Members Present:

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

Members Absent:

Mr. Sena

Guests Present:

Frank Delaplane	Reno Evening Gazette/ Nevada State Journal
Stan Hansen	Heavenly Valley Ski Area
Larry Ketzenberger	Las Vegas Metro Police Dept.
William Killebrew	Heavenly Valley Ski Area
Rich Molezzo	Nevada Court Reporters
Paul Nelson	Hancock, Rothert & Bunshoft Attys.
Chief Parker	Reno P.D.
Mike Rowe	City Attorney
Bob Rusk	Assemblyman
Wally White	Incline Village G.I.D.

ASSEMBLY BILL 735

Requires prisoner to pay for treatment of self-inflicted injury.

Assemblyman Bob Rusk testified for A.B. 735. He stated that when inmates or persons under protective custody who have medical problems or inflict medical problems which require immediate medical attention, it becomes expensive. This bill would allow for the inmates or persons to have to pay for self inflicted injuries or medical problems. There is a good percentage of prisoners who have financial resources, family backing, pay checks, and government disability checks. At present, they can inflict an injury and not have to pay for the costs involved in treatment.

Mike Malone stated that he felt that another reason for self inflicted injuries was for better treatment and also it would be easier for them to escape.

Mike Rowe, City Attorney's Office in Reno, strongly urges the passage of this particular bill.

Chairman Hayes questioned as to how much money was spent on this type of litigation.

Mike Rowe stated that one particular case will cost them over $100,000. if the city loses it.

Chief Parker, Reno P.D., testified for A.B. 735. He stated that some of the inmates use this to get out of the work details and get in a hospital. They handle over 15,000 prisoners annually and the majority of them do have money. He stated that it is impossible to budget for this type of injury. A minimum of $50,000. is spent annually for this. Just to walk through the door of the hospital is $75. This bill would apply to someone who had money to pay for it.

Larry Ketzenberger, Las Vegas Metro, testified for this bill. He stated that the prisoners will self inflict an injury just to get to the hospital and escape from there.

ASSEMBLY BILL 763

Limits liability for certain injuries at ski resorts.

Bob Barengo, Assemblyman, testified for this bill. He stated that it would make the skier accept the risks of skiing. At present there are a few states that have this type of statute. If the slope is properly maintained, the skier must expect that some rocks will be under the snow and be aware of this.

Paul Nelson, an attorney who defends ski areas in the United States and nearly all ski areas in the Northern Nevada area, testified in favor of this bill. He stated that this bill is an attempt to address what is really a serious problem for the skiers. He stated that they need to have some clarification of the control of a downhill skier. This type of legislation is necessary for these reasons.

Mike Malone questioned if this would open the door for the ski slope owners to abolish a minimum of security, and would this do the same thing for roller skating rinks. He also asked if maybe they could state on the back of the ticket that the skier participates in this sport at his own risk.

Mr. Nelson stated that at present they do have this on the back of the tickets, but it doesn't apply because people don't always read the back of their tickets. The bill would state that when a skier is hurt because of something that the ski area could do nothing about, then it is the risk of the skier. He stated that the insurance companies will usually pay something just to get the case off their back. When you apply that principal when you sue you have to pay something, you have an impossible situation. At present they have no way of preventing each person from suing on any accident which could cause the ski resorts to go bankrupt.

Mr. Stewart questioned what if a condition was created by nature, such as a rock slide, and the owners were aware but did nothing about it. Would the ski area be liable?

Mr. Nelson stated that no, they would not because this condition was created by nature and not by the owners, so therefore they are not responsible for it. All of the ski areas are on forest service land and are strictly regulated by the forest service so he doubts that this type of thing would happen.

Mr. Stewart asked what the insurance companies rates were.

Mr. Nelson stated that the rates are lower in the states that are enacting this type of legislation. The first state that enacted this type of legislation was Washington and since then they have had no downhill skiing lawsuits.

Stan Hansen, Assistant General Manager of Heavenly Valley Ski Area, testified on this bill. He briefly outlined the same topics of the bill that Mr. Nelson did and talked about the high costs of the lawsuits that are involved.

Bill Killebrew, owner of Heavenly Valley Ski Resort, testified for the bill. He stated that skiing is one of Nevada's largest industries of tourism. About three years ago, skiing was regarded as an inherently dangerous sport and about $3. of every lift ticket goes to insurance. After the Vermont case, it was almost impossible for a small ski area to get insurance. He stated that after their contracts with the insurance companies are up, their insurance will go up so drastically that most of the ski resorts will go out of business, unless they choose to go without insurance. He stated that they are constantly being sued for something that they have no control over even when they have strict inspections by the forest service. They are not trying to avoid liability but only to make the state say what is an assumable risk and what isn't. The ski rangers have the authority to close the resort at any time he feels that it is necessary (lack of snow).

Wally White, Incline Village General Improvement District, testified for the bill. He stated that it would help clarify some of the responsibilities of the individual.Mr. White said that in summer there are about ten people planting and maintaining the slope. His main concern lies with insurance since the case in Vermont and the limited type of coverage that is available. They employ as many as 60 or 70 people and the operations are well maintained. Please see suggested amendments to bill - EX C

ASSEMBLY BILL 757

Revises fees of court reporters.

Rich Molezzo, Nevada Court Reporters, testified for A.B. 757. He stated that the reporters' qualifications in Nevada are

fantastic and that you will not find better qualified reporters anywhere. He stated that they would like the pay increase to cover the last six years for things such as cost of living. One problem that they encounter is finding qualified transcribers to do their work. The transcriber's salaries go up and up and the reporter's stay the same. At present they are guaranteed $50. per day when the Judge is sitting, nothing when he is sick or absent. When they sit in on a civil case, then it is $8. per hour. He cited the increases in their overhead as being 36% increase for equipment, 133% for service policies, 42.5% for shorthand machines, 84% for shorthand machine repair work, and 55.7% for IBM equipment.

Sam Mamet, Clark County, testified against this bill. He stated that this may cost Clark County an additional $330,000. per year. He felt that the county is told to bite the bullet and that they cannot afford this. He will oppose this bill because of the fiscal impact.

Mr. Stewart questioned as to whether the rest of the county employees got a raise and if so, how can you bar the court reporters.

Sam Mamet said that he understood the situation, but felt that he must stand firm since he is a representative of Clark County.

Mr. Horn questioned as to what was the highest paid court reporter.

Mr. Mollezo stated that he had heard of one who made $34,000. in Clark County.

ASSEMBLY BILL 524

Limits dissemination of certain criminal records and provides for their examination and challange.

Norm Herring, Nevada State Public Defender, testified for this bill. He could not understand the outspokenness on the bill, stating that it was not directed to the press. Mr. Herring feels that we must adopt the bill or the other states and the Bureau of Investigation most likely won't cooperate with us.

For Donald K. Wadsworth's testimony, please see EX. A.

Karen Hayes questioned as to how many states have adopted this bill.

Norm Herring stated that so far, 26 states have enacted this uniformity legislation and the states that have not, will be given three more years. He stated that if we did not adopt these regulations, that we would probably be getting down to executive order.

Mike de la Torre, Director of the Crime Commission, testified for A.B. 524. He testified that he would like to have Criminal History Record Information referred to as "CHRI". He feels that if you refer this to any other name they would have problems with such things as NCIC, CLETS, NLETS or the FBI Bureau.

Frank Ritter, Executive Editor of the Reno Evening Gazette and the Nevada State Journal, could not be here to testify in opposition to A.B. 524 so he submitted written testimony. Please see EX. B.

Larry Ketzenberger testified for A.B. 524. He stated that recorded information should be changed throughout the bill to "Criminal History Recorded Information". He would also like to see disclosure of recorded information changed to "Investigative Information".

Chairman Hayes elected a subcommittee of Mr. Coulter as Chairman; Mr. Horn and Mr. Banner to discuss amendments to the bill.

ASSEMBLY BILL 735

Mr. Coulter motioned to Do Pass A.B. 735; Mr. Fielding seconded the motion. The committee approved the motion on the following vote:

Aye - Hayes, Stewart, Malone, Horn, Polish, Prengaman, Fielding, Coulter, Brady - 9

Nay - None

Absent - Banner, Sena - 2

ASSEMBLY BILL 763

Chairman Hayes appointed Mr. Brady and Mr. Stewart on a subcommittee to discuss amendments to the bill.

ASSEMBLY BILL 757

Chairman Hayes appointed Mr. Horn and Mr. Malone on a subcommittee to discuss and get the circumstances for this bill.

ASSEMBLY BILL 767

Changes procedure respecting failures to appear in court on certain traffic citations.

Mr. Polish motioned to Indefinitely Postpone A.B. 767; Mr. Horn seconded the motion. The committee approved the motion on the following vote:

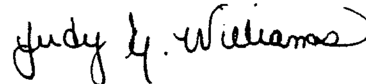
Aye - Hayes, Stewart, Malone, Horn, Polish, Prengaman, Fielding, Coulter, Brady - 9

Nay - None

Absent - Banner, Sena - 2

Chairman Hayes adjourned the meeting at 10:45 a.m.

Respectfully submitted,



Judy E. Williams
Secretary

Office of the District Attorney

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EDWARD R. J. KANE
DAVID P. SCHWARTZ
JOEL M. COOPER

BEECHER AVANTS
CHIEF INVESTIGATOR

KELLY W. ISOM
ADMINISTRATIVE OFFICER

April 24, 1979

The Committee on Judiciary
Nevada State Assembly
Capitol Complex
Carson City, Nevada 89710

Attention: Assemblywoman Karen Hayes, Chairman

Re: AB 524--Privacy and Security

Dear Madam Chairman and Members of the Committee:

Pursuant to my recent testimony before your Committee on the above-stated matter, and pursuant to a request at the conclusion of said testimony that I reduce my comments and recommendations to writing for further consideration by the Committee, I respectfully submit the following comments and recommendations with regard to AB 524:

It is the understanding of this office that the State of Nevada has been granted an extension by the Federal Government up to and including July 1, 1979, to formulate and adopt a "State Plan" pursuant to the guidelines set forth in Title 28 of the Department of Justice Regulations. It is our further understanding that unless a satisfactory State Plan is so adopted that said regulations above stated provide for sanctions and penalties for non-compliance. It is also the understanding of this office that AB 524 is the result of a cummulative effort by a committee appointed by the Governor to formulate a "State Plan" as dictated by said Federal regulations.

As a matter of general policy, please be advised that the Office of the District Attorney of Clark County is strongly in favor of being permitted to disseminate criminal history information to other agencies and individuals as freely as possible within the Federal guidelines above mentioned.

This office has therefore reviewed AB 524 in conjunction with Title 28 of the Department of Justice regulations and if AB 524

were to be adopted by the Legislature as the Nevada "State Plan," it is our recommendation that the following corrections and/or amendments be made thereto, which changes, in our opinion, would not only serve to improve the present form of the Bill, but would likewise be in compliance with the Federal guidelines established in Title 28. Said recommendations are broken down into general recommendations and District Attorney related recommendations.

GENERAL RECOMMENDATIONS

1. A review of Section 9 of AB 524 commencing on page 2 thereof reveals that as presently drafted, said section is not in conformity with the Federal guidelines, and it is in fact much more restrictive. The Federal regulations as set forth in Section 20.21.(a)(2) is directed toward assuring that all dissemination of restricted criminal history record information is both accurate and complete. Prior to a dissemination, said Federal regulation in essence requires that the accuracy of such information be verified prior to such dissemination, and it further provides that to ensure that accuracy that the central state repository of criminal history records (or a comparable state agency) should be queried for that purpose prior to any dissemination.

Sec. 9 of AB 524 is obviously an effort to conform to that requirement. By misplacing what is now Section 9(1), however, said section takes on a completely different meaning than that promulgated by the Federal regulation. As indicated above, the problem lies with the construction of that section, rather than with the general content, and in order to make section 9 as presently drafted less restrictive and still be in compliance with the Federal guidelines, it is recommended that said Section 9 should be reconstructed and read substantially as follows:

> Sec. 9. No Agency of Criminal Justice in Nevada may disseminate any recorded information which includes information about a felony or gross misdemeanor without first making inquiry of the Indentification and Communications Division of the Department of Law Enforcement Assistance of the State of Nevada for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:
>
> 1. The information is needed for a purpose in the administration of criminal justice for which time is essential, and the Identification and Communications Division of the Department of Law Enforcement Assistance is not able to respond within the required time;
>
> 2. The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of an officer, agent or employee of the agency which disseminated the information;

3. The full information requested and to be disseminated was received as part of a summary of recorded information from the Identification and Communications Division of the Department of Law Enforcement Assistance within thirty days before the information is to be disseminated;

4. The statute, executive order, court rule or court order under which the information is to be disseminated refers only to information which is in the files of the agency which makes the dissemination; or

5. Information requested and to be disseminated is for the express purpose of research, evaluation for statistical activities to be based upon information maintained in the file or files of the agency or agencies for whom the information is sought.

The above Sec. 9 as amended now conforms to the Federal regulations and the same has been accomplished simply by incorporating former subsection (1) of the proposed draft of AB 524 into the main body of Section 9 and renumbering the remaining subsections.

2. Sec. 10 of AB 524 sets forth the perameters of permissable dissemination of criminal history record information within the State of Nevada. Therefore, it is also the recommendation of this office that Sec. 10(3) of AB 524 should be amended to include the language presently found in Section 20.21(b)(2) of Title 28, which language permits the dissemination of criminal history record information to

> "individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order as construed by appropriate State or local officials or agencies."

Our interpretation of the presnt draft of AB 524 is that it appears that section 10(3)(f) represents an effort to incorporate that particular Federal regulation into the "State Plan," but subsection (f), as presently contructed, is more restrictive and same does not specifically provide for dissemination pursuant to a Court Order as provided for by the Federal regulations. I see no reason why the State of Nevada should not have the same flexibility in this area as provided for by the said Federal regulations, and if AB 524 or a reasonable facsimile thereof is to be adopted as a Nevada "State Plan," I think it is essential that subsection (f) be amended to be as all inclusive as the Federal language. It is our understanding that other jurisdictions presently operating within the Federal guidelines have found this particular Federal provision allowing dissemination pursuant to Court Order both a desirable and necessary provison.

3. This office would further recommend that Sec. 10 of AB 524 be amended and expanded also to include the language contained in

section 20.21(b)(4) of Title 28 Federal regulations which provide that dissemination of criminal history record information may be made to

> "individuals and agencies for the express purpose of research, devaluative, or statistical activities pursuant to an agreement with a criminal justice agency."

Dissemination of criminal record history information is permissible for this purpose under the Federal guidelines but again is not specifically provided for in Sec. 10 of the current draft of AB 524.

4. AB 524 in various sections therein refers to the Identification and Communications Division of the Department of Law Enforcement Assistance. Such reference is made in Sec. 9 of said Bill, Sec. 14, and is further mentioned in Sec. 20. It is only after a careful and overall review of AB 524 that it becomes apparent that the Identification and Communications Division of the Department of Law Enforcement Assistance is intended to be the Central State Agency or Central Repository for Nevada for the Keeping and Storing of Complete and Accurate Criminal History Record Information. Such a central repository is one of the recommendations of the Federal guidelines set forth in Title 28. Thus, it is our recommendation that a preliminary reference to this particular State agency should be incorporated in the first part of AB 524, wherein it sets forth various definitions. Such preliminary reference should define what said agency is and should explain its function and duties.

5. Additionally, it would be our general recommendation that the phrase "Recorded Information" be deleted throughout AB 524 and that the phrase "Criminal History Record Information" be substituted in its place. The phrase "Criminal History Record Information" is the phraseology utilized and set forth in the Federal regulations, and to the best of our information that is the phrase utilized by every other jurisdiction in the United States who is operating within the guidelines of Title 28. Since frequent contact with other criminal justice agencies in other jurisdictions will be necessary, it would seem reasonable and plausible that a uniform phrase having the same definition in all jurisdictions would be preferable.

SPECIFIC RECOMMENDATIONS--DISTRICT ATTORNEY RELATED

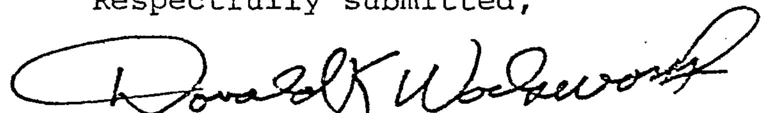
In addition to the foregoing suggested amendments to AB 524 which in our opinion would greatly enhance the workability of AB 524 and still be in compliance with Title 28, this office has reviewed AB 524 with specific reference to the needs and requirements of the Office of the District Attorney in carrying on its day to day operation. It was indicated in my testimony before the Committee this office deals on a daily and necessary basis with public defenders, defense attorneys and victims of crimes, as well as witnesses. In the federal regulations, i.e. Title 28, said individuals,

by definition, are not criminal justice agencies and dissemination of criminal history record information to such attorneys or crime victims is not specifically provided for under Title 28. It is noted that in AB 524, i.e. Sec. 10(3)(b), that dissemination is permitted to both the subject of the recorded information or his attorney of record. In our opinion, this provision is essential to meet our daily needs and it is our further opinion that this particular provision is generally authorized by Section 20.21(b)(2) of Title 28. This office, therefore, strongly recommends that the present provisions of Section 10(3)(b) of AB 524 be retained as presently set forth.

Another primary need of the Office of the District Attorney in conducting its day to day operation is the need to disseminate certain criminal history record information to victims of crimes. Sec. 14(1) AB 524 has attempted to provide for this particular need. Such a provision is deemed essential by this office, for as indicated above, crime victims are not criminal justice agencies and without a specific provision allowing dissemination thereto, this office would not be allowed to disseminate needed information to them. It is, therefore, our recommendation that section 14(1) be retained, but that the same be expanded to the extent that said section should specifically allow dissemination to crime victims of criminal "dispositions" as defined in section 6 of AB 524. Such an amendment would allow this office to properly inform crime victims of all final dispositions of criminal charges which concern them, whether that disposition be made in open court or whether it be made by way of an administrative decision by either the law enforcement agency or the District Attorney's Office.

Additionally, it is suggested that section 14 of AB 524 be amended to specifically authorize the dissemination of criminal history records information not only to victims of crimes but also to a victim's immediate family or guardian. Such language would thus permit dissemination of information to the family of a victim in homicide matters, and would further permit the dissemination of information to the legal guardians of victims, when such victims are minors.

Respectfully submitted,



DONALD K. WADSWORTH
Chief Criminal Deputy

DKW/lp

EXHIBIT A 871

Testimony before Assembly Judiciary Committee
AB 524
Robert W. Ritter, Executive Editor
Reno Evening Gazette and Nevada State Journal
April 23, 1979

Chairwoman Hayes; Distinguished committee members:

I speak to you this morning on behalf of the Reno Evening Gazette and Nevada State Journal in relation to Assembly Bill No. 524.

Although I am greatly concerned about any legislation involving limitations on the free flow of information in this democracy, I can support the content of this bill if you will include several revisions which I will outline.

With the aid of several members of my staff, I have studied the content of this proposed legislation for too many hours since your last hearing. As a result, I sincerely believe that this committee can report out a bill which not only meets the mandate placed upon you by the Law Enforcement Assistance Administration, but also insures that the people of Nevada will have free and open access to information within the files of the criminal justice agencies which they sanction.

Since that last hearing, my basic position on the dissemination of criminal justice information has not changed.

Quite simply, I believe there should be no restrictions beyond the usual and long standing basics of sound news judgment and voluntary restraint exercised by editors and reporters, as well as the existing legal restrictions, primarily libel law.

This is not to say that my newspapers are opposed to a system similar to which is outlined in this legislation, a system which insures that only accurate and up-to-date information will be disseminated.

No one is more concerned about presenting truthful information than newspapers.

I do not oppose tight controls of this information within the criminal justice system, but controls on secondary dissemination should not be extended carte blanche to local law enforcement agencies; those agencies sanctioned by the people of this state; those agencies which regularly deal with the press and the public.

As I told this committee two weeks ago, my concern is for free access to this information and then the freedom to choose what information to publish and how to publish it. These freedoms cannot be compromised.

Let me now outline several changes I believe must be made within this proposed legislation.

First of all, on Page 3, Sect. 10, Para. 1. I ask that the wording "only may" be dropped and that the word "shall" be substituted. The paragraph would then read: "Recorded information which reflects conviction records shall be disseminated by an agency of criminal justice without any restriction pursuant to this chapter."

Secondly, on Page 3, Sect. 10 Para. 2. I ask that the word "may" be dropped in line 25 and substituted with the word "shall." Paragraph 2 would then read: "Recorded information which pertains to an incident for which a person is

EXHIBIT B

currently within the system of criminal justice, including all correctional supervision through final discharge from parole, shall be disseminated by an agency of criminal justice without any restriction pursuant to this chapter."

Thirdly, on Page 3, Sect. 10, Para 3. I ask that the word "may" be dropped in line 28 and that the word "shall" again be substituted. Paragraph 3 would then read: "Other recorded information shall be disseminated by an agency of criminal justice only to the following persons or governmental entities for the following purposes:"

The fourth change I request would occur on Page 4, Sect. 11. I would ask that the section be rewritten to read as follows: "No person who receives recorded information pursuant to this chapter may disseminate it further without express authority of law or in accordance with a court order. This section does not prohibit dissemination of any material deemed newsworthy by newsgathering organizations or their appointed representatives."

And finally, I request that language be written into this bill which would effectively negate this legislation should the federal government elect to eliminate the LEAA as is currently being discussed.

In conclusion, I believe that with these few minor revisions this legislature can insure that Nevada's law enforcement agencies have the resources to function effectively and to provide free access to information for the citizens of this state.

Do you have questions?

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section which shall read as follows:

No action may be brought against the owner or operator of a recreational ski area, or his agents or employees, for injury to persons or damage to property which:

1. Occurs while a person traverses or otherwise ascends or descends a slope under his own power; and

2. Is not the result of skier contact with a dangerous slope condition created by the negligence of the owner or operator of the ski area or his agents or employees.

3. The term "dangerous slope condition" shall be limited to conditions occurring on ski slopes or runs designated by the ski area for public use. It shall not include rocks, trees, stumps, vegetation, bare spots, creeks, gullies or similar features of natural underlying terrain, nor shall it include obvious artificial structures on slopes or other skiers or persons on slopes.

EXHIBIT C