Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Prengaman
Mr. Sena

Members Absent:

Mr. Polish (excused)

Guests Present:

Barbara Bailey, Nevada Trial Lawyers
Cal Dunlap, Washoe County District Attorney
Brent Kolvet, Deputy District Attorney, Douglas County
Steve McMorris, District Attorney, Douglas County
Bill Macdonald, District Attorney, Humboldt County

Chairman Hayes called the meeting to order at 8:06 a.m.

ASSEMBLY BILL NO. 186

Limits to district courts authority to order civil commitment of alcoholics and drug addicts charged with crimes and makes plea of guilt condition of defendants' eligibility.

Bill Macdonald, Humboldt County District Attorney, stated that in large counties, feeling is that alcoholic diversion in a criminal process should be the responsibility of the district court. Presently, in large counties, many misdemeanors and felonies heard in justice court are being diverted, often before entry of a guilty plea or before factual finding that the accused has actually committed a crime. If a person is first required to plead, then alcoholic diversion would be treated more like sentencing or probation, procedurally, rather than as a substitute for prosecution.

In answer to Mr. Stewart's question, Mr. Macdonald said that persons charged with a misdeameanor would not have alcoholic diversion available to them.

In response to Mr. Malone's comment that persons in traffic court may elect to attend classes for alcoholism, thereby lowering the fine, etc., Mr. Macdonald stated that option is after the pleading, not before.

Next to appear before the Committee was Brent Kolvet, Douglas County Deputy District Attorney, also testifying in favor of the measure. He supported the necessity for hearing these cases in district court, since diversion without pleading could result in evidence becoming stale, witnesses not being able to remember particulars of the crime. He added that justice courts do not have probation, and the problem should be a district court matter. He suggested that language on page 2, line 20 should be amended to effect that change, and told the Committee he would provide them with the suggested particular wording to amend the bill.

In answer to Mr. Stewart's inquiry, Mr. Kolvet stated that judgment is not entered until a person either completes or fails to complete the diversionary program. He added that he felt charges should be dismissed if a person had completed the program satisfactorily, i.e., a rehabilitated alcoholic would not have to go to jail, and the bill would eliminate a felony conviction hanging over the head of a rehabilitated alcoholic.

Mr. Kolvet's response to another of Mr. Stewart's questions was that the bill is not meant to address a person who attempts to be excused from committing a crime by using the defense that he or she was intoxicated at the time. Rather, the bill addresses the alcoholic as someone who cannot help himself when he drinks.

Cal Dunlap, Washoe County District Attorney, next stated that he does not support the diversionary concept, and that he does not feel such cases should be dismissed. His feeling is that the bill would provide treatment that would be helpful to people needing it and would benefit society in general. In district court, the judge has the discretion to order such treatment. In answer to Mr. Sena's question, Mr. Dunlap said that judicial determination is made after testimony from a doctor, or from evidence of a lengthy course of drinking. In answer to Mr. Coulter's question, Mr. Dunlap stated that first-time marijuana offenders are covered under the Controlled Substance Act which provides that the court may, after a plea of guilty, allow the defendant to apply for deferred status; judgment is entered, after the guilty plea by defense, and probation may be granted for a three-year period.

In response to Mr. Stewart's question, Mr. Dunlap answered that most abuses in these matters have been at the municipal

and justice court level and that he feels district courts could handle the matters better. He stated he will provide the Committee with suggested language to amend the bill as drafted.

ASSEMBLY BILL NO. 182

Broadens admissibility of testimony of accomplice.

Mr. Dunlap told Committee members this bill is the outcome of problems with an existing statute regarding corroboration of an accomplice's testimony. Presently, in the State of Nevada, prosecution has to show not only that there has been an accomplice, but totally independent sources from the accomplice have to connect that person to the crime. The bill would provide that statements of the accomplice can be corroborated, so that many cases could be prosecuted which now cannot even get to trial. He added that the bill would bring Nevada's statutes into line with those of most other states.

Steve McMorris, Douglas County District Attorney, spoke next, on behalf of Douglas County and the Nevada District Attorneys Association, noting that major cases had been lost in Douglas County because of problems with the present statute. He cited a particular case for the Committee involving a gift shop in another jurisdiction.

ASSEMBLY BILL NO. 168

Prohibits discharge of firearm at structures and vehicles.

Mr. McMorris next spoke to the Committee on A.B. 168. He said that presently the statute does not cover potshots into a building, and that the category seems to fall somewhere in between assault with a deadly weapon and attempted murder. He stated he feels this addition to statute is necessary to deter people from shooting into cars, trains, houses, when it is a matter of luck that no one is injured. He stated that the language of the bill as drafted is broader than originally intended in his request for drafting, but added that the previous language of statute does not include an automobile. In answer to Chairman Hayes' question, Mr. McMorris said that at one time consideration was given to inclusion of wording that the statute would not apply if a building was uninhabited, but there is no way to be sure the building is not inhabited.

Mr. Prengaman inquired about Section 1, subsection 1, which refers to inability to determine in what county the crime was committed, and Mr. McMorris answered that portion of the draft might apply to airplanes. Mr. Macdonald added that his understanding is the language was drawn from statutes that spoke to crimes which occurred on transcontinental trains, when there was no way to prove that a person may have been killed in a certain county, perhaps not even within the State of Nevada. With reference to buildings which may appear uninhabited,

he said that buildings, such as line shacks, in his county and other rural areas, may appear to be vacant to a city person, and he feels the bill would encourage people to be more careful when using guns since they would have to pay full consequences if someone were shot by them.

Mr. Dunlap added, with regard to the uninhabited building consideration, that perhaps the bill might include language that if the building were uninhabited, the charge might be a misdemeanor rather than a felony offense. He noted, too, that there are general provisions for a change of venue, and that this particular wording would allow for a change of venue once a jurisdiction attaches.

ASSEMBLY BILL NO. 169

Defines kidnaping for sexual assault as kidnaping in the first degree.

Steve McMorris stated that presently kidnaping for sexual assault falls under the second degree, and that convicted felons are probably out of prison within 3 to 3-1/2 years after commission of such a crime. His feelings are that the statute should provide first degree penalties, with a minimum of 10 years if there is intent to harm and a minimum of 5 years with no intent to harm. He contrasted the severity of kidnaping for sexual assault with other first-degree charges noted in the statute, and said he feels this crime is more serious than those already categorized as first-degree offenses.

ASSEMBLY BILL NO. 192

Requires publication of list of persons paroled or pardoned.

Mr. Macdonald stated he feels this bill is a housekeeping measure to facilitate county recordkeeping to accommodate requests by media or individuals who request particulars regarding paroled prisoners. He said he thinks the list should include the county of origin of the crime, length of sentencing and the actual amount of time served, noting that in many cases a person sentenced to 10 years may serve only 1/4 of that time, based on good-time and other prison system credits.

Mr. Prengaman stated his concerns regarding publication of the past few years of a person's activities which might adversely affect a paroled prisoner. A discussion followed, in which Mr. Sena noted his uneasiness about publication, too, noting it might defeat the rehabilitative process. Mr. Macdonald stated the bill language regarding publication might be amended.

Responding to Chairman Hayes' inquiry, Mr. Macdonald said the transient nature of convicted felons in his community makes statistics for repeat offenders difficult to record. Mr. Dunlap added that problem also exists in Washoe County; however, people in the Nevada State Prison are usually repeat offenders,

and by definition, most are recidivists of some type. He estimated that 48 per cent of those paroled return to prison. He added that ex-felons are faced with having to tell prospective employers about their criminal records, and jurors and witnesses are concerned with parolees' release information. He noted further that people with no direct interest in the parole information probably would take no notice of its publication. He commented that the published information could provide patterns on recidivism which might furnish legislators with important data relating to future statutory decisions. Mr. Dunlap responded to Mr. Prengaman's question regarding threats made by convicted felons about revenge against victims, witnesses, and/or jurors upon release of the felon, saying that those threats are rarely carried out, but that involved individuals might have their concerns relieved by knowledge of the release.

In response to Mr. Coulter's question, Mr. Dunlap suggested the bill might be worded, "made public", rather than "published". In particularly significant matters, bill language might provide for publication.

Mr. Prengaman stated he did not agree that only people directly involved with the release of an ex-felon would notice media publication of that information. He stated further that he felt the information should be given only to individuals and/or media upon their direct request to law enforcement agencies.

Chairman Hayes stated that in cases of sex molestation, public dissemination of such information might provide the only access to such information to people who could reside in the same neighborhood as the released parolee. Mr. Dunlap stated that in such situations as prison honor farms, publication of such information could prevent libeling of employers, and even of the State, by employees who might be molested by the ex-felon. He advocated release of a monthly list to law enforcement agencies which would also be made publicly available.

In regard to Mr. Prengaman's inquiry about the language of A.B. 168 pertaining to change of venue, Mr. Dunlap said the bill would defeat defense arguments for dismissal based upon geographical jurisdiction, but that defendants seeking change of venue would be protected by other existing statute provisions.

Action taken by the Committee on this date follows:

A.B. 182

Motion: Mr. Sena moved Do Pass, seconded by Mr. Horn. The motion carried unanimously among those present as recorded above.

A.B. 169

Motion: Mr. Banner moved Do Pass, seconded by Mr. Horn. The motion carried unanimously among those present as recorded above.

There being no further business to come before the Committee, upon motion by Mr. Banner, seconded by Mr. Horn, the meeting was adjourned by Chairman Hayes at 9:18 a.m.

Respectfully submitted,

Jacqueline Belmont

Jacqueline Belmont
Secretary