MINUTES

ASSEMBLY JUDICIARY COMMITTEE
March 28, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Banner
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblyman Wagner

The meeting was called to order at 7:15 a.m. by Chairman Barengo.

AB 468: Bud Hicks, Deputy Attorney General and Larry Hicks, District Attorney, both testified on the purpose of the bill stating that this bill would increase the punishment of cheating from a gross misdemeanor to a felony. This bill was part of the District Attorneys Package of bills. Larry Hicks pointed out that it is a felony for a client to cheat an establishment and this simply makes an establishment which conducts a cheating game, such as using marked cards or loaded dice, subject to the same crime and punishment. He stated he felt it was more important that the establishment be treated in this manner than the customer.

Mr. Ed Bower, Gaming Industry Association, stated that their association was in support of this bill.

In answer to a question from Mr. Price, Larry Hicks stated that any person who aided or abetted or counselled or encouraged the cheating would be liable under the law for the cheating in an establishment. He stated the dividing line would be between those who knew and those who didn't.

AB 469: Larry Hicks stated that there should be addition to line 2, which would read "unlawful to possess with the intent to defraud, manufacture, or sell:". This would allow the cooperation of the gaming establishments in aprehending the people who are distributing these cheating devices. Bud Hicks stated that this would be a good addition considering some of the training programs which go on in the casinos. Larry Hicks stated that the other aspect of this bill was to increase this to a felony due to the growing sophistication of these devices and the use of those devices can completely drain a slot machine, for instance, with only a slight modification in their electronics. Bud Hicks reiterated Larry's comments about the sophistication of these cheating devices and the losses that accompany them.

In answer to a question from Mr. Sena, Larry Hicks stated he felt that on line twelve, it should read ".1 year nor more that 10 years,...". He stated this would be a good change.

In answer to a question from Mrs. Hayes, Larry Hicks stated that there is currently a statute relating to defrauding by use of foreign coinage and he did not feel this should be covered in this bill.

Ed Bowers stated that their association was in support of this bill and they were also in agreement with the purpose of the proposed change in language regarding possession because of the training programs in the casinos.

AB 466: Chairman Barengo explained that the reason for this bill was that the ability to send the jurors home for the night, during deliberation, should be with the judge. He stated that the jurors are allowed now to go home at night during the course of the trial and it seemed that if they were going to be influenced by outside factors that would have happened before they got to the point of deliberation. This bill would still leave the judge the power to determine that the jurors should be sequestered, if he felt it was necessary. He stated this bill would make the law consistent with current practices.

Mr. Price pointed out that he felt it was ridiculous to let the defendant out on bail and lock up the jury.

In answer to a question from Mrs. Wagner, Larry Hicks stated that if the jurors were going to be influenced they would have been influenced before time for the deliberation and these people are assumed to be honest, conscientious people. He stated the really important thing in this bill was that the judge still have the ability to hold the jury over, if necessary.

AB 467: Larry Hicks stated that this bill would provide that service of subpenas in misdemeanor trials can be made by registered or certified mail rather than by personal service. He said this is the procedure now in Clark County and would save a great deal of time and money for the county. He stated there are approximately 10,000 of these per year at a cost of $3.00-$4.00 each. He stated that though the cost consideration is important that is not the real purpose of this bill. He stated he felt the most important point of this bill was that this was simply a more effective way of handling these subpenas.

Chairman Barengo stated that the Municipal Court in Reno sends out a letter instead of a subpena and this does not require that they pay these witnesses as serving them with a subpena would.

Discussion followed among the committee and Mr. Hicks as to what would happen if the person the subpena was sent to did not pick up his mail or was never at home to receive the notice. Mr. Hicks stated that the person would not be liable if they did not receive notice, but, that they had not had this come up as a practicable problem so far where this procedure is being used. He stated that in the areas this is being used, there is a phone set up being used that the person who has been subpenaed can call to see if

the case they are involved with is still on schedule and this saves time for both the witness and the court and has worked out well.

In response to a comment from Mr. Ross, Mr. Hicks stated that he would have no objection to changing the time requirement to ten days notice. He also pointed out that this bill, too, was part of the DA's package.

AB 471: Larry Hicks stated in regard to this bill that this would reduce the standard of proof in an accomplice testimony case and that this was brought about by the Eckert case in Clark County. He stated this was a complex area and, that if the committee had not done so, that they should review the material which he had sent them in regard to this which was included in the material accompanying the DA's package as number seven. He stated he felt the current accomplice law is too strict. He felt the current Bramlett case in Las Vegas will be a test of this rule and explained why he felt this was to committee. He also explained other possible cases to the committee to stress his point. He pointed out that in the Eckert case the strigency of the accomplice testimony law caused Eckert to be released and within months of his release he was back in custody for kidnapping, armed robbery, and he believed, murder on a later charge.

He said the DA's association and law enforcement both support this bill and their point of view on it is that these cases should go before the jury for them to decide. He said he felt that if the testimony of the accomplice is weak then let the jury decide it, don't bar the case from being heard. And let them decide whether there is other independant evidence which shows that the accomplice is being truthful, not whether the other evidence, of itself, is sufficient for conviction alone. He stated, in addition, that Nevada's laws in this area are far stronger than the general rules throughout the other states and the federal courts do not have an accomplice rule as such and he felt that Nevada's laws are too strong.

Discussion followed pointing out the committee's concern with a person who had committed a crime involving others as a matter of revenge. Larry Hicks stated that he felt the jury system would compensate for this possibility and the main problem was in the area of aggrivated cases.

Mr. Ross stated that he felt that even though it would be terrible for one guilty person to get off due to this rule that it would be more terrible to convict a person who was innocent because of prior bad reputation and an accomplice's testimony.

Discussion of this followed at some length, with no conclusions.

AB 472: Larry Hicks stated that this bill was intended to clear up the vagueness in the conspiratory law so that it could be a

felony to "conspire to sell, exchange, barter, supply or give away a controlled substance" which, up until a year ago was considered a felony. Due to a court ruling stating that it had to be specifically listed in the law to be considered valid under the conspiracy law, this bill was drafted. This would be used where a large quantity of a drug would be brought into the state to be sold but was confiscated before the sale actually took place.

In answer to a question from Mr. Ross, Mr. Hicks stated that the reason the upper limit of the possible sentence was raised was for the situation where very large quantities were involved and they felt stiffer penalties were necessary. And, the maximum would only be given in an aggrivated case.

In answer to a question from Chairman Barengo, Mr. Hicks stated that, indeed, conspiracy to possess would still be a gross misdemeanor.

Mrs. Wagner pointed out that there may be some instances where one could receive a longer sentence for conspiring to give away marijuana than for actually using it (if the current proposed laws pass). Discussion followed on this idea.

Chairman Barengo asked Mr. Hicks to give the committee his opinion on the marijuana issue that was passed out of this committee. Mr. Hicks stated that he felt that bill was in keeping with the approaches of law enforcement and the District Attorneys Association and he has no objection to the bill as it was amended.

AB 459: Larry Hicks stated that this was a bill out of Clark County and his office had no objection to it and he felt it had a good purpose.

Mrs. Hayes stated that Bart Jacka would be testifying on this bill at a later time because he was unable to attend today.

AB 460: Larry Hicks commented breifly on the background of this bill stating that NRS 458.300, which this seeks to amend, was enacted last session. He stated that law enable an alcoholic or a drug addict who had committed a crime to show the court that they were either an alcoholic or a drug addict and if the court found he was, then the court could order him to a rehabilitation facility and the charges were dismissed. In other words, if the alcoholic committed a burglary, those charges would be dismissed before there was a conviction. He stated the treatment program these people went into sometimes would only last three or four weeks. And, he said he felt this was unjust inasmuch as Nevada provides that intoxication is no defense to the commission of a crime. Therefore, if someone were not an alcoholic, but simply drunk and they committed a crime, they would be tried and convicted without being able to use the defense of being under the influence. However, had he been an alcoholic he would never have been convicted.

He stated that the DA's assessment of this in general is that it is a good plan, however they do not feel it should result in a complete dismissal of the charge, rather it should result as something similar to a probationary treatment period after conviction. Discussion followed on this and Mr. Hicks said that this would protect society by allowing for a conviction and then providing, after the conviction, treatment which can be used to dismiss him from that conviction when completed.

Mrs. Wagner asked Mr. Hicks if this would preclude treatment until after conviction. Mr. Hicks stated that he did not believe so because treatment was available for those who sought it and could afford it or upon court order. Mrs. Wagner pointed out that she felt treatment before the conviction might be helpful in these cases. Mr. Hicks stated he did not agree and that any person who wants to pursue treatment can. Discussion followed briefly. Mr. Hicks stated that he felt the law, the way it is now, discriminates against the person who commits a crime but is normally more of a law abiding citizen. Mr. Ross stated he felt that, perhaps someone who is not addicted to a drug of some sort might be more able to leave that drug alone and not commit the crime than someone who is under the influence of a drug.

Chairman Barengo stated that perhaps the criteria should be if the person were under the influence of alcohol or drugs during the commission of the crime.

Mr. Paul Cohen, Administrator of the Bureau of Alcohol and Drug Abuse in the Rehabilitation Division, Department of Resources, spoke next on this issue. He submitted to the committee his prepared statement which he read from and he also commented to the committee generally on this bill. He stated that though his department works with the Crime Commission and Parol and Probation they do no work under either of these divisions. He said there are twenty-four accredited programs in the state at this time and have programs which run from two weeks to eighteen months and on an out-patient basis from three months to two years. He stated that the only way a client can get into one of these programs is after they are convicted. He stated he did feel that from the legal aspect something needs to be done in this area however, he did not feel that the changes proposed would do that.

In addition to his prepared statement, Mr. Cohen submitted a statement to the committee from Mr. Peter Regner concerning this subject. Both of these are attached and marked Exhibits A and B respectively.

Mr. Ross asked Mr. Cohen if he felt it would be better if the law read "if an individual were charged with or convicted.... and instead of the election being with the individual, have the election be with the court." Then let the judge decide on whether there should be a diversion. Mr. Cohen said that he felt that would be better.

In response to Mr. Ross' question Mr. Tom Beatty stated that he felt there are three main problems and they are: 1. delay in the court procedings, 2. Currently the District Attorney's office hasn't much to say as to whether or not the defendent is deverted out of the system, the judge makes that decision, and the District Attorney's office loses track of them, 3. He stated he did not feel that this bill would put TASC out of business even though they might have to change some of their approaches.

Mr. Beatty made a statement on behalf of Mr. Howard Ecker, TASC (Treatment Alternatives to Street Crime) Advisory Board, who was unable to attend due to a court schedule conflict. He stated that Mr. Ecker was worried about this bill and believes there might be two ways to solve his problem: 1. Amend the present bill to put in a specific provision requiring notification of hearing with the district attorney involved, 2. Use a subsection six with would allow you to go through the regular procedure until just prior to sentencing and at that point the person would be placed on probation without a sentence being imposed. Therefore, technically the person would not be convicted. He further stated that Mr. Ecker felt that if AB 467 passed in its current form, it would not mean the end of TASC and that he believed that it could work.

In conclusion he stated that if some other alternative were adopted, in lieu of this bill, it would have to give the District Attorney some say in this matter and would have to avoid the problem of delay that now exists which are the crucial factors.

Mrs. Wagner asked Mr. Beatty if he would agree with the suggestion of Mr. Ross concerning the addition of the "charged with or convicted" language. Mr. Beatty stated he felt that would be a step forward but, that it should be coupled with proper notification of the DA and a guarantee that the DA would play a part in the procedure.

AB 461: Mr. Larry Hicks stated this was not one of their bills, however they did favor a bill similar to this and a copy of language they would suggest is attached and marked Exhibit C. He stated there is a need for solicitation laws because of the inability to proceed in a case like this under the current statutes, even in the case of a murder solicitation.

Tom Beatty submitted to the committee his proposed language concerning the definition of solicitation. It is attached and marked Exhibit D. He stated he did not feel the bill AB 461 as proposed was strong enough. He pointed out this has been a special problem in the undercover narcotics agent type solicitation in Clark County. Someone approaches another undercover agent and asks him to kill another officer and there is no way to prosecute that person becuase he has not committed a crime and he is not guilty of conspiracy unless the officer being approached agrees to do the job.

Mrs. Wagner asked Mr. Beatty if there were solicitation statutes in other states. Mr. Beatty stated that California and other states do, though he did not know exactly which ones. Mr. Hicks also stated that he knew other states do have laws like this.

The committee discussed Exhibit C with Mr. Beatty and Mr. Hicks and the effect this language would have on the bill. They also discussed how this related to entrapment.

AB 479: Larry Hicks stated that he had no objection to the provision that the notification go to the surety company and the the agent putting up the bond. He said he felt this might lead to quicker bail forfeitures.

Tom Beatty stated that he did not feel this would solve the problem in Clark County. He stated he felt this would involve more paper work and possibly additional people. He stated they need a simplification of the law not the additional new language of this bill. He commented also that he did not know where the manpower or money to do this would come from or that the system would be any better if it were changed.

Mrs. Wagner asked if Mr. Beatty had any suggestions so far as this problem was concerned. He stated that his office had submitted to the LCB some of their problems and their proposals for solving those problems but, they have not seen them come out as yet. He stated they are trying to set out some statutory standards for both parties, the court and the bondsman.

In closing Larry Hicks pointed out that he felt there should be a change on line 18 to change the language from "shall request" to something that would require the surety to register with the Insurance Commissioner and then serve him and make it his responsibility to notify the surety.

Mr. Jim Waddams of the Insurance Commissioner's Office was next to address this bill and stated that they had been involved in the inception of this bill and he stated that their proposal had been substantially changed in the bill drafting procedure. He said that the point they were trying to address was that the ultimate obligors is the surety, not the bailbondsman. He stated there has been difficulty in the surety being advised by the bailbondsman of the forfeiture and this was aimed at that problem.

He stated that he did not feel that certified mail was necessary and that just notification by mail would be sufficient, but they should be notified. He stated that he agreed with Larry Hicks concerning the "shall request" portion of the bill.

He stated their original intent was to eliminate the confusion in getting the information to the surety and prevent, if possible, the delays in payment. He said they would support the bill if it were returned to its original intent and form.

AB 470: Chairman Barengo stated that this bill had been submitted to the LCB by Judge Barrett. He stated that it deals with the disqualification of people for the Grand Jury after they are chosen at large.

Larry Hicks commented on the Washoe County situation which prompted this bill. He stated that currently there is no way to disqualify a person once they are chosen for the Grand Jury even though they might be a relative of one of the people involved in a case, or even if they had a prior criminal record which might cause conflict or make them less than ideal as a juror. He said they had also been confronted by another problem which was that, due to the amount of time that was involved in Grand Jury service that, in Washoe County they have ended up with a jury that was composed of approximately 75% women (housewives) and this did not make for an ideal mix of people on the jury. He stated he felt this would give the judge the ability to not select those who might not be suitable and arrive at a better mix in general within the jury.

Mr. Tom Beatty stated that they had not had this problem in Clark County and he commented that his only point is that he wished the law could be settled so they would not have to continue to debate it.

A brief discussion on this topic continued with no solutions to the problem offered.

There being no further business, the Chairman adjourned the meeting at 9:27 so that the members could go into session.

Respectfully submitted,

Linda Chandler

Linda Chandler

EXHIBIT A

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
ROGER S. TROUNDAY, DIRECTOR
MIKE O'CALLAGHAN, GOVERNOR
DEL FROST, ADMINISTRATOR

REHABILITATION DIVISION
BUREAU OF ALCOHOL AND DRUG ABUSE
5TH FLOOR, KINKEAD BUILDING
505 EAST KING STREET
STATE CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

TESTIMONY ON A.B. 460

The Bureau of Alcohol and Drug Abuse does not support the intent of this legislation.

This bill provides for the elimination of diversion and treatment in lieu of prosecution and mandates a conviction before, and instead of, treatment alternatives prior to prosecution. If this legislation is passed it will:

1. Endanger diversion funds by effectively eliminating a large segment of the population from entering a diversion program prior to prosecution and entry into the criminal justice system. At present the Bureau receives $190,000 federal funding for diversion and another $125,000 from the National Institute on Drug Abuse for treatment.

2. Eliminate much of the District Attorney's and Court's discretion of bringing prosecution when it is not in the best interests of the client or the criminal justice system.

3. Require prosectuion.

4. Overload the courts and the criminal justice system, thus increasing the time, staff and financial needs.

5. Virtually require a criminal record and conviction before treatment.

None of the above seem to be in the best interest of the State, the community or the individual.

In Las Vegas, the Bureau runs a TASC Project that has identified 200 drug addicts in the criminal justice system who are likely to benefit from rehabilitation. Of the 200 addicts identified, 110 or 55%, would not have been previously identified in the criminal justice system. It is estimated that 75% of these are expected to complete treatment.

The existing statute, NRS 458, provides that an alcoholic or drug addict is eligible to elect treatment in lieu of prosecution, subject to specific exceptions under Section 1, paragraphs one through five. The existing statute provides safeguards along the way. For example, if the defendant leaves treatment or is found unsuitable, then prosecution may be resumed.

Pre-trial intervention allows the court to place an individual in treatment while the case proceeds through the criminal justice system and his treatment progress is considered in sentencing or plea bargaining.

In summary, passage of this bill would eliminate diversion and pre-trial intervention. It would require conviction and thus kill the incentive toward rehabilitation.

Paul Cohen, Chief
Bureau of Alcohol and Drug Abuse

PC:br

EXHIBIT B

Submitted by Paul Cohen

Dated March 23, 1977

Today by phone Mr. Regner gave permission for TASC and/or BADA to quote the following statement in any situation deemed appropriate:

"The Las Vegas TASC Project is dealing with one of the hardest core addict populations of the 40 TASC PROJECTS in the United States and yet is able to report one of the lowest rearrest rates from clients who are under the Las Vegas TASC supervision."

Peter L. Regner
Narcotic and Drug Abuse Program Coordinator
Law Enforcement Assistance Agency
633 Indiana Avenue, N.W.
Washington, D.C. 20531
Phone: (202) 376-3944

EXHIBIT C

461

PROPOSED STATUTE CREATING A CRIME OF "SOLICITATION."

NRS 199.500 - SOLICITATION.

Whenever any person shall solicit another:

1. to commit or join in the commission of murder, robbery, forcible rape, kidnaping in the first or second degree, or arson in the first or second degree, every such person shall be punished by imprisonment in the state prison for not less than one year nor more than ten years; or

2. to commit any felony as defined in the Nevada Revised Statutes except those set forth in subsection 1 above, every such person shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense solicited, but for not more than half of the longest term, or by a fine of not more than half of the maximum sum, prescribed upon conviction for the commission of the completed offense solicited, or by both such fine and imprisonment.

3. The solicitation of any gross misdemeanor shall be a misdemeanor.

4. For the purpose of this section, solicitation means to endeavor to obtain, to invite, to petition, to induce, or to request another to commit an act which constitutes a crime.

5. It shall not be necessary to allege or prove that any overt act was done in pursuance of such solicitation.

6. It shall not be necessary to allege or prove that any person so solicited either acted or intended to act upon the solicitation.

Synopsis of Proposed Statute:

This proposed statute would make the solicitation of one person to commit a crime on behalf of another a crime itself. Solicitation to commit crimes was a crime at common law, however, nothing in the Nevada Revised Statutes is provided to make it a crime in Nevada. Under the proposed statute, solicitations to commit certain serious crimes enumerated in paragraph 1 would be a felony punishable by from one to ten years in prison. It would provide that solicitation to commit any felony other than those enumerated in section 1 would be punishable in the same manner as attempted crimes are punishable under NRS 207.080; that is, by a penalty from one year up to a maximum of one-half of the maximum term provided for the completed offense. The statute would make solicitation to commit any crime which is classified as a gross misdemeanor, a misdemeanor.

EXHIBIT D

George Holt, District Attorney

THOMAS D. BEATTY
Assistant District Attorney

Clark County Courthouse
200 East Carson Street
Las Vegas, Nevada 89101

Telephone
(702) 386-4011

PROBLEM:

Nevada law relating to criminal conduct provides penalties for conspiracies to commit crime, for attempts to commit crimes, and for certain specific conduct defined by statute. (That is, completed crimes). A recurring problem is the solicitation to commit a crime, commonly that of murder, which solicitation is made to an informant or undercover officer. In such cases, despite the grave social harm in the specific intent and solicitation by the defendant no prosecutable offense will arise unless more than one person who is bent upon commiting a crime ~~are~~ is involved or unless the crime goes far enough to constitute an attempt. In other words, no conspiracy arises unless there are at least two real crooks actually agreeing to commit a crime (the undercover officer is not such a person). ~~and~~ For the obvious reason that victims may not be subjected to the possibility of danger, case cannot be allowed to proceed far enough where an attempt will have been committed. The method used to resolve and punish such conduct in other states is to prohibit the solicitation of the commission of certain crimes.

PROPOSED SOLUTION:

The following sections should be added to the appropriate Chapter in NRS, "Every person who solicits another to commit or join in the commission of murder or any other crime against a person is punishable by imprisonment in the County Jail for not more than 1 year and may be further punished by a fine of not more than $1,000. Such offense must be proven by the testimony of two witnesses, or of one witness and corroborating circumstances."