

MINUTES

ASSEMBLY JUDICIARY COMMITTEE

April 19, 1977

7:00 a.m.

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

Chairman Barengo brought this meeting to order at 7:00 a.m.

Senate Bill 184:

Senator Foote, having been sworn in, testified in support of this child abuse bill. She stated that one of our greatest problems is that of child abuse. There have been people throughout this state who have been interested in working on legislation of this type. This bill was amended in the Senate. Dr. Pemberton of Reno, Nevada had come before the Senate Judiciary committee and gave valuable testimony to them concerning having a Registry. There is now in this bill mention of Regional Registries. The Washoe County Medical Association is interested in starting one at Washoe Medical Center in Reno in order to keep track of people involved with child abuse in order to develop a pattern. There are stiff penalties in this bill in an effort to try to abolish child abuse. There were several questions from the Committee of Senator Foote including concern with the present problem of pornography and children in this state which is not addressed in this particular bill. Sen. Foote stated that the Governor's office has been made aware of this problem and they are going to be very watchful of this type of activity.

Mr. Howard McKibben, District Attorney of Douglas County, having been sworn in testified in support of this bill. He feels that this is one of the most critical pieces of legislation that this committee has before them. He has had experience in this in his county. It is a very difficult crime to detect and once it is detected, it is very difficult to prove in Court. But, he does think that legislation such as this will serve as a deterrent. There were some questions and discussion following his testimony.

Ann Hibbs representing the Nevada Nurses Association testified in support of this bill. She made reference to Dr. Pemberton of Reno starting the 24-hour Registry at Washoe Medical Center and attempted to explain how this would work in addition to starting a program that will be preventive, perhaps similar to COPE or through the County Welfare Department.

Chairman Barengo asked that the record show that Mrs. Florence Mc Clure of Community Action Against Rape, Las Vegas, Nevada is in support of this bill.

At the request of the Chairman, the committee also received advice on this current bill from Mr. Frank Daykin of the Legislative Counsel Bureau.

Larry Hicks, District Attorney of Washoe County and President of the Nevada District Attorney Association, having previously been sworn, testified on this

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bill in support of it. However, he stated that there is a real drafting problem in it. Attached hereto and marked as Exhibit "A" are copies of Mr. Hicks' outline of the problem in the final section of this bill. There was lengthy discussion and questioning by the committee.

Senate Joint Resolution 10:

Judge Guinan testified on this bill stating that he is here on behalf of the Judges, but, in a neutral position, neither for nor against this bill, however, he did have some comments on the bill. He first explained what this bill does. He then stated that it had been told to him that this would provide continuity in order that they would not have all district judges going out of office at the same time which, although a physical possibility, seems incredible to him that it would ever happen. They are not opposed to staggering terms if that is what the Legislature would like to do and they are not opposed to solving a salary problem to some extent in this bill. However, concerning the method for the staggering of terms, he mentioned that the bill divides the district judges into three groups and they object to the "two year term". He stated that precisely the same thing could be accomplished by having that third group run for an eight year term in 1978 which is only two years longer than the standard six year term. They would request that the committee make an amendment if they were going to pass this bill to change the "6 and 2" to one term of "8". He also mentioned the three ways to get rid of district judges in addition to elections. Judge Babcock was also with Judge Guinan and concurred with his remarks.

Senator Gibson testified on this bill as its chief sponsor stating that they had thought that the staggered terms were in that when they went to the six year term for the district judges. He explained that the number of judges will undoubtedly be increased as time goes on and yet they all run in the same election and it merely made sense both from the standpoint of the mechanics of elections as well as an opportunity to the people to vote on the district judges and stagger those terms so that a third of them run each election.

Senate Bill 163:

Senator Bryan, having been previously sworn in, testified on this bill as its chief sponsor. He gave the committee some background on this bill stating that it came from an interim study on the problems of the aging. His view is that ultimately the position of public administrator, as they have approved an amendment to the constitution, is to make that office an appointive rather than an elective position. This would contemplate that the Board of County Commissioners, at their option, could establish the office of Public Guardian. He feels that the office of Public Guardian should be combined with the Public Administrators office on a salary basis. He also mentioned that the concept of a Conservatorship should be tied into one office as it is done in most places. The particular problem that gives rise to this, he stated, is the difficulty of people who are living alone, have become incapacitated and cannot handle their own affairs and there is nobody under the present law who is charged with the responsibility.

Assembly Bill 627:

Mr. Martin Weiner, having been sworn in, an attorney with the Consumers Affairs Division of the State of Nevada and the Assistant to the Commissioner, testified on this bill. He stated that this bill is the result of a request by the Chairman of the Nevada Service Station Association, Roger Bidell. He explained that the current situation is that a mechanic or a garage man will repair a car, the car will remain on its premises and he is then faced with the difficulty of getting payment of the bill and the NRS has set up a procedure giving the repairman a lien

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on the property and if the bill is not paid, the repairman can serve a notice on the owner of the car, plane, trailer, etc. stating that it will be sold within a certain number of days unless the bill is paid. The current state of affairs, at least in southern Nevada, is that the service station owners have been advised by their attorneys that the current lien law is ineffective. They are unsure as to what their rights are in the automobiles that they are repairing. There is a vacuum in the law created by Judge Foley's decision that the current Chapter 108 procedures are unconstitutional. This bill is an attempt to set up a quick procedure of an Order to Show Cause within 10 days of the time that the garage man chooses to enforce the lien. It will be heard in Court and the Judgment will be entered for the proper party. The bill also sets up treble damages as an incentive for people to avoid the self-help remedies. There were many questions from the committee of Mr. Weiner.

Senate Bill 422:

Senator Young stated that this is a bill which had its genesis in a problem that developed in regard to providing a defense in civil actions to state employees. He stated that the Attorney General's office now provides the defense, but, requires the employee to sign a Waiver of Confidentiality. One of the keystones of the lawyer/client relationship is the confidentiality of the communications between the client and the lawyer. Unless the lawyer has the total factual situation at hand, he simply cannot do a good job. This Waiver would mean that if the defendant reveals something that might expose him or her to criminal liability or prosecution, this confidentiality is waived. This seems unfair to him.

Senate Bill 368:

Senator Young, having been sworn in, testified on this bill explaining the genesis of the bill to the committee.

Assembly Bill 662:

Bart Jacka, having been previously sworn, testified on this bill realizing that previous testimony had already been given. He merely wanted to reiterate that this device was analyzed in their laboratories and a document indicating the substance was transmitted by Commander Mc Carthy to Chairman Barengo and it is, in fact, exactly what they have indicated. Attached hereto and marked as Exhibit "B" is a copy of said Memorandum dated April 15, 1977. Mr. Jacka stated that he realizes that Sheriff Galli of Washoe County has taken opposition to the bill and Mr. Jacka disagrees with his stand. He feels that we need to provide some sort of defensive weapon for the citizens and that this instrument is not injurious to anyone on a permanent basis. Attached hereto is a copy of a letter that Chairman Barengo introduced into the minutes from Vincent Vitale, Criminologist with the Washoe County Sheriff's Department, and marked as Exhibit "C".

Senate Bill 268:

Commander Jon Mc Carthy testified on this bill, having previously been sworn, stated that this section has been used for a number of years in California with a substantial amount of success. He stated that he realizes that the committee might be thinking that this legislation might be abused, but, he stated that any law, to some extent, can be abused by a law enforcement agency. The thrust of it is solely to protect the taxpayer as they deal with large sums of money in narcotics transactions. He gave an example of perhaps the purchase of a large sum of "whites" that turn out to be sugar pills and there is no way to recover their money. Thereafter there was considerable discussion and questioning.

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COMMITTEE ACTION:

Assembly Joint Resolution 2, Mr. Ross moved to CONCUR WITH AMENDMENTS, Mr. Polish seconded the motion. The motion carried unanimously.

Assembly Bill 227, Mrs. Wagner moved to CONCUR WITH AMENDMENTS, Mrs. Hayes seconded the motion. The motion carried unanimously.

Assembly Bill 470, Mrs. Hayes moved to NOT CONCUR WITH AMENDMENTS, Mrs. Wagner seconded the motion. The motion carried unanimously.

Senate Bill 163, Mr. Banner moved for a DO PASS, Mr. Ross seconded the motion. The motion carried unanimously.

Assembly Bill 451, Mrs. Hayes moved for a DO PASS, Mrs. Wagner seconded the motion. The motion carried unanimously.

Assembly Bill 540, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mrs. Wagner seconded the motion. The motion carried unanimously.

Assembly Bill 596, Mr. Sena moved for an INDEFINITE POSTPONEMENT, Mrs. Hayes seconded the motion. Mr. Banner and Mr. Coulter and Mrs. Wagner voted "no". The motion carried.

Assembly Bill 471, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mrs. Wagner seconded the motion. Mrs. Hayes and Mr. Banner voted "no". The motion carried.

Senate Bill 132, Mr. Polish moved for a DO PASS AS AMENDED, Mr. Banner seconded the motion. The motion carried unanimously.

Assembly Bill 662, Mrs. Hayes moved for a DO PASS, Mr. Sena seconded the motion. Mr. Ross, Mr. Barengo, Mrs. Wagner voted "no". The motion carried.

Senate Joint Resolution 10, Mr. Ross moved for a DO PASS AS AMENDED, Mr. Price seconded the motion. Mrs. Hayes abstained from voting. The motion carried.

Senate Bill 422, Mrs. Hayes moved for a DO PASS, Mr. Ross seconded the motion. The motion carried unanimously.

Assembly Bill 527, Mr. Sena moved for an INDEFINITE POSTPONEMENT, Mr. Ross seconded the motion. Mr. Price, Mr. Coulter, Mrs. Wagner and Mrs. Hayes voted "no". The motion carried.

There being no further business to discuss, this meeting was adjourned at 10:45 a.m.

Respectfully submitted,

  
Anne M. Peirce

200.508 1. Any adult person having the care, custody or control of a minor child under the age of 18 years who willfully causes or permits [such] the child to suffer unjustifiable physical pain ~~or~~ mental suffering, ~~serious injury or injuries inflicted~~ as the result of abuse or neglect, ~~or who causes or permits the life of~~ ~~[such] the child to be endangered or the health of [such] the~~ ~~child to be injured,~~ or who willfully causes or permits [such] the child to be placed in such situation <sup>that the child may suffer</sup> ~~that its life or limb may be~~ ~~in danger or its health likely to be injured~~ <sup>physical pain or mental suffering as the result of abuse or neglect</sup> ~~is guilty of a gross~~ ~~misdemeanor.~~ <sup>is guilty of a gross misdemeanor.</sup>

2. A person who violates a provision of subsection 1 under circumstances or conditions likely to produce substantial bodily or <sup>mental</sup> harm or death shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years.

3. As used in this section, "permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

Sec. 3. NPS 200.503 is hereby amended to read as follows:

200.503 1. Any adult person having the care, custody or control of a minor child under the age of 18 years who willfully causes or permits [such] the child to suffer unjustifiable physical pain, mental suffering, serious injury or injuries inflicted as the result of abuse or neglect, or who causes or permits the life of [such] the child to be endangered or the health of [such] the child to be injured, or who willfully causes or permits [such] the child to be placed in such situation that its life or limb may be in danger or its health likely to be injured is guilty of a gross misdemeanor.

GRS.  
MIS-  
Demeanor

SAME CONDUCT

2. A person who violates a provision of subsection 1 under circumstances or conditions likely to produce substantial bodily harm or death shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years.

FELON

3. As used in this section, "permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

THE UNDERScoreD PORTIONS OF #1 ARE ALL SITUATIONS "LIKELY TO PRODUCE SUBSTANTIAL BODILY HARM OR DEATH" — IF THE SAME CONDUCT CONSTITUTES BOTH A GROSS MISDEMEANOR AND A FELONY, THEN THE FELONY WILL BE VOIDED BY LAW. HERE, BOTH FELONY BATTERY (PROPOSED 200.491 (2)(c)) AND FEL. CHILD ABUSE WOULD BE VOIDED

Sec. 4

200.508 1. Any adult person (having the care, custody or control of a minor child under the age of 18 years) who willfully causes or permits (such) a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as the result of abuse or neglect or who willfully causes or permits such a child to be placed in such situation that the child may suffer physical pain or mental suffering as the result of abuse or neglect, is guilty of a gross misdemeanor.

2. A person who violates a provision of subsection 1 under circumstances or conditions likely to produce substantial bodily or mental harm or death shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years.



# Las Vegas Metropolitan Police Department

400 EAST STEWART AVENUE  
LAS VEGAS, NEVADA 89101  
PHONE 702/385-4711

REFERENCE

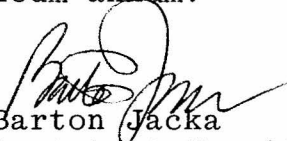
April 15, 1977

TO: COMMANDER JOHN McCARTHY  
FROM: ASSISTANT SHERIFF JACKA  
SUBJECT: NEBULIZER MARK IV

Richard Renner, the Department Chemist analyzed the Nebulizer Mark IV this date and found that it contained the following:


Oleo resin capsicum and isopropyl alcohol

Oleo resin capsicum is oil product from Cayenne pepper, from Capsicum frutescens or Capsicum annum.

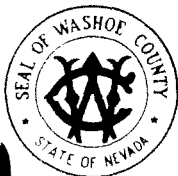
  
Barton Jacka  
Assistant Sheriff

BJ/gm



EXHIBIT B <sup>177</sup> 





WASHOE COUNTY SHERIFF'S DEPARTMENT

P. O. Box 2915  
RENO, NEVADA 89505  
Phone: (Area 702) 785-6220

VINCENT G. SWINNEY  
UNDERSHERIFF

ROBERT J. GALLI  
SHERIFF

THOMAS F. BENHAM  
CHIEF, INVESTIGATIVE SERVICE BUREAU

RUSSELL T. SCHOOLEY  
CHIEF, OPERATIONAL SERVICE BUREAU

JAY S. HUGHES  
CHIEF, ADMINISTRATIVE SERVICE BUREAU

April 18, 1977

Assemblyman Robert Barengo  
Chairman, Assembly Judiciary Committee  
NEVADA STATE LEGISLATURE  
Carson City, Nevada 89710

Subject: NEBULIZER XL-4 REPELLANT SPRAY DEVICE

Dear Assemblyman Barengo:

On April 14, 1977 I received a repellent spray device labeled Nebulizer XL-4 from Sheriff Robert J. Galli. This report covers my examination and analysis of this device.

The active ingredient is a compound known as Oleo Capsaicin. This pungent substance is derived from Cayenne pepper and like plants. It is dissolved and dispersed in isopropyl (rubbing) alcohol. The presence of the active ingredient was confirmed by instrumental analysis.

A brief personal test confirmed the irritating property of this compound to nasal and eye tissue. I placed a small amount of the material in my right nostril and also in the corner of my right eye. A sharp burning sensation was noted for about thirty minutes in the nostril and for about twenty minutes in the eye. In addition to the irritant external effects, this compound can cause gastritis and diarrhea.

The dispensing device is operated by a two-position switch which allows a flashlight incorporated in the mechanism to be operated alone or as a bright flash of light in conjunction with the release of a spray burst of the irritant liquid.

It is my opinion that both the irritant-containing liquid used in the device and the device itself fall under the definitions as stated in NRS 202.370, since the liquid spray is "intended to produce temporary physical discomfort" and the device is intended for "the projection or release" of this irritant liquid.

Very truly yours,

  
Vincent Vitale, Criminologist

VV:NSM

EXHIBIT <sup>1775</sup> C