

Members Present:

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

Members Excused:

Mr. Sena

Guests Present:

Barbara L. Bailey	Trial Lawyers Association
Bill Burnaugh	Carson City Supervisor
Frances S. Conner	Carson City Clerk's Office
George K. Folsom	State Bar Probate and Trust Committee
Judge Michael E. Fondi	First Judicial District
Alan Glover	Assemblyman
John W. Hawkins	Trial Lawyers Association
Tom Hickey	Assemblyman
Nellie S. Laird	NRTA/AARP Joint Legislative Committee
Lloyd Mann	Assemblyman
Orvis Reil	NRTA/AARP Joint Legislative Committee
Ted Thornton	Carson City Clerk
Thomas Wilson	Senator

Chairman Hayes called the meeting to order at 8:11 a.m.

ASSEMBLY BILL 623

Requires party demanding jury trial in civil cases
to deposit certain fees with county clerk.

Judge Fondi said this bill provides that a party in a civil suit who demands a jury for trial in that action is required to post more than the present \$120 for the first day's jury fees. He said that a civil trial uses eight jurors, and to get that number, the custom in Carson City was to call 40 jurors. He said that county is required to pay \$9 to each of those who appear for the initial call of the jury. If all 40 jurors appeared, there would be an initial cost of \$360. He said that an original deposit of \$120 just did not cover costs.

Judge Fondi said that, in addition, there is the cost of sending out summonses by certified mail. After the eight people are selected for the jury, they are then paid \$15 a day for serving. He said that taxpayers are left to make up the difference of the costs not covered by the \$120 deposit. He said that the people using the courts should pay for them.

Judge Fondi said that juries are summoned three weeks in advance of trial dates. He said that it is the rule rather than the exception that most civil cases settle before they actually go to trial. The cases are usually settled after the summonses have been sent out. If there is enough time, jurors are noticed that they do not have to appear; however, he said there has still already been the cost of mailing the certified letters. Also, if a juror is not reached and does appear at the required time, the county is required to pay the \$9 for appearing. Because the case has been settled, the party requesting the jury then applies for a refund of the \$120 which has been posted for deposit, and the county is left holding the full cost of the jury.

Mr. Malone said that this bill would be fine for those who could afford footing the full cost of a jury trial, but he asked about those who would not be able to afford this cost. Judge Fondi said that it is usually an attorney's determination to ask for a jury because of the benefit it may provide for his client. He also stated that the prevailing party is able to recover costs. He said that defense counsel representing an insurance company are usually the ones requesting a jury.

Assemblyman Glover said he thought courts should be compensated more by the people who are using them.

Mr. Thornton said that with the present system, it seemed like people were frivolously calling for juries to take their chances to see what would happen. He said that they know if the case does not go to trial, it will not cost either way.

Mr. Burnaugh said that this was a prime example of a way to reduce government costs. He said that if a person lacking funds went to an attorney with a good case, the attorney would usually pay the court costs in anticipation of receiving a favorable judgment in court. He said he did not feel this bill would deprive poor people of due process of law, rather he felt this additional cost should be paid by those using the court so it is not passed on to the taxpayer. He said he wished there more ways like this to save taxpayers' money.

Mr. Hawkins said he did not want to see the court system precluded from poor people. He said that even if he, as an attorney, felt his client had a good case, but the court ruled against his client, the client would still ultimately be responsible for the costs incurred in the trial. For this

reason, he felt the bill would work to preclude poor people from using the courts.

ASSEMBLY BILL 694

Increases scope of certain prohibitions against improperly influencing, interfering with, or intimidating certain persons acting in official capacity, and provides penalties.

Assemblyman Hickey, primary sponsor of the bill, said that this bill was brought to his attention by people working in the Justice Court in Las Vegas. He said the problem is particularly caused by crowding in the halls and mingling of witnesses and victims of crime. He said that it has not been unordinary to have intimidation of witnesses.

Mr. Hawkins said he saw problems with this bill. He said that the way to properly cure those problems would be to not omit Lines 2 and 3 where it is presently bracketed out. He said he could see lawsuits stemming from this statute where a person may have been intimidated outside of a courtroom.

ASSEMBLY BILL 670

Adopts Uniform Probate Code.

Assemblyman Mann, primary sponsor of this bill, said this bill was patterned after model legislation for providing uniform probate proceedings throughout the country. He said that a similar bill was considered by the Legislature four or five years ago. He said he was prompted to make the introduction of this bill through some contact with senior citizens in his district. He said this would give citizens the opportunity to take care of probate proceedings without going through a lot of trouble. He said that if the bill would help people without having effects on the Nevada law, he would hope the Committee would pass it.

Mr. Folsom said that this was a controversial piece of legislation. He said he was always interested in comments about small estates, because presently estates up to \$10,000 can be set aside without administration by order of the court. He said that the Uniform Probate Code does not deal adequately with attorneys' fees. He said that the State of California has written an extensive critique about the Code. The ultimate test would be whether or not the Code was better than what is presently in Nevada law. He said that the California critique had determined that the Code would not be a better law.

Mr. Reil said that his group has been attempting to get this type of Code on the books for several years. He spoke in favor of adoption of the bill.

The Committee was in recess at 9:32 a.m. and reconvened at 9:48 a.m.

ASSEMBLY BILL 251

Revises provisions on compensation to victims of crime.

Mr. Banner moved to indefinitely postpone; Mr. Brady seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Banner, Brady, Coulter, Fielding, Horn,
Malone, Polish, Prengaman - 9.
Nay - None.
Absent - Stewart, Sena - 2.

ASSEMBLY BILL 273

Revises law on compensation for victims of crime.

Mr. Brady moved to indefinitely postpone A.B. 273; Mr. Banner seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Banner, Brady, Coulter, Fielding, Horn,
Malone, Polish, Prengaman - 9.
Nay - None.
Absent - Stewart, Sena - 2.

ASSEMBLY BILL 613

Permits publication of name of juvenile charged with second or subsequent offense.

Mr. Banner moved to indefinitely postpone A.B. 613; Mr. Polish seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Banner, Brady, Coulter, Fielding, Horn,
Malone, Polish, Prengaman - 9.
Nay - None.
Absent - Stewart, Sena - 2.

ASSEMBLY BILL 614

Permits publication of name of juvenile charged with offense which would be felony if committed by adult.

Mr. Banner moved to indefinitely postpone; Mr. Polish seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Banner, Brady, Coulter, Fielding, Horn,
Polish, Prengaman - 8.
Nay - Malone - 1.
Absent - Stewart, Sena - 2.

ASSEMBLY BILL 623

Mr. Banner moved to indefinitely postpone; Mr. Brady seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Brady, Coulter, Fielding,
Horn, Malone, Polish, Prengaman - 10.
Nay - None.
Absent - Sena - 1.

ASSEMBLY BILL 546

Expands membership of medical-legal screening panels to include hospital administrators.

Mr. Horn moved to Amend, and Do Pass A.B. 546 as Amended; Mr. Banner seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Brady, Coulter, Fielding,
Horn, Malone, Polish, Prengaman - 10.
Nay - None.
Absent - Sena - 1.

ASSEMBLY BILL 225

Removes prohibition of employment of minors in public dancehalls.

Mr. Stewart proposed that the bill be amended to apply only to dancehalls where liquor is dispensed. Also, he said that Line 14 of the bill should not be deleted.

ASSEMBLY BILL 173

Provides protective services and placement to certain adults.

Mr. Banner moved to indefinitely postpone; Mr. Coulter seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Banner, Brady, Coulter, Fielding, Horn,
Malone, Polish - 8.
Nay - Stewart - 1.
Absent - Prengaman, Sena - 2.

SENATE BILL 4

Summary - Prohibits bail bondsmen from making campaign contributions for or against election of candidates for certain public offices.

Title - An Act relating to bail; shortening the time between notice of failure to appear and forfeiture; clarifying and strengthening procedures and grounds for exoneration of sureties; enumerating grounds and requiring a hearing before setting aside or remitting a forfeiture; and providing other matters properly relating thereto.

Senator Wilson said that this bill had been originally drawn to address the policy of campaign contributions by bail bondsmen. He said that the Senate Commerce and Labor Committee had not felt that this was the problem. He said that the bill in its present form addresses not only the reduction of bail, but also the setting aside of a forfeiture. He said that the latter item was apparently the major loophole. The bill would provide that bail would not be set aside or exonerated except for good cause.

ASSEMBLY BILL 670

Mr. Banner moved to indefinitely postpone; Mr. Polish seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Brady, Fielding, Malone,
Polish, Prengaman - 8.
Nay - Horn - 1.
Absent - Coulter, Sena - 2.

ASSEMBLY BILL 480

Provides penalty for battery against adult member of defendant's household.

Mr. Prengaman presented information to the Committee from Hawaii and Florida statutes. He said that the Florida statute simply says when an arrest by an officer without a warrant is lawful. He said that if the intent in this bill is to facilitate an arrest, then clearly giving the officer power to make that arrest when spousal abuse has occurred would be the way to write the bill. In the Hawaii statute, there is the provision in regard to the police officer (See Exhibit A).

Mr. Coulter moved to Amend A.B. 480 as recommended in the Florida statute, and Do Pass as Amended; Mr. Prengaman seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Brady, Coulter, Fielding,
Horn, Malone, Polish, Prengaman - 10.
Nay - None.
Absent - Sena - 1.

(Committee Minutes)

ASSEMBLY BILL 511

Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity.

Mr. Coulter moved to Amend A.B. 511 as previously proposed; and Re-refer to Ways and Means; Mr. Horn seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Brady, Coulter, Fielding, Horn, Malone, Polish, Prengaman - 10.

Nay - None.

Absent - Sena - 1.

SENATE BILL 4

Mr. Horn moved to indefinitely postpone S.B. 4; Mr. Banner seconded the motion. The motion lost on the following vote:

Aye - Banner, Fielding, Horn, Polish - 4.

Nay - Hayes, Stewart, Brady, Coulter, Malone, Prengaman - 6.

Absent - Sena - 1.

Mr. Coulter moved Do Pass on S.B. 4; Mr. Prengaman seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Coulter, Fielding, Malone, Prengaman - 6.

Nay - Brady, Horn, Polish - 3.

Not Voting - Banner - 1.

Absent - Sena - 1.

ASSEMBLY BILL 46

Requires that certain agreements to which consumers are parties be written in plain language.

Mr. Banner requested that the Committee discuss this bill for another possible vote.

Mr. Brady moved to adjourn; Mr. Stewart seconded the motion. The meeting was adjourned at 10:31 a.m.

Respectfully submitted,

Carl R. Ruthstrom, Jr.

Carl R. Ruthstrom, Jr.
Secretary

...ail or, when informed of his right to bail, does not
urnish bail immediately, he shall be taken before
he magistrate designated in the warrant.

History.—s. 9, ch. 19554, 1939; CGL 1940 Supp. 8663(8); s. 6, ch. 70-339.

901.09 When summons shall be issued.—

(1) When the complaint is for an offense that the
magistrate is empowered to try summarily, he shall
issue a summons instead of a warrant, unless he
reasonably believes that the person against whom
the complaint was made will not appear upon a sum-
mons, in which event he shall issue a warrant.

(2) When the complaint is for a misdemeanor
that the magistrate is not empowered to try sum-
marily, he shall issue a summons instead of a war-
rant if he reasonably believes that the person
against whom the complaint was made will appear
upon a summons.

(3) The summons shall set forth substantially the
nature of the offense and shall command the person
against whom the complaint was made to appear
before the magistrate at a stated time and place.

History.—s. 9, ch. 19554, 1939; CGL 1940 Supp. 8663(9); s. 6, ch. 70-339.

901.10 How summons served.—A summons
shall be served in the same manner as a summons in
civil action.

History.—s. 10, ch. 19554, 1939; CGL 1940 Supp. 8663(10); s. 6, ch. 70-339.
f.—s. 42.031 Service of process generally.

901.11 Effect of not answering summons.—

...a to appear as commanded by a summons
without good cause is an indirect criminal contempt
of court and may be punished by a fine of not more
than \$100. When a person fails to appear as com-
manded by a summons, the magistrate shall issue a
warrant. If the magistrate acquires reason to believe
that the person summoned will not appear as com-
manded after issuing a summons, he may issue a
warrant.

History.—s. 11, ch. 19554, 1939; CGL 1940 Supp. 8663(11); s. 6, ch. 70-339.

901.12 Summons against corporation.—

When a complaint of an offense is made against a
corporation, the magistrate shall issue a summons
that shall set forth substantially the nature of the
offense and command the corporation to appear be-
fore him at a stated time and place.

History.—s. 12, ch. 19554, 1939; CGL 1940 Supp. 8663(12); s. 6, ch. 70-339.

**901.14 Effect of failure by corporation to an-
swer summons.—**

If, after being summoned, the cor-
poration does not appear, a plea of not guilty shall
be entered by the court having jurisdiction to try the
offense for which the summons was issued, and the
court shall proceed to trial and judgment without
further process.

History.—s. 14, ch. 19554, 1939; CGL 1940 Supp. 8663(14); s. 6, ch. 70-339.

**901.15 When arrest by officer without war-
rant is lawful.—**A peace officer may arrest a person
without a warrant when:

...the person has committed a felony or misde-
or violated a municipal ordinance in the
presence of the officer. Arrest for the commission of
a misdemeanor or violation of a municipal ordinance
shall be made immediately or in fresh pursuit.

(2) A felony has been committed and he reasona-
bly believes that the person committed it.

(3) He reasonably believes that a felony has been
or is being committed and reasonably believes that
the person to be arrested has committed or is com-
mitting it.

(4) A warrant for the arrest has been issued and
is held by another peace officer for execution.

(5) A violation of chapter 316 has been commit-
ted in the presence of the officer. Such arrest may be
made immediately or on fresh pursuit.

(6) The officer has probable cause to believe that
the person has committed a battery upon the per-
son's spouse and the officer:

(a) Finds evidence of bodily harm; or

(b) The officer reasonably believes that there is
danger of violence unless the person alleged to have
committed the battery is arrested without delay.

History.—s. 15, ch. 19554, 1939; CGL 1940 Supp. 8663(15); s. 1, ch. 21782,
1943; s. 6, ch. 70-339; s. 4, ch. 71-982; s. 1, ch. 77-67.
cf.—ss. 829.03, 829.17 Cruelty to children or animals; arrest without warrant.

901.151 Stop and Frisk Law.—

(1) This section may be known and cited as the
"Florida Stop and Frisk law."

(2) Whenever any law enforcement officer of this
state encounters any person under circumstances
which reasonably indicate that such person has com-
mitted, is committing, or is about to commit a viola-
tion of the criminal laws of this state or the criminal
ordinances of any municipality or county, he may
temporarily detain such person for the purpose of
ascertaining the identity of the person temporarily
detained and the circumstances surrounding his
presence abroad which led the officer to believe that
he had committed, was committing, or was about to
commit a criminal offense.

(3) No person shall be temporarily detained un-
der the provisions of subsection (2) longer than is
reasonably necessary to effect the purposes of that
subsection. Such temporary detention shall not ex-
tend beyond the place where it was first effected or
the immediate vicinity thereof.

(4) If at any time after the onset of the temporary
detention authorized by subsection (2), probable
cause for arrest of person shall appear, the person
shall be arrested. If, after an inquiry into the circum-
stances which prompted the temporary detention,
no probable cause for the arrest of the person shall
appear, he shall be released.

(5) Whenever any law enforcement officer au-
thorized to detain temporarily any person under the
provisions of subsection (2) has probable cause to
believe that any person whom he has temporarily
detained, or is about to detain temporarily, is armed
with a dangerous weapon and therefore offers a
threat to the safety of the officer or any other person,
he may search such person so temporarily detained
only to the extent necessary to disclose, and for the
purpose of disclosing, the presence of such weapon.
If such a search discloses such a weapon or any evi-
dence of a criminal offense it may be seized.

(6) No evidence seized by a law enforcement officer
in any search under this section shall be admissi-
ble against any person in any court of this state or
political subdivision thereof unless the search which
disclosed its existence was authorized by and con-

FAMILY AND INCOMPETENTS

Sec. 709-906

COMMENTARY ON §709-905

This section seeks to expand the protection which the law affords to incompetents by making it roughly equivalent to that afforded to minors. A child who suffers from a mental or physical disease, disorder, or defect is protected as a child from certain dangers by §§709-902 through 904 which make abandonment, persistent nonsupport, and endangering the welfare of a minor penal offenses. A person who is physically incapacitated or

mentally incompetent is afforded protection against sexual assault and abuse by Chapter 707, which makes such conduct, as it relates to such persons, an offense. However, in cases not involving sexual activity or not specifically involving minors under §§709-902 through 904, there is, without §709-905, a gap in the coverage of the Code. This gap also existed in prior law.

§709-906 Spouse abuse, penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse his or her spouse, or to refuse compliance with the lawful order of a police officer under subsection (3).

(2) Any police officer may, with or without a warrant, arrest a person if he has reasonable grounds to believe that the person is physically abusing his or her spouse in his presence and that the person arrested is guilty thereof.

(3) Any police officer may, with or without a warrant, take the following course of action where he has reasonable grounds to believe that there was recent, substantial, physical harm inflicted by one spouse upon the other and where such physical harm has not occurred in his presence:

(a) He may make reasonable inquiry of the spouse upon whom he believes recent, substantial, physical harm has been inflicted and other witnesses as there may be, to ascertain whether there is probable danger of further substantial, physical harm being inflicted upon such injured spouse by the other spouse; and

(b) Where he has reasonable grounds to believe that there is such probable danger he may lawfully order such other spouse to voluntarily leave the premises for a cooling off period of three hours; and

(c) If such other spouse refuses to comply with such reasonable request or returns to the premises before the expiration of three hours, he may place such other spouse under arrest for the purpose of preventing further physical harm to the injured spouse.

(4) Spouse abuse, and refusal to comply with the lawful order of a police officer under subsection (3) are misdemeanors.

(5) The spouse who has been physically abused or harmed by his or her spouse may petition the family court for a bench warrant to issue forthwith.

(6) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may then dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(7) If it is established beyond a reasonable doubt at the hearing that the respondent physically abused his or her spouse, then the court may find the spouse guilty of a misdemeanor.

(8) It shall be the duty of the family court to assist any petitioner under this section in the preparation of the petition.

(9) This section shall not preclude the physically abused spouse from pursuing any other remedy under law or in equity.

(10) Upon dismissal of such person and discharge of the proceeding against him or her under this section, such person, if the offense is the only offense against the other spouse for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to his or her arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the

Sec. 709-906

HAWAII PENAL CODE

proceedings against him or her were discharged and that no other similar offenses were charged against him or her for a period not less than one year, it shall enter such order. [L 1973, c 189, §1]

COMMENTARY ON §709-906

This section was added by Act 189, Session Laws 1973, to provide protection to a spouse from being physically abused by the other spouse. Standing Committee Report No. 828 (1973) states:

"It is apparent today that there is little, if any, protection for a spouse beaten by the other spouse....

This bill is intended to alleviate this problem to a certain extent. A police officer, upon arrival at the scene, is given the power to arrest if the offense is committed in his presence. Section 571-14(2)(B) gives the family court exclusive jurisdiction over any adult

charged with an offense, other than a felony, against the person of the defendant's husband or wife. Section 571-42 establishes the procedure to be followed in such cases. It is intended by your Committee that these laws be enforced to the extent that they will afford the abused spouse the necessary protection needed. Further, unless it appears adverse to the best interests of all concerned, the family unity should be retained without the necessity of the abusing spouse being branded a 'criminal.' Toward this end, the courts are asked to aid these persons needing its assistance in order that they may be rehabilitated."

CHAPTER 710
OFFENSES AGAINST PUBLIC ADMINISTRATION

PART I. GENERAL PROVISIONS RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION

SECTION

- 710-1000 DEFINITIONS OF TERMS IN THIS CHAPTER
- 710-1001 FORFEITURE OF PROPERTY USED AS BENEFIT OR PECUNIARY BENEFIT IN THE COMMISSION OF AN OFFENSE DEFINED IN THIS CHAPTER

PART II. OBSTRUCTION OF PUBLIC ADMINISTRATION

- 710-1010 OBSTRUCTING GOVERNMENT OPERATIONS
- 710-1011 REFUSING TO AID A PEACE OFFICER
- 710-1012 REFUSING TO ASSIST IN FIRE CONTROL
- 710-1013 COMPOUNDING
- 710-1014 RENDERING A FALSE ALARM
- 710-1015 FALSE REPORTING TO LAW-ENFORCEMENT AUTHORITIES
- 710-1016 IMPERSONATING A PUBLIC SERVANT
- 710-1017 TAMPERING WITH A PUBLIC RECORD
- 710-1018 SECURING THE PROCEEDS OF AN OFFENSE

PART III. ESCAPE AND OTHER OFFENSES RELATED TO CUSTODY

- 710-1020 ESCAPE IN THE FIRST DEGREE
- 710-1021 ESCAPE IN THE SECOND DEGREE
- 710-1022 PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE
- 710-1023 PROMOTING PRISON CONTRABAND IN THE SECOND DEGREE
- 710-1024 BAIL JUMPING IN THE FIRST DEGREE
- 710-1025 BAIL JUMPING IN THE SECOND DEGREE
- 710-1026 RESISTING ARREST
- 710-1027 RESISTING AN ORDER TO STOP A MOTOR VEHICLE
- 710-1028 HINDERING PROSECUTION; DEFINITION OF RENDERING ASSISTANCE
- 710-1029 HINDERING PROSECUTION IN THE FIRST DEGREE
- 710-1030 HINDERING PROSECUTION IN THE SECOND DEGREE
- [710-1031] INTIMIDATING A CORRECTIONAL WORKER

PART IV. BRIBERY

- 710-1040 BRIBERY

PART V. PERJURY AND RELATED OFFENSES

- 710-1060 PERJURY
- 710-1061 FALSE SWEARING IN OFFICIAL MATTERS
- 710-1062 FALSE SWEARING
- 710-1063 UNSWORN FALSIFICATION TO AUTHORITIES
- 710-1064 RETRACTION
- 710-1065 INCONSISTENT STATEMENTS
- 710-1066 NO PROSECUTION BASED ON PREVIOUS DENIAL OF GUILT