

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

FEBRUARY 16, 1977

The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 184 Increases penalties and broadens reporting requirements for child abuse.

Dave Small, Attorney General's office testified in favor of this measure. He stated that at the present time there is a gaping hole in the law as far as punishment for child abuse. There have been some rather grievous injuries suffered upon children for which the perpetrators have only received gross misdemeanor sentences.

The proposal before the Committee approaches this situation in two stages:

- 1) it would elevate the penalty for battery, where there is no deadly weapon or aggravated circumstances involved and which would include all persons; and
- 2) it would beef up the present child abuse sections for persons with a custodial relationship with the child.

Senator Close expressed concern over the situation where a battery is committed on a child by a person who is more than two years older than him and cited the schoolyard fight as an example.

Senator Bryan concurred and stated that there are presently bills being drafted which will attempt to lower the age of certification as an adult, which is something that should be kept in mind.

Mr. Small stated that their intent was with regard to the full grown adult and the small child and that they did not wish to include schoolyard fights in this instance.

Senator Bryan suggested that perhaps they could establish some age threshold or criteria with respect to the victim rather than setting an age differential between the perpetrator and victim.

SB 184 Michael Hoover, Director of Social Services, Washoe Medical Center in Reno stated that he felt the current law was a good one and that the proposed changes would make it an excellent one. He cited a current case where the child is slowly dying and the perpetrator has been found guilty of child abuse, which is a gross misdemeanor, and therefore cannot be held for the more serious crime of murder. He felt that the misdemeanor section should be retained as it allows them some leverage in manipulating otherwise unwilling child abusers into therapy. He was concerned that the incidence of reported cases, which is currently their most useful way of getting child abusers into therapy, would be reduced to a small fraction of what it is now if the misdemeanor section were entirely deleted.

Something he felt was very important was the establishment of a state registry for reporting abuse and neglect cases. He stated that the last session of the legislature mandated the creation of a registry within the State Welfare Division's central office in Carson City but provided no money for doing this. The result is that one person runs a small office from 8:00 a.m. to 5:00 p.m., Monday through Friday, however, most cases are seen after 5:00 p.m. and on weekends when the registry is closed. The registry would be most helpful in stopping child abusers from "hospital shopping" where they go from one hospital to another and one doctor from another.

Mr. Hoover also agreed with the new proposal insofar as who must report. He suggested that something be written into the civil immunity section that would protect nurses and other persons who are required to report from the wrath of an angry doctor. He informed the Committee that his hospital has already taken steps in this direction where a nurse could comply with her legal and moral responsibility to report and still save her job. He felt this was especially necessary in the smaller communities where everyone knew everyone else.

Larry Hicks, Washoe County District Attorney and President of the Nevada State District Attorney's Association testified before the Committee on behalf of this measure.

He distributed for the Committee's review a copy of the California law (see attached Exhibit A) which is, in essence, the one proposed by the State District Attorney's Association. The thrust of this proposal is 1) to continue the concept of a separate offense called child abuse and 2) add the concept of battery on a child where substantial bodily harm occurs. They support this because it will allow for an easier burden of proof for prosecutor. They also support the 1-20 sentence in that it is the same as for attempted murder and in the aggravated cases of child abuse that they have encountered, they feel it is equivalent to that.

SB 184 He stated that there was a problem with Section 3 of the bill which stems from the legal concept that you cannot classify the same conduct as both a gross misdemeanor and a felony. If so, the lesser crime controls; the doubt is resolved in favor of the defendant. He suggested this could be taken care of by amending NRS 200.508 with the language in Exhibit A or as follows:

200.508 1. Any adult person having 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 as the result of abuse or neglect, or who willfully causes or permits /such/ the 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.

It was their feeling that mental suffering is a very substantial aspect of child abuse. For example, the mother who routinely places her child in a closet for 3 or 4 hours each day. Actual physical harm cannot be shown but there obviously is mental damage or at least the potential for mental suffering.

He further stated that they had a problem with the inclusion of the words "care, custody or control" in that in many instances the person inflicting the abuse does not have such control, as in the situation of the boyfriend or neighbor. In response to a question from Senator Bryan regarding the California approach, Mr. Hicks stated that they liked having the flexibility of the simple misdemeanor, gross misdemeanor and felony penalties, depending on what the circumstances warranted.

He also stated that another reason for going with the California approach is that it has been tested in the courts a number of times and has a good case authority that supports the language. He is always a bit wary of creating a new statute.

In response to a question from Senator Sheerin as to the reporting requirements of battery, Mr. Hicks stated that they were not presently covered and that they should be included in NRS 200.481.

The Committee asked Mr. Small to comment on Mr. Hicks suggestions.

Mr. Small stated that he had no problem with the proposed amendments to 200.508 (see above) however he had objections to the California approach. He felt that mixing "any person" with persons with "care, custody or control" would create problems. Would this mean, for instance, that a person would have a duty, under pain of criminal law, to interfere with what is taking place in his neighbor's home? Morally, yes but he did not feel there was a criminal obligation to do so.

SB 184 He further stated that there are existing laws which cover the "any person" problem in the child abuse and sexual abuse areas and that the battery statutes are also being up-graded in regard to "any person." It was his feeling that the child abuse and neglect statutes should be left to those persons for whom the law can rightfully place a great duty of care.

Joe Burnett, Director, Children's Behavioral Services, Las Vegas, Nevada and Dr. Jack Mayville, Director, Children's Behavioral Services, Washoe County stated that they were in favor of strong legislation that dealt with the detection and prosecution of child abuse. However they expressed concern over certain implications of this bill in regard to the reporting aspects. They agreed on the necessity of reporting but with the existing trends concerning client's rights and freedom of information they were afraid they might lose those persons who would come in voluntarily for treatment if they felt they would be turned over to the authorities for prosecution. Dr. Mayville stated that he had "lost" 5 families due to this already. They simply never showed up again. He also suggested that the term "promptly" on page 2, line 20 be more definitely defined. He felt 48 hours would be an appropriate time period.

William J. Labadie and Mary C. Lee of the State Welfare Division testified in favor of this measure. They were in full agreement with Drs. Burnett and Mayville insofar as the reporting aspect and cited an instance where 3 weeks had gone by before they were notified of a particular child abuse case. In response to a question by Senator Close as to the normal notification time, Mr. Labadie stated that if it is viewed as a serious situation, they were notified immediately but as a rule it is within 72 hours. Most notification comes from a telephone call.

Concerning the comments made in regard to a central registry, Mr. Labadie stated that he did not see a need for the hospitals to have one in that, at the present time, the information is available but they do not receive any requests for it. He also expressed concern over the confidentiality of it. Senator Dodge pointed out that previous testimony had indicated that most child abuse cases occur after 5:00 p.m. or on weekends when the present registry is closed.

Senator Close asked whether the decision to release a child was based on past behavior. Mr. Hoover responded that that would be a significant factor. He stated that often times a child will be brought in with perhaps a black eye and the explanation as to how it happened does not square with the

SB 184 observation of the psysician yet you have a problem because it does not appear that serious but there are questions. If you can check a registry and find that they have been reported elsewhere in the past, that gives you an idea that this is a continuing pattern of events. If you just see it as an isolated case, the decision becomes much more difficult.

In regard to the confidentiality of the registry, Senator Dodge suggested that perhaps the registry could be maintained at the Sheriff's office, which is also open on a 24-hour basis.

Mr. Hatfield from Reno stated that he and his wife and conducted foster homes for the state and county since 1953 and in that time, they had encountered many cases of child abuse. He felt that it was vital that the legislature take immediate steps toward the prosecution and treatment of child abusers.

Ellen Polk, Fallon, representing the Nevada Licensed Practical Nurses Association and the Nevada Nurses Association informed the Committee that they were interested in having some sort of mandatory treatment for simple child abuse as a preventative measure. She stated that it was the desire of nurses to have something in the law that would protect their jobs should they report a child abuse case over the objections of a doctor, especially in the smaller communities. She further agreed with the testimony concerning the need for a 24-hour central registry.

Ileta Iler, a case worker with Washoe County Welfare testified in favor of this bill. She stated that she did not feel the age of the child should be lowered to 14 in that she has had a case involving a 16 year old.

No action was taken at this time.

SB 192 Measures judgment debtor's exemption from execution upon his vehicle by his equity in it.

Howie Bennett, Field Investigator for the U.S. District Court in Reno testified in favor of this bill. He suggested that the bill be amended as follows:

- 1) Page 1, line 4 add "gross" value; and
- 2) Page 1, line 13 delete "and" and insert "or the tools," which would give them a single deduction rather than a double one.

In discussing the bill, it was the decision of the Committee to amend the bill by deleting on lines 12 and 13 of page 1, "not to exceed \$1,500 in value," which would allow for a single deduction only.

SB 192 Senator Ashworth moved to amend and do pass.
Seconded by Senator Sheerin.
Motion carried unanimously.

SB 195 Adopts Uniform Vendor and Purchaser Risk Act.

Bill Kosark, Nevada Association of Realtors testified in support of this measure in that it will protect both the buyer and the seller.

Following a brief discussion, Senator Ashworth moved a do pass.
Seconded by Senator Foote.
Motion carried unanimously.

SB 54 Authorizes payment of lodging allowances to jurors under certain circumstances.

Senator Close informed the Committee that he had discussed this measure with Bob Broadbent, Clark County Commissioner and he had stated that he had no problems with it.

In further discussion, it was the decision of the Committee to increase the milage allowance to 75 miles per day in that 50 miles is not that much today.

Senator Bryan moved to amend and do pass.
Seconded by Senator Sheerin.
Motion carried unanimously.

There being no further business the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

PROPOSED NEW CHILD ABUSE LAW

REPEAL THE CURRENT NRS 200.509 AND REPLACE IT WITH
Wilful Cruelty or Unjustifiable Punishment of Child; Endangering
life or health.

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, wilfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, wilfully causes or permits the person or health of such child to be injured, or wilfully causes or permits such child to be placed in such a situation that its person or health is endangered, shall be punished by imprisonment in the State Prison for not less than one (1) year nor more than twenty (20) years.

2. Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, wilfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child wilfully causes or permits the person or health of such child to be injured, or wilfully causes or permits such child to be placed in such a situation that its person or health may be endangered, is guilty of a gross misdemeanor.