it to do.

NERC's 1977 Legislative Proposals call for the enactment of the following sanctions so that it can become a more viable law enforcement agency:

* Temporary injunctive relief
* Remedial actions
* Compliance with Commission orders
* Extension of time to file in Court
* Investigation of complaints in housing

A review of Nevada history since 1960 will show that it was individuals like you and organizations like the NAACP who fought for the enactment of NERC. Now we must join forces once again to make NERC even more effective.

We are at the crossroads of state inaction and federal government interference in the entire area of human rights. Just as Idaho had to face the problem of giving meaningful authority to the statutes of its state's Human Rights Agency, Nevada must now face a similar situation.

We submit, and are certain that you concur, that Nevada must be given the opportunity to first solve its own discrimination problems.

To do this, NERC must have the resources and the statutory authority to do the job imposed by citizen demand. Contrary to common belief, more than 50% of NERC's recent caseload is non-Black, and comes from areas other than the Westside of Las Vegas. Most of the complaints come from women in the protected areas of sex, age, physical & visual handicap.

Your support is needed in this regard more than ever before during this critical period of Nevada and United States history.

Please let us hear from you relative to this extremely important issue.

Sincerely,

DR. JAMES McMILLAN
NAACP President

JM:ps

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
JESSE D. Scott	Equal Rights		
EDMUND C. MIRAMONTES	EQUAL RIGHTS	✓	
D SMALL	CRIME COMM.	✓	
BERNARD IRHL	CRIME COMM.	✓ 261	
Frank Gallagher	Reno Newspapers	✓ 261	
Tom COOKE	CONTRACTORS Board	251	✓
Bob Stoker	Contractors Board		—
Joe Jackson	Nev. State Press assn.	261	✓
Jay Hughes	WASHOE Co. SHERIFF'S DEPT	✓	
Ray Tuckson	LAS VEGAS MPD	261	
Bob Gagnier	SNEA	209-251	
STAN WARREN	NEV BELL AB247 AB261	~~AB247~~	✓
CLINT KNOLL	Nev. Ass'n of Employers		✓ AB247
Bob Felten	SNEA AB 209-251	—	
DON DIGILIO	Review-Journal + Nevada State Press association		
GEORGE L. COTTON	NEV. EQUAL RIGHTS COM.		
HENRY A HICKS III	" " "		
Larry L Ketzenberger	L. V. M. P. D.		AB 261
MIKE DYER	DEPUTY ATTORNEY GENERAL		
Vince Swinney	Undersheriff, Washoe S.D.		
ROWLAND OAKES	ASSOC GEN CONTR	251	?

AMENDMENTS TO NEVADA ASSEMBLY BILL NO. 247

Amendment No. 1

On page 2 of the printed bill, line 41 after "it" strike out "shall" and on line 42 after "(a)" strike out "Serve" and insert "Shall serve"

Amendment No. 2

On page 2, line 44 after "(b)" strike out "Order" and insert "May order"

Amendment No. 3

On page 3, line 12 after "court" strike out "shall" and insert "may"

Amendment No. 4

On page 6, line 17 after "of" strike out "1 year" and insert "180 days"

EXHIBIT A

Barney Dell
c/o Rev H

BACKGROUND: Why A.B. 261?

Congress: Section 524(b) Omnibus Crime Control and Safe Streets Act of 1968 (Amended 1973).

Directs Law Enforcement Assistance Administration (LEAA) to adopt regulations assuring accuracy, completeness, and security of criminal information systems including provisions for protecting the privacy of individuals who are subjects of information.

LEAA: Answered with many pages of fine print.
The first set of regulations was published May 20, 1975.
Amended - and happily somewhat relaxed - March 19, 1976.

REGULATIONS:

1. Application:
   a. All federal law enforcement agencies (FBI, NCIC, etc)
   b. All interstate communicators of affected information (CLETS, etc)
   c. All state agencies which have received federal funds since 1973 for law enforcement information or communications systems. The regulations apply to virtually all law enforcement agencies in Nevada.
2. Time contraints:
   a. Each state to submit a planned approach. The Nevada Plan was signed by the Governor and submitted to the feds last October.
   b. The substantive provisions of the federal law, federal regulations, and the Nevada Plan to be in force 1/1/78.
3. Muscle:
   a. Fine up to $10,000.
   b. Possible cut-off from federal funds.
   c. Most importantly - unavailability of information. FBI, other states.

Gaming Control Man on the Street

EXHIBIT B

Substance of the Regulations - the Plan - and therefore A.B. 261

Some portions necessary, long overdue, and probably above reasonable objection.

1. Uniform treatment of criminal information throughout the state.
2. Complete and accurate information.
3. Individual access by the subject of record for inspection. Procedures for correcting or deleting inaccurate information.

More controversial:

1. Dissemination provisions
2. Costs

Amendments
Definition
Users Committee
Release of information
Conflicts Addresses Release of Conviction Data
Standard? Effective Dates

Statutes + No of States
Adopting Privacy & Security
by Law

PROPOSED AMENDMENTS
A.B. 261
3-9-77

AN ACT relating to the commission on crimes, delinquency and corrections; providing a criminal information system; providing penalties for unauthorized disclosure of information; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 216 of NRS is hereby amended by adding thereto the provisions set forth in sections 2 to 11, inclusive, of this Act.

SECTION 2. As used in section 2 to 11, inclusive, of this Act:

1. "Criminal justice information" means any information collected in the process of law enforcement which identifies an individual in connection with an arrest, criminal charge, detention, conviction, sentencing, correctional supervision, or other formal transaction in law enforcement. It does not include court records, chronologically indexed information or information relating to an offense for which the individual is currently within the law enforcement process. It does not include investigative reports or intelligence materials.

2. "Criminal information system" means an automated communications and record storage and retrieval system involved in the collection and dissemination of criminal justice information and related law enforcement data.

SECTION 3. The director shall:

1. Administer, in accordance with regulations adopted by the commission, the development and operation of a criminal information system.

EXHIBIT C

2. Prepare necessary forms and manuals for users of the system and conduct training programs in its use.

3. Conduct such audits of the accuracy and security of system as the commission may direct.

SECTION 4. The commission shall adopt, and may from time to time amend, rules, regulations and procedures governing the development, operation and use of the criminal information system and insuring the accuracy, security and privacy of information in the system.

SECTION 5. 1. There is established under the commission a users committee consisting of seven members who shall:

(a) Be appointed by and responsible to the governor.

(b) Serve at the pleasure of the governor.

(c) Be representative of law enforcement agencies of the state and units of local government within the state.

(d) Be representative of the geographic regions of the state.

(e) Be possessed of knowledge and experience in the technologies of electronic data processing, telecommunications, or criminal justice management.

2. The governor shall appoint a chairman from the members of the users committee.

3. Members of the users committee shall serve without compensation but may be reimbursed from commission funds for necessary travel and per diem expenses in the amounts provided by law.

4. The purpose of the users committee is to advise the commission in the design, development and operation of the criminal information system.

SECTION 6. 1. Each law enforcement agency shall submit a complete set of fingerprints to the central repository for each person arrested whose name and other pertinent data are entered

into the system. This report will indicate among other things the type of offense, type of arrest, arrest disposition and bail or release status, if any.

2. Each prosecuting attorney shall report filings, non-filings, grand jury and other activities relevant to the prosecution process.

3. The clerk of each court shall submit a report including the initial plea, disposition, most serious offense for which a conviction was entered and type of sentence. Clerks of district courts shall report appeal results or cases appealed from justice and municipal courts. The clerk of the supreme court shall report the disposition of criminal cases by that court.

4. Each court shall report changes in trial, custody status, bail or recognizance releases each time a change occurs.

5. The Nevada state prison, the department of parole and probation, and each county jail shall report all correctional information including a description of changes in and termination of custody or supervision status.

6. All reports required by this section shall be transmitted by the reporting authorities to arrive at the central repository within 90 days after the reportable event.

SECTION 7. 1. Criminal justice information which reflects a judgment of conviction shall be disseminated to anyone upon request except as provided in Section 9.

2. The commission may adopt reasonable procedures and fees for access.

SECTION 8. Dissemination of non-conviction criminal justice information is limited to entities specified in regulations of the commission, which shall include:

1. Government agencies of this state or any other jurisdiction charged with law enforcement.

2. The state gaming control board.

3. Persons and agencies specifically authorized to receive the information by statute, executive order, or court rule, decision or order.

4. Person or agencies rendering services in law enforcement under a contract which specifically authorizes access and defines the uses of the information.

5. The individual who is the subject of the information as provided in Section 10.

SECTION 9. Dissemination of any criminal history information obtained from sources outside of the state may be limited as prescribed by the laws governing the source.

SECTION 10. The commission shall by regulation provide for:

1. Reasonable procedures and fees assuring access to criminal justice information for purpose of inspection by the individual who is the subject of the information.

2. Review at the source agency of the information if its accuracy or completeness is challenged.

3. Appellate review within the commission if such a challenge is denied.

4. Effective dissemination of corrected information to users who may have received incorrect information.

5. Effective public notice of every individual's right of inspection and challenge of information pertaining to the individual.

6. Effective deletion from the criminal information system of any information ordered sealed by a court.

SECTION 11. Any person who:

1. Discloses any information which is a part of the system in a manner or to a person not authorized by Sections 2 to 11, inclusive, of this act or a regulation adopted thereunder; or

2. Makes any unauthorized use of information which is a part of the system for his own benefit;

is guilty of a misdemeanor.

SECTION 12. NRS 242.030 is hereby amended to read as follows:

242.030

1. The provisions of NRS 242.010 to 242.060, inclusive, do not apply to the department of highways, the department of motor vehicles, the state controller, the University of Nevada system, the legislative counsel bureau, the Nevada industrial commission, [and] the employment security department [,] and the state criminal information system, but subject to the provisions of NRS 242.010 to 242.060, inclusive, [such] these departments, officers and agencies may utilize the services of the division.

2. The division shall provide state agencies with all of their required systems, programming and automatic data processing equipment services.

3. If the demand for services is in excess of the capability of the division to supply [such] the services, the division will contract with other agencies or independent contractors to furnish the required service and will be responsible for the administration of such contracts.

SECTION 13. NRS 242.170 is hereby amended to read as follows:

242.170 "Using agencies" means the department of highways, the department of motor vehicles, the state controller and the central data processing division of the department of general services. Except as set forth in NRS 242.230, using agencies shall have all of their data processing equipment services furnished by the commission. The employment security department, the Nevada industrial commission, the state criminal information system or the legislative counsel bureau may negotiate for data processing equipment services to be furnished by the computer facility on a mutually agreeable basis with the commission.

SECTION 14. NRS 242.230 is hereby amended to read as follows:

242.230 All state-owned or state-leased equipment of an executive office, department, commission or agency, other than that

used for the operations of the criminal information system, shall be under the managerial control of the commission, but the commission may, by regulation, permit a using agency to operate data processing equipment on its premises.

SECTION 15. Sections 1 through 5 and sections 12 through 14 of this act shall become effective upon passage and approval. Sections 6 through 11 of this act shall become effective on January 1, 1978.

STAN WARREN

NEVADA BELL

I am appearing in opposition to AB 261 in its present form, and would like to propose to you an amendment.

Nevada Bell's operation is statewide - our people are located in, or serve in some fashion, in virtually every county in Nevada. We employ nearly 2,000 people.

Not all of our employees are under the constant and personal supervision of their immediate managers. Many see the boss only at the beginning of their shift, and again when the day is done. During their work day some of these people will visit hundred's of homes and/or businesses to install and/or repair equipment which we provide.

As a public utility we feel we are responsible to our customers to screen the people we send to their homes and businesses. Undesirables who may steal from, or ransack, ~~their~~ property, and also individuals who may make improper advances must be weeded out.

I have been in the telephone business over 22 years. I started as an installer/repairman. I have been met at a customer's door by unattended children whose ages ranged from 5 to 10, who were there to let me in to do telephone work. We don't allow our employees to perform work under these conditions and we ask our customers for more responsible access conditions. For an individual of questionable or uncertain character, this type of temptation may be too great to resist.

As drafted, this bill isn't definite or certain as to whether criminal history conviction record information would be made available to Nevada Bell, or any other utility, for its legitimate use in ~~pre-employment~~ security screening. For this reason, I'd like to suggest that sec. 7,8 or both of the bill, be amended to insure that criminal history conviction record information would be made available to Nevada's public utilities under the ~~guidance~~ of the Nevada Public Service Commission, for their

EXHIBIT D

legitimate use in ~~pre-employment~~ employee screening.

/PASS OUT AMENDMENT/

THANK YOU.

ARE THERE ANY QUESTIONS?

AMENDMENT TO NEVADA ASSEMBLY BILL NO. 261

Amendment No. 1

On page 2 of the printed bill, line 38 after "Commission" insert:

"including furnishing such information to public utilities regulated by the Public Service Commission of Nevada for employee security screening."

Amendment No. 2

On page 2 between lines 48 and 49 insert:

"5. Public utilities regulated by the Public Service Commission of Nevada for employee security screening."

Reno Newspapers, Inc.

Publishers of RENO EVENING GAZETTE and NEVADA STATE JOURNAL (Morning and Sunday)

P. O. Box 280
RENO, NEVADA
89504

March 11, 1977

Chairman
Assembly Judiciary Committee
Nevada State Legislature

Testimony regarding AB 261--provides privacy and security requirements for criminal justice information system.

Reno newspapers--Nevada State Journal and Reno Evening Gazette--object to AB 261 in three areas:

--Regulation and restriction of the public's right to know about it's criminal justice system and about criminals themselves.

--General unclarity, particularly in reference to policies regulating release of criminal justice system information.

--The federal government's (Law Enforcement Assistance Administration-LEAA) attempt hinder the public's right to know and freedom of the press by pushing for regulations that usurp constitutional rights by the threat of withholding federal funds.

AB 261, in its simplest concept, is the enabling legislation to set up a computer storage system of criminal justice information (arrest, conviction data etc.) on a state by state basis. The benefit is a system capable of dispensing criminal history information to any law enforcement agency in the nation on a moment's notice. Such a system would be a valuable aid in the fight against crime.

But the federal government doesn't like simple things.

To get this computer system, federal funds to establish it, and other federal funds to fight crimes, LEAA says states must pay a price.

EXHIBIT E

The price Nevada must pay is a restriction of the public's right to know certain criminal justice information. LEAA says there must be certain security and privacy regulations concerning criminal justice information in the computer to prevent misuse of the system. Much of the information LEAA would restrict has been available to the public up to now.

The LEAA idea is to strike a balance between the criminal's right to privacy and the public's right to know. However, the result of the proposed LEAA regulations, if followed, will be the public will know less about society's criminals and the criminal will benefit from the privacy.

We believe the privacy rights of individuals are important but they don't outweigh the public's right to know. A criminal must give up a little privacy when he makes the choice to be a criminal.

It's the public's criminal justice system, not the criminal's. LEAA's proposed regulations and AB 261 leave some doubt as to whose system it is.

AB 261, in its present form is unclear as to what information will be made available to the public.

Section 7 says "Criminal history record information which has a conviction disposition may be disseminated by the system at the discretion of the director according to policies and regulations recommended by the committee and adopted by the commission.

No person, committee or commission should have the "discretion" to decide what the public has the right to know. That's a step toward a police state. The public, pure and simple, has the right to know what's going on in its criminal justice system.

AB 261, in its present unclear form, is open to different interpretation by every law enforcement official as to what information is authorized for release. If the wrong information is release, he faces a misdemeanor charge. Under this threat, the tendency is going to be--when in doubt, release nothing.

The Oregon Legislature passed a bill similar to AB 261 that was unclear and vague. The result was people were arrested and disappeared into the criminal justice system. Police officers were afraid to give out information on arrests. The governor had to call a special session of the legislature to repeal the law.

AB 261 is vague when it refers to dissemination of non conviction data. Section 8--"Dissemination of non conviction data is limited to agencies specified in regulations of the commission, including:

The public is not included. There's an irony here. The arrest of a person is a matter of public record at the time of arrest. Once the fact of arrest goes into the computer, it can no longer be released to the public unless the arrest eventually results in conviction.

Some major crime figures have been arrested countless times but, through the use of smart attorneys and other means, never convicted. Under LEAA regulations the public would never have a running account of these arrests.

If a school district wanted to check out a potential employe, it would be unable to get information of several arrests for child molestation unless there had been convictions. This is further complicated in plea bargaining where a person pleads guilty to a lesser crime. There's a lot of difference between a felony child molestation charge and a plea of guilty to a reduced misdemeanor charge of loitering that the computer finally spits out.

The public should have an equal right to conviction and non conviction data for its own protection.

Nevada's privacy and security plan from which this bill is drafted states on Page 2--"It should be emphasized, however, that no part of the Privacy and Security Plan will contradict existing Nevada State law, as noted above. In all cases Nevada State Law shall supersede privacy and security regulations." That includes Nevada public record and open meeting laws.

At no place in AB 261 does that statement appear.

The bill states the public, press and other users have to sign a users agreement to gain access to criminal justice information. They must also sign an agreement not to disclose this information.

How does the press give the information that the public needs to know if it has signed a form that it can't disclose that information?

We object to the concept of a users committee contained in the bill which would decide who does and doesn't have the right to access to public information. The public has the constitutional right to criminal justice information.

What changes do we suggest in this bill?

1. A statement should be included saying nothing in the regulations or the bill itself supersedes present state law, including Nevada's open records and open meeting laws.

2. The provision giving the director discretion to decide what information should be released should be eliminated. No one should have this power over the public's right to know.

3. The section on users and non disclosure agreements should

be eliminated. The public has the right to know, as in the past, criminal justice information.

4. There should be no distinction between conviction and non conviction data. Both are equally important and the public has the right to know. Federal guidelines actually leave it up to the states to decide whether the public has the right to this information.

5. The section on the users committee should be eliminated. The users are the public and there is no need for distinction of who can and can't gain the information in the system.

It should be pointed out that the information in this system doesn't contain sensitive and speculative law enforcement intelligence reports, just fact about criminal histories that the public has a right to know about.

In summation, we oppose any restrictions of the publics right to know.

This is just another federal plan which, by threat of possible fund cutoff, attempts to control states and dictate their laws.

Let this bill say Nevadans are not restricted in their right to know what goes on in their criminal justice system. Open this system to all Nevadans. Let the federal government make the next move.

Frank Delaplane
News Editor
Nevada State Journal

Comments by Nevada State Press Association concerning Assembly Bill 261"Providing privacy and security requirements for criminal justice information system."

The Nevada State Press Association speaks in opposition to AB 261 in its present form because it is too loosely written, tends to create confusion, leavestoo much to interpretation by individuals, could contravene Nevada public records and open meeting laws, needlessly deprives the people of their right to know, and one of the most important points of all, would require a person to sign, and pay for, information to which he is freely entitled under the Nevada, and the United States Constitutions.

In considering the bill, consideration must be given to a letter written about one month ago to Nevada Governor Mike O'Callaghan by David Small, deputy attorney general, criminal division. Mr. Small made the point that AB 261 would not change any procedures in obtaining criminal justice information in Nevada, would in no way affect Nevada's law making public records available to the public, would not affect standard operating procedures in police and sheriff departments. Why? Because an attorney general's opinion written in 1965 said that Nevada's public records law does not apply to police files. Then Atty. Gen. Harvey Dickerson said the open records law applies to police business other than police identification records. For the record, the Dickerson opinion has no force of law. It is one man's opinion, expressed, at request, as a guideline. Another attorney general might reasonably take quite the opposite view. The open records law has never met the ultimate state Supreme Court test, nor the test of any other court. In fact, when Mr. Small fell back on the Dickerson ruling in his February 8, 1977 letter to Governor O'Callaghan he flew in the face of a view expressed by his superior, Atty. Gen. Robert List. Mr. List had commented in February, 1976 on a guideline to be submitted to the Law Enforcement Assistance Administration: "I don't think this plan or the regulations are in the best interests of our state. Once an individual commits a crime it becomes a part of history. The wars, scandals, crimes, these are a part of the history of all peoples. And we shouldn't tear chapters out of history books or pages from crime records because these are factual events that are unpleasant." List said also that the proposed LEAA regulations would conflict with Nevada's open meeting law. The statement certainly didn't indicate that Mr. List, unlike his deputy, felt the whole question is moot because of an earlier attorney general's opinion.

Mr. Small's letter to the governor indicates that police blotters or booking sheets have traditionally been made available to the public and press and will continue to be made available if AB 261 is passed. But some police officials say this might not be the case, and it is generally agreed information will be made available on conviction records only and nonconviction records will be denied to the public. We are not referring to confidential files on intelligence, investigations and other matters which rightly should remain confidential. We say that to refuse access to arrest records, however, is wrong. Washoe County Sheriff Robert Galli feels it is wrong. Sheriff Galli in a letter entered into the record in a 1976 hearing criticized exclusion from police files of many non-criminal justice agencies which need information. And it is apparent that the vague wording of the bill would leave it open to unpredictable interpreation by every police department and every sheriff's office the length and breadth of the state as to who is entitled to what information, even going so far as to decide information on murders and arson could be released, but information on sex crimes could not. The Oregon legislature passed a law similar in many respects to the bill being considered here. The legislature had to be called into session because police refused to divulge any information whatever regarding arrests for fear of breaking the law. People were disappearing off the streets and their relatives

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even their attorneys, were denied information by the police.

For a time last spring the federal Law Enforcement Assistance Administration appeared to have backed down on its insistence that the strict federal guidelines be followed. States were told they could draft their own regulations. What LEAA didn't tell the states was: "Okay, go ahead and draft your guidelines, but if we don't like them, you won't get our money." One police official has said that states which don't toe the mark might even have to give back the money already received. AB 261 isn't designed to test LEAA's mettle in this respect.

Past experience indicates the federal agency will insist on nondisclosur of non-conviction arrests and this will deny far more than the freedom of information ideology traditionally applied to the news media. What about the school official who wants to know whether a prospective employee has ever been arrested for child molestation or arson? Or the public utility official who wants to know whether a job applicant has ever been caught playing around with bombs? The police couldn't reveal such information unless the person was convicted, without regarding whether, although patently guilty, the person was freed on a technicality or through the efforts of a darned good defense lawyer.

Certainly, everyone has a right to privacy but the prospective employer has the right, and the need, to know what kind of a person he is considering hiring. But AB 261 would deny that information. Such information would be almost impossible to get because once it is filed, you can't just go and ask for John Doe's record, you have to specify date, time and place or the law enforcement people can't tell you.

AB 261 as it now stands follows strict LEAA guidelines which if enforced could bring this nation one step further into a police state. That's the worst concept of the bill. At best, it is one more interference with state rights. As an example, AB 261 provides for the continuance of the state criminal justice information system users committee, certainly a trend toward a police state. Under the concept, a few would decide on who gets what information. This bill can say one thing, the committee can take quite another viewpoint.

One of the most objectionable features of AB 261 is requiring that a person requesting information sign an agreement with a provision against disclosure once the information is obtained. The news media must sign an agreement to obtain information to which the media is clearly entitled by the constitution. The public must sign an agreement to obtain information to which the public is entitled by the constitution. The question has been asked: "If the press signs a nondisclosure agreement, how does the press disclose?" No one has come up with an answer , just as no one has come up with the answers to many other questions this bill poses.

Nevada can have a bill which will meet LEAA guidelines, perhaps AB 261, drastically amended, is such a bill. But right now, Nevadans cannot possibly live with it.

Submitted by Joe Jackson, secretary-manager, Nevada State Press Association.