

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Dodge
Senator Raggio
Senator Sloan
Senator Ford
Senator Don Ashworth

ABSENT: None

SB 174 Amends requirements for notice of check refused for payment because of insufficient funds.

Christine Scaletta, Bank Examiner, Division of Banking, Department of Commerce, stated that her office viewed this bill as generalizing the extent and purpose of the word "check" by replacing it with "instrument of value."

Senator Close asked what would be included by enlarging the definition.

Ms. Scaletta responded that it would be anything that is negotiable in exchange for payment; notes, bills, etc.

Senator Hernstadt asked what the situation would be with regard to post-dating a check.

Ms. Scaletta replied that there is a separate section in NRS on post-dating of checks. It was her opinion that if you issue a post-dated check, you are doing so with the intent that the funds will be there. She stated that the key phrase is "intent to defraud."

Senator Dodge asked what problems had occurred that prompted the proposal of this bill.

Ms. Scaletta stated that this bill was not requested by her office. She further stated that she was not aware of any current problems.

Senator Close observed that this bill had been requested by Senator Norman Glaser and suggested that the Committee withhold action pending testimony from him.

No action was taken at this time.

SB 194 Provides for preliminary hearing after indictment.

Senator Carl F. Dodge testified in support of this measure. He stated that over the years, he has been concerned about grand jury process. He felt that the individual who has been indicted or about whom some wrong-doing had been inferred by the grand jury, was at a considerable disadvantage in that they were unable to confront their accusers.

He stated that the two methods of initiating a criminal prosecution were by information or by indictment. If the process is by information, the accused is given a preliminary hearing at which he may have representation and respond to his accusers. It was Senator Dodge's opinion that an individual should have the same right following indictment by a grand jury.

Senator Ashworth stated that he disagreed because the individual's rights are protected when he appears in District Court. He further stated that all that need be shown in a preliminary hearing is probable cause that a crime was committed. He did not feel that an individual's rights were vitiated in any way by the grand jury system.

Senator Raggio concurred with Senator Ashworth and further stated that an indictment by a grand jury is only a determination of whether a charge should be brought. It is not a determination of guilt or innocence.

Senator Raggio also expressed concern over grand jury investigations which involved sexual assault on young girls. He felt that the indictment process serves a very humane purpose in avoiding an additional appearance that the victim would have to make in a public hearing.

Kent Robison, Nevada Trial Lawyers Association, appeared in support of this measure. For his testimony, see attached Exhibit A.

Senator Raggio disagreed with Mr. Robison's statement that the preliminary hearing is a constitutional right. In a recent Supreme Court decision, it said the right to a preliminary hearing is not, and never has been, determined to be a fundamental right.

Senator Sloan concurred with this and further stated that the federal system does not provide for preliminary hearings.

Paul S. Goldman, District Judge, Eighth Judicial District Court, Department 10, Las Vegas, testified on this matter. He stated that as Chief Judge and as a former Assistant U.S. Attorney for Nevada, he has had a good deal of experience with grand juries.

He suggested that perhaps the differences in opinion on the grand jury was a matter of regional perception. It was his understanding that in Washoe County, discovery is an adversary and often times difficult process. In Clark County, they maintain an "open file" policy in the District Attorney's office. The file is simply duplicated and turned over to the defense counsel.

In Clark County, preliminary hearings are not used for discovery purposes, but rather for impeachment of witnesses.

Judge Goldman further stated that he viewed the grand jury process as a method of disposing of volume cases, particularly those involving narcotics.

John S. McGroarty, Justice of the Peace, Department 3, Clark County stated that in 1978 there were 4,276 preliminary hearings in Las Vegas Justice Court. He felt that if this bill were passed, it would increase their workload by 10%, which would be a substantial increase. He also stated that there would be a fiscal impact as far as the counties were concerned because they would need additional Justices to handle the additional caseload.

Dan Seaton, Chief Deputy District Attorney, Clark County, concurred with Judge McGroarty's comments. He stated that he supported the present grand jury system in that grand jury hearings take considerably less time than preliminary hearings. He also felt that the grand jury system saves a good deal of money with regard to out-of-state witnesses. Preliminary hearings often times have continuances and the witnesses must be brought back. With the grand jury system, they are brought in for one day only.

Robert J. Galli, Sheriff, Washoe County, submitted a letter in opposition to SB 194. See attached Exhibit B.

No action was taken at this time.

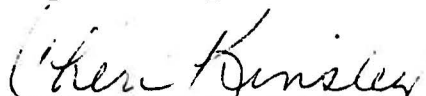
The following was unanimously approved for Committee introduction:

BDR 41-485 Makes various changes to laws regulating gaming.

There being no further business, the meeting was adjourned.

Respectfully submitted,

APPROVED:



Cheri Kinsley, Secretary

Senator Melvin D. Close, Jr., Chairman



Barbara Bailey, Executive Director
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NEVADA TRIAL LAWYER'S ASSOCIATION'S POSITION
ON S.B. 194

The Nevada Trial Lawyer's Association vigorously supports S.B. 194. If passed, S.B. 194 would assure fundamental fairness and fair play in Nevada's system of criminal jurisprudence. Presently, if a person is indicted (Grand Jury) he is not afforded the same valuable rights as is the person who is charged by criminal complaint. (preliminary hearing)

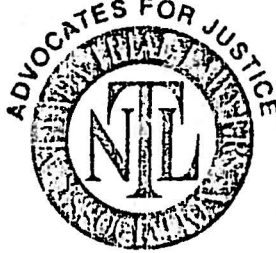
N.R.S. 173.015, et seq. provides that a criminal accusation may be brought to district court one of the three ways. 1) by information which provides the accused with a preliminary hearing; 2) by indictment from the grand jury; and 3) by affidavit in support of information.

The rights involved in the methods mentioned above are drastically different. The information by affidavit is seldom, if ever, used. The rights which attend a preliminary hearing are numerous and all based upon the concept of fundamental fairness. These rights include the following:

- 1) Right to cross-examine the witnesses & get police records of incident
- 2) Right to call witnesses and submit physical evidence
- 3) Right to subpoena documents, reports and memoranda
- 4) Right to contest evidence, i.e. object
- 5) Right to have magistrate rule on motion's and evidentiary questions
- 6) Right to argue case
- 7) Right to later be provided with complete list of

In sharp contrast, one accused by Grand Jury indictment is afforded none of these valuable rights. The Grand Jury proceeding is a "star chamber" secret proceeding, completely controlled by the prosecutor. The accused is not allowed to confront his accusers, present evidence, and frequently is not even aware of the fact that he is the subject of the Grand Jury proceeding. Indeed, current indictment procedures create a prosecutorial paradise. The prosecutor decides what evidence will be heard, how it is to be presented, and then advises the grand jury on its admissibility and legal significance.

The prosecution is free in his unfettered discretion to chose which defendants will be charged by indictment rather than by preliminary hearing. He, therefore, controls each defendant's pre-trial rights. He may act out of what he believes to be proper law enforcement motives, or he may act whimsically. No case law or statutory guidelines exist to circumscribe his discretion.



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NTLA's Position on S.B. 194

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The discrimination which results from a prosecutor's choice of a grand jury indictment as opposed to prosecution by information undoubtedly strikes the very foundation of the democratic system. Fundamental fairness is compromised to a commodity which is exchanged for the tactical advantages afforded by the grand jury system. The accused is arbitrarily denied his right and access to fundamental fairness.

The singular goal of prosecutorial advantage by preservation of a prosecutorial "tactic" cannot be deemed a "legitimate state interest," and certainly not "compelling." Such a goal is the only utility provided by use of the grand jury in a criminal case. The advantage or tactic derived from such use is totally repugnant to the concepts of due process and equal protection. S.B. 194 would eliminate this basic denial of fairness and should be passed as a law of this State.

Respectfully submitted.

Kent R. Robison
President of NTLA

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COMPARISON OF RIGHTS

<u>Right Afforded the Accused</u>	<u>Grand Jury Indictment</u>	<u>Preliminary Hearing</u>
1. Right to confront & cross examine witnesses	No	Yes
2. Right to call witnesses	No	Yes
3. Right to subpoena and introduce documents	No	Yes
4. Right to have judge rule on evidentiary matters	No	Yes
5. Right to argue evidentiary questions	No	Yes
6. Right to argue merits of case	No	Yes
7. Right to make motions, e.g., bail, discovery, psych. exam, etc.	No	Yes
8. Right to later have list of prosecutor's witnesses	No	Yes
9. Right to see police reports	No	Probably
10. Right to immediate judicial determination of probable cause	No	Yes
11. Absolute prosecutorial control	Yes	No



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MOTIONS AND COURT APPEARANCES WHICH MAY BE
ELIMINATED BY HAVING PRELIMINARY HEARING

In any criminal proceeding initiated by Indictment, the accused is at such a disadvantage that in order to properly prepare for trial, he must file a series of motions to determine whether his rights have been violated. These motions unnecessarily clog the already overburdened court calendar. The evidentiary hearings which attend these motions are time consuming demands on our courts. The motions generally filed in district court after indictment include the following:

1. Motion for discovery
2. Motion for psychiatric examination
3. Motion to suppress evidence
4. Motion for reduction of bail
5. Jackson v. Denno hearings (to determine validity of confessions, indentifications or line-up procedures.)

These motions and hearings take hours and hours of court time. Yet, most of the issues involved in these motions are matters which can be covered at the preliminary hearing.