

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 17, 1977

The meeting was called to order at 8:05 a.m. Senator Close was in the chair.

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

ABSENT: None

SB 268 Revises laws regulating controlled substances.

John McCarthy, Las Vegas Metropolitan Police Department stated that he wished to impress on the Committee the reason they wanted to have the person leasing or renting the property included. This is exemplified by the numerous occasions they have had where a rental property was involved and the occupant has fortified the place. It is critical that we get in as soon as possible, if you fool around outside it gives the occupants a chance to get weapons and so forth. He feels that at least 99% of these people anymore are carrying weapons.

Lt. Tom Biggs, Las Vegas Metropolitan Police Department stated that section 7 is the sale of a controlled substance statute. The request that we have here is that we have included a new sale of controlled substance statute which takes out the factor. There were recently decisions in the Haas vs State, Wright vs State, where age was alleged and if it had been upheld we would have to go back and reindict in many cases. So we want the age factor left up to the discretion and judgment of the judge in the hearing. That is basically the change we are asking on the sale statute. We are trying to guard against another court decision where age is being alleged.

Senator Sheerin stated then what you are trying to get at is in the future the seller's age will not be a factor, this is not messing around with possession.

Lt. Biggs stated this is strictly seller, regardless of whether he is a 16 year old or a 60 year old. We are taking the age factor out and leaving it up to the judge as to the penalty. This would also involve the buyer to an extent but we have not had a sale case involving a minor that we can recall in years.

Mr. McCarthy stated that until the Supreme Court reversed themselves on the Haas decision we were in jeopardy of loosing some 300 sale cases.

Lt. Biggs answered in response to Senator Gojacks question he that the Haas decision was a case that came out of Reno or Carson City, that involved the sale to a minor of a lid of grass. Age was alleged in the complaint, but yet not proven in a criminal trial, and the case was reversed. It was a sale be a person over 21 to a person under 21. Initially the Supreme Court held that you have to demonstrate the age of the suspect involved in order to get a conviction under that statute, which nullified all the other statutes because they all interrelated over and under 21. So we had to come up with proof of age on everybody that we filed a case on, which required additional reports and sometimes how do you prove age. The only other change in the section is the penalty. We have gone from a 1 to 20 on the first offense to a 5 to 15 on a sale.

Senator Bryan asked if they still have the definition of bartered, gift or exchange, because if you gave someone a marijuana cigarette, technically you would be guilty under the sale statute.

Lt. Biggs stated that would be by way of furnishing, but when we wrote this bill we did not consider the possibility of the bills coming out as have in regard to reduction of the scheduled drugs.

Senator Bryan stated he feels that one marijuana cigarette should certainly not be placed in the same category as trafficking in heroin.

Lt. Biggs stated he understands the concern, but based on what happens in the Legislature this time, the marijuana issue and whatever type determination you might make in give away type cases. We seldom file on give aways, we use those for stepping stones for sale case development.

Senator Bryan stated that because this would affect cases state wide, they would really have to look at it closely. In the larger areas there really isn't much prosecution for small amount of marijuana, but in some of the rural areas that is still next to murder

Lt. Biggs stated that in other states where they have reduced the penalties for marijuana their sale statutes still read the same. But they have taken marijuana from some portion of those statutes and have even rescheduled the drug. There are 8 states now that have reduced the penalties to an ounce or less and there are 35 states that are considering it.

Mr. McCarthy stated you could create a lot of problems if you were to remove the give away, barter, or gift because often times that is really essential to the investigation. We realize what you are trying to do in the area of marijuana but don't want you to loose the concept of what we are trying to do in these harder drug areas at the sacrifice of marijuana.

Senator Foote felt that if we think the use of these things is wrong, whether someone sells it or gives it to somebody or barter that is still wrong. It would seem to her that people can get, and yougsters particularly, involved in drugs by giving them the first free sample. For that reason she would not be willing to go along with changing any of the definitions.

Senator Dodge asked for an explanation of just how this barter or exchange enteres into investigations.

Lt. Biggs stated that drugs are involved in a counter-culture type situation. There is a lot of social interaction that goes on and very often, in fact the majority of times people are introduced to drugs, because it is given to them freely. Many times we have an undercover agent who goes in to buy, but because of circumstances it is inappropriate and that is the only thing we can get them on is when they provide rather than sell the drug. They may after 5 or 6 contacts furnish the controlled substance. In doing that they are trying to see if he is an agent.

Senator Sheerin asked if it would be appropriate to ask these gentlemen to prepare for us a schedule of all of the new crimes we are creating and the penalties. Rather than going just dry with this and trying to remember back. Then we can compare the old statutes and the new that this bill is providing.

Lt. Biggs stated they would be happy to do that. He would just like to make one more comment. In section 12, it is the possession of a controlled substance statute as presently written, they did not recommend a change to possession. There was a bill that came down that made minor changes. We did not recommend the changes in sub-section 6 page 9 through sub-section 9 on page 9, we want this to stay in the law. What it really does is if an individual that is convicted in a possession case can upon conviction get three years probation, and after he successfully completes that 3 years then his record is sealed on that conviction. It is held in abbeypence. The point is that when you are dealing with youthful offenders, you have some flexibility in the law there to get these kids into court and get their attention and yet they don't get a criminal record. Section 13 is the old conspiracy section and the four subsections actually cover acts of inducement or attempts to induce. We have never really been able to use that statute. The fifth sub-

section says to conspire with another person or persons. That violates provisions of NRS 453.011 to .551. There was a decision where this was ruled unconstitutional because there was a conflict with the other conspiratorial crimes statute under section 199.480. So what we are proposing is a new conspiratorial crimes statute that covers the controlled substances act. As it reads now there is no probation and we feel that is needed. It is a very important statute we could utilize in the enforcement of sales cases, possession cases and examples I spoke of yesterday on the aircraft investigations we have conducted where you have got mules or people who are transporting drugs. In the last 6 months through the people we were investigating, we have gotten something like 15 lbs. of heroin alone.

Senator Dodge asked just how affective probation was.

Lt. Biggs stated that it is useful in some cases. In the long run we could generally say the ones that are probated get right back into the business again, particularly major offenders. That is true with sales and possession.

Senator Bryan asked that if the marijuana laws are not changed, is there enough flexibility built into the proposed bill, with the changes you are making, to allow the DA to allow someone to plead to an offense that does not constitute a felony?

Mr. McCarthy stated that on your possession of a controlled substance they do that. We have a working relation with the DA's office. We prefer that they not negotiate a sale case or any of our cases without conferring with us so that we let them know just how deeply involved this individual is. If we find he is not involved we have no objections in some of these cases, so there is flexibility built in.

Senator Sheerin thought there was a problem with the language regarding conspiracy because where you say "and one of the conspirators doesn't act in furtherance of the conspiracy". He feels they might be going a step more then they really want to by making this conjunctive and requiring the act. What this does is make it an attempt statute and not a conspiracy statute.

Lt. Biggs stated he would agree on that point. Section 15 amends 199.480. What this does is that now 199.480 is still a conspiracy statute pertaining to those crimes above. But under the controlled substances act we have a conspiracy crime and therefore it is prescribed by law.

Senator Dodge stated his overall question about the penalties generally in this law, is whether the stiffness of the

penalty is going to be any deterrent to getting a conviction. We have wrestled with this thing over the years. In their opinion are the penalties realistic in getting juries to convict.

Mr. McCarthy stated he believes that history has demonstrated that it is not so much the severity of the punishment, that is academic. The swiftness and sureness of punishment is the best deterrent. He doesn't actually agree that a lengthy sentence has anything to do with the individuals propensity of rehabilitation. But we can't seem to get the swift justice that is critically needed to deal with these things because of the cumbersomeness of our court system. The only other alternative, and admittedly it's a frustrating alternative, is to increase penalties. So if you have a better idea he would be more than glad to hear it.

Senator Gojack stated she really didn't have a better idea, but it seems like it would slow things down even more by having a longer term. She feels that if you make the penalties too stiff then you can't get at the offender and help the people that really need the help.

Senator Bryan stated that before on a conviction you could get 20 to 40 years. That didn't work too well, so they lowered it to 1 to 6, and that didn't work either.

Lt. Biggs stated they would take this whole penalty matter under consideration and recommend a proposed change. He will slo contact the DA's office and try to come to some agreement on the penalties that should fit the particular crimes they are talking about. We are getting convictions on sale cases. Some cases have been getting 16 to 18 years, so he doesn't feel that is really that much of a problem. In answer to Senator Dodge's question he stated they are getting a 95 to 98% conviction rate on their sale cases now.

Larry Hicks, District Attorney's Association, Washoe County stated that he would just like to state that their association is in support of this bill. He feels the penalties do need some adjustment, but the concept is good. He stated he would be happy to work with Biggs and McCarthy on the penalty end of it.

AB 301 Provides advisory referendum on equal rights amendment.

Kate Butler, Coordinator of Nevadans for ERA stated their position is in opposition to what is called an advisory referndum. Their feeling is that the constitution of the United States places the responsibility for passing constitutional amendments on the Legislature. In this case the Legislature having two courses of action. In AB 301 by delegating at least an advisory referendum to the vote of the people at large, that is an abrogation of the Legislative responsiblity. There is a referendum in Arizona but the language is strictly advisory. One point the Supreme

Court has specifically held that where Congress directs it, ratification of constitutional amendments be handled through Legislative action. Legislatures may not submit it to the people by way of referendum, since article 5 of the United States Constitution calls for the decision to be made by deliberate assemblages representative of the people. In answer to a question by Senator Close she stated that there is also notation that a legislature cannot do indirectly what it can do directly. There is also argument and a body of law that the legislature cannot escape its responsibility by delegating legislative powers to the people at large. Thus a State Legislature may not delegate its power by referendum except where the constitution permits.

Senator Close asked if she thought the Legislature would have to be bound by this vote?

Ms. Butler stated that she doesn't think you can be bound by the vote. Frank Daykin clearly has stated it is not a referendum and yet it is called a referendum. The bill itself states it is an "advisory referendum". In the opinion of Daykin this is neither a referendum in name or affect, and yet we are calling it that. It really is only a straw vote or poll. She feels that it is misleading to the people of Nevada. They may think, even though it says very clearly it is only advisory, it does say "shall the Legislature be advised that it is the will of a majority of the registered voters of Nevada that the following proposed amendment to the U.S. Constitution--". If I were to see it for the first time I would assume that it was the will of the majority of the people of Nevada and binding. Therefore they would be led to believe that this would guarantee passage of the ERS in Nevada.

Senator Bryan stated he felt that if this were put on the ballot, and the will of the people were expressed, wouldn't this end the argument about the polls that are conducted everytime the ERA issue comes up, of whose polls are actually correct.

Ms. Butler feels that because there are such discrepancies of consistency in the different districts of the amount of registered voters this would hamper an accurate poll. She feels that because not all registered voters vote it would not really give an accurate picture of all the voters feelings.

Senator Ashworth stated that in this last election the pros said they had a 2 to 1 majority and the antis said they did, and that leads to confusion. He feels that this way if it were put to the people it would give an overall picture not only state wide but district wise.

Nick Horn, Assemblyman representing assembly district 15 stated that the Assembly Elections Committee had heard considerable testimony regarding this and one comment continued to ring clear throughout the hearing and one assemblyman put it quite simply "what is wrong with the people expressing their point of view at the polls?" He believes the peoples wishes have been represented during the past two sessions and that AB 301 will give the people of the State of Nevada an opportunity to speak their minds in the voting booth and advise the 1979 Legislature of their will. We have been elected to represent our constituents, what clearer format could be used then to allow the voters to speak at the polls. Those that believe in representative government have to believe also in the rights of the people when called upon to express their point of view. This is a matter of great import and should not be taken lightly. Why not let the people voice their opinions at the polls? Therefore, I encourage your support of AB 301.

Dorothy Frehner, representing Nevadans for ERA stated she would like to be as objective as possible. First of all as a sociologist she would like to state the language is atrocious. If I had tried to put this wording on any undergraduate methods test I would have flunked out immediately. I believe if you go ahead with this, the whole Equal Rights Amendment should be on there. A lot has been said about polls, statistically speaking there wasn't a good poll in the bunch, including ours. Many of these polls had a 7% return and anything less then a 40% return, statistically speaking is very invalid. What concerns her most is that there could be another smear campaign, such as happened with the social security adds before the vote by the Legislature, and then how are you going to get an accurate vote? She stated if she thought it would be an accurate vote with no scare tactics at the last moment, she would say "by all means".

SB 48 Changes limit of jurisdiction of justices' courts over certain actions.

Tom Davis, Justice of the Peace and Municipal Judge of Carson City is representing the Nevada Judges Association. He stated that this is raising the jurisdictional limit in small claims and justice court civil actions from \$300 to \$1,000 and is a long time needed raise in the jurisdiction of the justice courts. When this amount was established in 1914, \$300 was like \$1,800 today. The only problems that he can foresee in the raising the amount to \$1,000 would be the frequency of attorneys perhaps wanting to practice in small claims court. This amount could make it worthwhile for them to seek the small claims court, because you could get the cases on faster then in most of the jurisdictions. It is his understanding however that there is another bill that perhaps would preclude attorneys from practicing in small claims courts. So far as Carson City he sees no real

problems either way and would definitely like to see this increase.

Senator Dodge stated there was a bill somewhere to try and make the justice courts, courts of records. If that were to happen would there be any justification for increasing this jurisdiction. Where you could take an appeal to the District Court on the record. Now, because you are not a court of record is the reason for the trial de novo in the District Court, anyone that wants to take an appeal. The only way they can do it is by virtue within a new trial of the district court. We had some testimony on the interim committee by the dean of the college of the state trial judiciary in Reno, saying that if we made it a court of record he thought that jurisdiction ought to go at least to \$5,000 for the reason that the rights of either party are preserved to take an appeal into district court if you are not satisfied with the decision of the justice court. Looking down the road I think we should be thinking of an even higher jurisdiction laws then this.

Tom Davis stated that this bill in conjunction with AJR 36 of the 58th session will give the Legislature absolute power and authority to increase the jurisdiction at any time.

Senator Close asked if we couldn't divide this up and have a smaller amount appropriate for small claims, where attorneys are not traditionally allowed, and then have the greater amount in the justice court.

Tom Davis stated that this would be ideal. You could set it at \$500 for small claims and \$1,000 for justice court civil actions which are far more complicated.

SB 286 Provides for recovery of welfare payments made for dependent children.

Acle Martelle, Deputy Administrator, Nevada State Welfare stated he is here to testify in support of SB 286. We would like to give you a very brief overview of the child support which has a total relationship to this bill and he would like Dale Landon to present this to the Committee.

Dale Landon, Chief of the Child Support Program stated that the child support program was created by Congress through public law. The major intent of the program was to make the absent parents support their children, instead of State and Federal monies paying the full burden through welfare payments. In Nevada the Welfare Division has contracted with the District Attorneys office for enforcement and collection while the State is responsible for location and identification of these absent parents. The Attorney General provides enforcement and collection where any county has not signed a contractual agreement, such as Pershing, Storey, Eureka, Nye and Lincoln Counties. Nye is in the process right now of signing a contract with the State. As an incentive

to PL 93.647, which allows the State including counties that have signed for the contracts, 75% federal matches for the administration of the program. Incentives are paid for all support collection for public assistance cases. 50% of this incentive in any collection is retained by the State. 25% is retained by the particular county in question and 10% after the absent parent has been paying support for one year and the remainder is retained by the Federal Government. This bill would provide the tools to maximum program effectiveness through the Nevada Revised Statutes in location, collection and enforcement procedures. The goal of the State will be to pay for all administrative costs for the program through child support collecting from absent parents, as well as assisting in defraying on-going welfare costs. The child support enforcement program was implemented in the State of Nevada in July of 1976, and the following table reflects the cases of the collections made to date by month (see exhibit A). These are only public assistance cases. The break even point for the collection figure is \$20,000 a month, so we are now exceeding our break even point. The language was modeled primarily after the states of California and Washington and the successful programs around the country. They have also worked with DA's around the state to be sure that this is forceful enough to enable them to do a good job. With the passage of this bill it would give our department as well as the DA's state wide, the proper legal tools to really do their job and make this an extremely cost beneficial program for both the State and the Counties.

Robert Ulrich from the Attorney Generals' Office stated that one of the major problems that they have is continuing wage assignments. You may garnish a wage when it becomes due and owing but you must garnish between the time the wage is due and dispersed to the employee. Section 53 of the bill is a wage assignment provision which would allow the assessing of future wages and is patterned after the California law. These sections all provide alternate remedies for the Federal requirements for an on-going child support program. Also, to pass this would allow us to have a much more effective program. He asked that if this bill were passed they would like one change in section 9 (see exhibit B).

Mr. Martelle stated that there were 3 avenues we had to approach this program, by social avenue, where we could have tried to rehabilitate everybody which is impossible. The second was a punitive approach where we write a law and then throw everyone in jail that doesn't pay child support. The third was really a businesslike approach and that is the one we went with. The general impetus was to make it a cost beneficial program to the State and make absent parents, who are actually responsible for the children to pay and provide support for those children, in lieu of the welfare programs in Nevada. Also, they will be able to assist mothers who come in who are not on ADC for a flat fee of \$20. They will only add staff as revenue is generated.

When the receiptent receives assistance the she makes an assignment and gives the administrator the power of attorney to endorse all drafts received as support payments. This would eliminate the administrative problem of contacting a client or absent parent to re-endorse the payment.

The Committee after some discussion felt that all of the language was a little vague and requested that they come back with something that was a little more precise and clearer.

Don Miller, Business Manager for the Clark County District Attorneys Family Support Division stated that the crux of his testimony will be strictly based upon the financial aspect to a local DA's office. The total cost to date for the county is a little bit over \$120,000 and this is shown on the chart passed out to you. They feel after all the costs they will still make a savings on the 10%, because they are trying to get some word processing and data processing equipment which will eliminate some of the clerical work we can divert the existing personnel into areas that we have identified as money making propositions, such as following up on the fathers to make sure that they are making the payments. Another area we need to divert people is in the process service. We have two people who serve process and do local investigations at this time, we would like to have at least a total of five by next year. My last comment would be that we don't loose sight of the fact that it is the child that is benefiting from all of this law and all of the monies.

SB 294 Increases licensing fees; changes fund accounting and expands enforcement powers of private investigator's licensing board.

William Windmeyer, Sierra Professional Services in Reno stated that he merely wished to state that he was here to back the Attorney Generals position on this bill.

Pete Podinelli, Private Investigator from Reno stated he was in favor of the bill also.

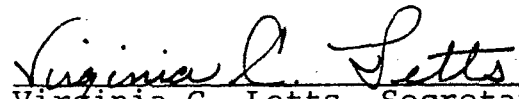
Bob Baublitz, who is on the State Licensing Board for Private Investigators stated that they too are in support of this bill.

Bob Braswell of Reno stated that he too was in favor of this bill.

Senator Close adjourned the meeting at 10:58 a.m.

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Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

<u>No. of Staff</u>	<u>Month</u>	<u>Cost to County</u>	<u>Admin.</u>	<u>Incent.</u>
8	Jul-Sept	18,876.64	14,184.17	3,314.46
18	Oct	15,154.12	11,339.07	1,412.37
23	Nov	17,888.09	13,416.07	2,258.76
21	Dec	22,979.48	17,234.61	2,016.36
22	Jan	23,907.25	17,930.43	2,579.85
21	Feb	22,265.61	16,699.20	6,371.00
		<u>121,071.19</u>	<u>90,803.55</u>	<u>17,952.80</u>

Cost to date -121,071.19
less admin - 90,803.55
less incentive - 17,952.80

Net cost to date 12,314.84

cost to county prior to IV-D Program - 84,000
projected cost for 8 month - 56,000
less net cost to date - 12,000
Net savings 44,000

Total ADC Collections

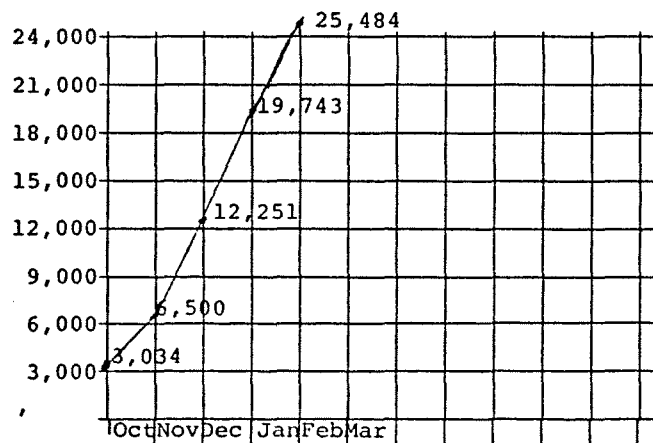


EXHIBIT A

SUGGESTED REVISION TO SECTION 9
S.B. 286

SEC. 9. "Prosecuting attorney" means the district attorney of any county or of Carson City, or the attorney general if the district attorney fails to act. The attorney general may assist the district attorney upon request.