

The meeting was called to order at 8:03. Senator Close was in the Chair.

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

ABSENT: None

AB 30 Changes certain procedures for defending actions against public officers and employees.

Larry Struve, Chief Deputy Attorney General, stated that they are in support of the bill. This bill resulted, because of bill that was passed in 1977 on this exact subject matter. At that time there was no provision in the bill, for defense of public officers or employees, to be provided by insurance carriers. Because of the lateness of that session there was no time to amend the bill, to give the Attorney General some guidelines in undertaking the defense of public officers or employees. Since that time there has been considerable discussion, including an interim-study committee who were looking at methods of providing a reasonable way of providing liability protection for both the state and political subdivisions. The present law is misunderstood and in many cases ignored. Under current law whether to certify a defense and engage the subdivision in the significant act of defending a tort law suit, can turn on the act or decision of an agency administrator and not the attorney who is responsible for the defense. The certification should be performed by the chief legal office or attorney general. Also under current law there is no provision to decertify, regardless of what circumstances or facts may be found during the course of discovery prior to the trial of the case. In the way the current law reads, in tendering the defense of the subdivision or state and that of the public officer or employee, that decision has to be made 10 days after certification of defense is made. Often times conflicts develop many days after that 10 days, and if the law is read literally, there would be no way that the A.G. or chief legal officer could avoid the conflict and get out of the case without violating this particular Statute. Also, there is no distinction made between cases tendered in our state courts and defenses that we often have to make in Federal court or in sister states. Therefore there should be a distinction made between the time limits and duties involved in all of these courts. Also, there is no indication that the duties imposed on us can be delegated to an insurance carrier so that they can tender the defense. The current law provides that the state is not required to indemnify a public officer or employee for wanton or malicious acts, but the only remedy appears to be a right of contribution against that officer or employee. So this bill clarifies all of the

above problems that were not covered under the present law.

Senator Dodge asked if in most cases, isn't the state already named and served too?

Mr. Struve stated that in most instances that is true. However, there have been a number of cases where the officer or public employee is named, but the plaintiff's attorney seems to be reluctant to name the state.

Senator Raggio stated that the law talks about certification. As a practical matter, what does that mean?

Mr. Struve stated that he has interpreted the law requiring certification to mean some type of official notification. The best means of doing that is through written communication. In Washoe we devised a system where we had a formal notice, which was not filed with the court, but sent to the officer or employee that confirmed we had certified the defense and set forth any conditions in that defense which we felt were appropriate under that case.

Senator Raggio stated that he felt that if there was a decline to represent, that the person should also have formal notification.

Mr. Struve stated that he would have no objection to that being put into the law as notice is an essential element of due process.

Jan Stewart, Assemblyman, stated that one of the reasons that there is no real requirement of certification is that any attorney in private practice, if he receives the request to defend or receives a complaint that has been served, has a duty to protect that person in reference to default. An attorney would be guilty of mal-practice if he fails to protect that person, and he feels that same duty is imposed on a public attorney. Defending a person and protecting his time are two different things. He does not feel it would do violence to the bill to put it in, but wanted to explain why it probably was not in the present language.

Senator Raggio stated that there seems to be a gap in the bill. The time is mandatory in the out-of-state cases but not the ones within this state.

Mr. Struve stated that the theory is that if the time limits of this bill are complied with, there should be ample time for the A.G. or chief legal officer to make their independent investigation and tender the defense within 45 days of the date of service.

Senator Close asked what would happen if the insurance company wanted to defend, but the person wanted his own attorney.

Mr. Struve stated that the insurance contract puts a contractual

duty on the county to allow the insurer to provide the defense. The contract between the political subdivision and the insurance carrier would control. He stated that there was a problem with Section 13. Under current law the state or subdivision can be required to pay judgments based on wanton and malicious acts. The current law is not clear if this allows for payment if the act is outside of the course and scope of employment. Peter Neumann feels that if the employee is acting in a malicious or wanton way within the scope of employment that the employer can be subjected to liability under the "respondeat superior" doctrine. However, Roger Newton has indicated that whenever an allegation is made the act is wanton or malicious, he has gotten the state out of the case on Rule 41B motion. The reason being that it would be inconsistent to hold the employer liable for these wanton and malicious acts.

Senator Sloan asked if action couldn't be brought now under 1983, the sovereign immunity statute.

Mr. Struve stated that is probably true. However, the limit has never been tested in the Federal Courts with respect to 1983 actions, but since the Supreme Court has spoken in the Hall case, the statement would probably be correct.

Senator Raggio stated that he felt there could be cases where the employee was acting maliciously, but if he were in the scope of his employment he shouldn't be left out on a limb all by himself. Take the case where a patrolman was chasing a felon, a stray bullet might hit a child on a bicycle and a jury might find that he was acting in a malicious manner, even though he was in the scope of his employment.

Senator Sloan stated that there was a problem with the amount that is specified in the bill. "If I were a public employee and an accident occurred and the judgment was for \$100,000, I was not acting wantonly or maliciously, why should I be out on a limb for \$65,000 as opposed to the state being on the line for the whole amount?"

Mr. Struve stated that as an attorney he would move for a directed verdict, or at least a judgment notwithstanding the verdict, to reduce the amount to \$35,000. He believes that there is case law in Nevada which would uphold the \$35,000 limit.

No action was taken on this bill at this time.

AB 198 Increases amount of time served before parole.

Nick Horn, Assemblyman, District 15 and Bob Miller, District Attorney, Clark County, stated that they are in favor of this bill.

Mr. Miller stated that it was his suggestion to change the minimum eligibility for parole from 1/4 to 1/3 of the sentence. He referred to the list he had passed out to the Committee members (see attachment A), that were sentenced within the last year. He

He stated that 5 or 6 individuals were sentenced to anywhere from 4 years to 7 1/2 years. He asked the Committee to look at the dates, as they were incarcerated anywhere from March to June of the year they were sentenced, and yet none of them saw Christmas day of that same year, in the Nevada State Prison. He feels that the victim of that inmate has the right to expect that if the fellow has been sentenced in February or March, that the victim will not turn around and see that person when he is Christmas shopping. Because of good time credit, we are not talking really about 1/4 or 1/3 but about 1/6 or 1/8. He also realizes that bed space is a problem, but whether the fiscal impact is there or not, some action should be taken. The public has a right to expect that these people spend a significant portion of their sentence before being paroled. The way it is now, he feels, is that the prison is a revolving door type of criminal justice.

Senator Hernstadt asked if prisoners in county jails get out earlier than what they are sentenced for.

Mr. Miller stated that the parole system only attaches at the state prison level. They do get 5 days off a month for good behavior at the jail level, but if a person was sentenced to one year in the county jail, he would probably spend more time in jail than the person who has been sentenced to two years in prison.

Mr. Horn stated that during the calender year of 1978, 616 inmates were released either on parole or on termination of their sentence. Of that number, 456 were released prior to serving two years. Of the 456, 145 parole violators were returned to prison. Of that number, 102 were sent to prison for less than 1 year. That 102 forced the taxpayers to pay the additional cost of re-arresting them, retrying them, additional trial expense, additional cost of public defenders, district attorney's fees, plus the social cost to society for the crimes they committed. The fiscal impact of this bill is that the prison population would increase by approximately 354 inmates. However, using the data supplied by the Department of Prisons, the Fiscal Analyst Division compared the actual time served to the time that would be required under the 1/3 of the sentence served. They found that most of the inmates are serving more time than they would be required to serve under the one year sentence. Adjusting these raw figures for the norm currently being served, the Analyst Division indicated that the impact and the number of additional new inmates would range from a minimal impact to a maximum of 174 inmates.

Larry Ketzenberger, Metro Police Department, Las Vegas stated that law enforcement throughout the state supported this bill back in November at the Attorney General's meeting. He feels it is ironic for a person to serve more time for a gross misdemeanor in the county jail than a felon who is sentenced to the state prison. He also pointed out that it is frustrating to the officer on the street who keeps arresting the same person time after time and knowing he will be back on the street within a year or less.

Bud Campos, Department of Parole and Probation, stated he supports this bill. Prior to 1967, when the old law was passed, there was indeterminate sentencing and a person was eligible for parole in some cases in 1/3 of the minimum sentence. Since the passage of the old law, two things have happened. First is the automatic granting of county jail time. Also that good credit time has increased as has the granting of parole.

Senator Close asked if a person were serving a 7 1/2 year sentence, how can he get out in 9 months?

Mr. Campos stated he didn't know the case, but he would assume that the man had served a year in the county jail. He also pointed out that the figures could be at the time they were granted a parole, because there is a time difference between the granting and actual release. By law they do have to serve one year or 1/4 of their sentence, which ever is longer. The good time comes off the 1/4 but not off the one year. He also pointed out that this bill would only impact the inmates with longer sentences. He felt that anyone doing less then a 6 year term, would not be impacted at all.

Warden Chuck Wolff, Director of the Nevada State Prison System stated that the only point of contention he would have is on the fiscal impact. Anyone that is doing 4 years or over in the system is going to be spending more time in that system. He stated they have tried two different approaches to the problem and still come up with a 350 to 400 population increase. He stated that it will take approximately two years for the fiscal impact to show up.

Senator Sloan asked how many rooms were available that could hold two people that right now are only occupied by one.

Mr. Wolff stated that legally there were none. They could put in about 325 more, but it would be a Federal Judge's interpretation of whether or not there was overcrowding.

Eric Moon, American Friends Service League, stated that part of what their agency does is talk with people about the criminal justice system. He felt that the focus should be on the 514 that did not return to prison, not the 102 that did. He felt that a dollar spent for merely supplying a bed to a prisoner was the least efficient place to spend that dollar. It should be spent on extra police on beats, increased public education and even mandate some statutes where it is society's burden to prevent crime. Some of the money spent on prisons could better be used in the Parole Department to help more when the people are released from prison.

Senator Ashworth asked what about the countries that use punishment to an extreme and their crime rate is much lower than the United States.

Mr. Moon stated that a lot of the crime is tied to the things

we have and do in this country. For instance, there were never credit card crimes before there were credit cards. Nevada has a unique situation in that we have gambling. This causes a lot of transient population which is a problem also. He would just like to say that there is so much more that can be done with the money that is available beside just build more prisons.

Senator Raggio stated that he felt Mr. Moon had overlooked the most important aspect and that is that most of the people that are in prison are multiple adult felony offenders. The bottom line to this bill is that all the people that are in prison are proven risks, or they wouldn't be there.

Senator Hernstadt moved that AB 198 be passed out of Committee with a "do pass" recommendation.

Seconded by Senator Sloan.

Motion carried unanimously.

AB 763 Limits liability for certain injuries at ski resorts.

Paul Nelson, Attorney in San Fransico, stated that he represents the ski areas throughout the United States in liability matters. With him were Bill Killabrew, Owner of Heavenly Valley Ski Area, and Carl Knew, from Pettit-Morey Company in Seattle, who are the representatives for the London insuror of many of the ski areas in the West.

Mr. Nelson stated that this bill came about because of a very serious problem in the skiing industry. Traditionally when people went skiing they recognized that skiing is a hazardous sport and one in which there are certain dangers which cannot be prevented by the operator. Because of the fast growth of the sport there are numerous people and a lot of them ski beyond what their actual skills are. A little over a year ago a decision came down from the Vermont courts which allowed recovery for a substantial amount of money. The case was a man, a begining skier, who claimed that a branch under the snow caught his ski and caused him to go off the run into rocks which rendered him quadraplegic. He claimed that the doctrine of traditional assumption of risk should not bar his suit, although it was an inherent type of hazard. Shortly after this suit, the Vermont Legislature enacted a statute which is virtually identical to what is proposed in this bill. This bill only applies to down-hill skiing, only things that happen once the skier is off the lift.

Senator Raggio stated that the bill that is in front of the Committee, as reprinted, is a complete immunity statute. It is assumptive risk and a complete departure from the original bill.

Mr. Nelson stated that it is simply a different approach. Instead of saying no suit may be brought, unless all of this different

criteria, it simply says skiing is a hazardous sport. When it comes to the obvious, inherent, and unavoidable risks of the sport, a skier assumes those risks. One thing you have to remember is that skiing is like no other sport. The terrain is natural, the snowfall is natural, and because of the snow the surface is opaque. Because of this surface you cannot tell if the branch or rock is right beneath the surface or two or three inches down. Also, the operator cannot control the surface conditions, such as slush or ice on the runs.

Senator Raggio stated that the whole problem with the bill is that it imposes on the skier, regardless of their ability, complete assumption of the risk. As for the conditions, the runs should all be marked as to steepness, areas designated for beginners, intermediate and advanced skiers. All known obstacles should be roped off and marked. If these things are not done then the operator should be held liable. Why should the operator not be held responsible for negligence just the same as anyone else who invites people to participate.

Mr. Nelson stated that the problem is that there is a conflict with two doctorines of law. One is the premises liability, which holds that the operator of a business premise is held to a standard of reasonable care in the maintenance of his premise in a safe condition. The other law is essentially "bolenti non fit injuria", which says that a participant in a sport assumes the risks that are inherent, obvious and necessary to the sport.

Senator Raggio stated that he agreed that if a beginning skier went down a hill that was marked for an advanced skier and got hurt, then the operator should not be held liable, but only if that hill or run were so designated. There has to be some responsibilities placed on the operator of the ski area.

As the Committee had to go into session they agreed to continue hearings on this bill after adjournment.

The meeting reconvened at 12:48 p.m. Senator Close was in the Chair. All members were present.

Mr. Nelson stated that the main point he wants to make is that skiing is unique in that it is a business conducted on a business property, but you do not have a controlled environment. There is a building but it is on a snow covered icy terrain. So the general principals of premise liability create a liability issue whenever a skier falls. Each year in the United States there are approximately 100,000 injury accidents, so the operator must treat each one as a potential law suit and each accident has to be investigated.

Senator Hernstadt asked how many claims are initiated, on an average.

Mr. Nelson stated that it was an average of about 800 a year.

Senator Hernstadt pointed out that that was less than 1%.

Mr. Nelson stated that in each case though, it cost between \$10,000 and \$15,000 to defend them.

Senator Dodge asked if they would object to putting the word downhill into the bill.

Mr. Nelson stated they would not as basically that was the purpose of the bill.

Mr. Carl Knew stated that they are the brokers for approximately 135 ski resorts. There are administrative costs, substantial engineering fees, commissions involved and a lot of other things on the part of the insurer. It is to the point, that it is not far away from the break-even point, even with this bulk of business. The largest problem is in the area of skiers running into each other. For some reason they do not sue the other skier, they sue the resort.

Senator Sloan asked if there wasn't some way to restrict the number of people so they wouldn't be running into each other.

Mr. Knew stated that most areas do try to restrict the amount of people and do have signs at the intersections.

Senator Raggio stated that there are 40 ski areas within the Reno area, and I only know of three or four that try to restrict the number of people on the slopes. The rest are obviously more interested in selling tickets, then trying to curtail the number of people coming down the hill at once.

Bob Roberts, Executive Director for the Sierra Ski areas, stated that because of the growth of the sport, and a number of environmental concerns, it is impossible to expand our areas to accommodate the number of people that want to buy tickets. The problem has been addressed to the Forest Service and we are working with them to try to work out limits.

Senator Ford asked what kind of safety factors are there now to operate a ski area.

Mr. Knew stated that they are under the regulation of the U.S. Forest Service, and the insurance carrier makes at least two inspections a year.

Barbara Bailey, Trial Lawyers Association, stated that she is opposed to the bill. The bill does away with the skiers right to expect a certain amount of security be provided by the resort owner or operator. It is his inherent responsibility to groom the slopes and make sure that they are safe. Unmeritorious cases will not be awarded, as with any trial by jury, they will take into account the injured person's own negligence as well as the negligence of the operator.

As Commerce and Labor were scheduled for a meeting, no further testimony or action was taken on the bill.

Meeting adjourned at 1:27 p.m.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman



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<u>SUBJECT</u>	<u>CRIME</u>	<u>SENTENCE</u>	<u>SERVED</u>	<u>REASON</u>
RAMOS, Juan	Burglary	5 years	3/7/78-12/13/78	Parole
EDWARDS, Guy	Robbery	7yrs 6 mos	3/11/78-12/12/78	Parole
FRANKLIN, Larry	Att Burglary	4 years	6/8/78-12/7/78	Parole
FULLER, Sidney	Burglary	5 years	1/5/78-12/4/78	Parole
CHORNEY, James	Poss Cont Sub (2 cts)	5cc6 years	2/26/78-11/6/78	Parole
NEAL, Pat	Burglary	6 years	2/10/78-11/1/78	Parole
WILSON, Stanley	Murder	Life w/o Parole	6/19/69-10/25/78	Parole
DEMBKE, Richard	1st° Murder	Life w/o Parole	10/28/65-10/19/78	Parole
KNOX, Kermit	Poss F/A by Ex-Felon	6 years	12/22/77-12/13/78	Parole
HUNTLEY, Charles	Vol Manslaughter	10 years	10/10/76-11/6/78	Parole
MITCHELL, Michael	Battery with Intent to Rape	8 years	3/4/77-11/6/78	Parole
NEWTON, Tony	Battery with Intent to Comm Mayhem; BWDW	10cc10 yrs	1/30/76-11/14/78	Parole
ARENT, Michael	Robbery; G/L	15cc10 yrs	3/28/75-11/8/78	Parole
REBER, Byron	Forg; Poss Cont Sub	10cc6 yrs	9/17/76-11/21/78	Parole

<u>SUBJECT</u>	<u>CRIME</u>	<u>SENTENCE</u>	<u>SERVED</u>	<u>REASON</u>
CROSS, Edward	2° Murder	Life	4/26/74-12/5/78	Parole
BRINKMAN, Paul	Burg; Robb	10cc10 yrs	9/15/77-10/24/78	Parole
MESSMER, Michael	Lewd w/Minor	10 years	8/21/76-10/19/78	Parole
SMITH, Gregory	Att Robbery	6 years	3/16/77-10/11/78	Parole
JACKSON, Benny	BWDW	9 years	5/13/77-10/10/78	Parole
FURMAN, Henry	Vol Manslaughter	10 years	3/12/76-6/23/78	Parole
WALDIE, Mark	Robbery	7 1/2 years	5/26/77-9/22/78	Parole
DODD, Terry	Robbery and Larc f/Person	10cc5 yrs	11/76-9/18/78	Parole
BROPHY, Bradley	Burg; CS; Poss Prob Violation	10/cs/6 yrs	10/9/75-9/15/78	Parole
MEREDITH, Richard	Vol Mansl	10 years	6/15/77-9/14/78	Parole
COSEY, Donnell	Robb; Use of Deadly Wpn	6cs6 yrs	10/22/76-8/29/78	Parole
SALIE, Walter	Robb; Use of Deadly Wpn	6cs6 yrs	2/16/77-8/25/78	Parole
RILEY, Richard	IFCA; Rape; Robb	Life w/Poss; 5cc5 yrs	10/10/73-8/23/78	Parole
OWEN, Richard	Sale Cont Sub	9 years	5/11/77-8/21/78	Parole
REED, Albert	Burglary	4 years	11/3/77-5/24/78	Parole
OWENS, Jackey	Poss Stol Veh	8 years	3/11/77-5/17/78	Parole
LEW, Gim Lan	2° Murder	20 years	12/14/73-5/19/78	Parole
ZELDIN, Michael	Burglary	10 years	10/1/76-5/4/78	Parole
O'BRIAN, Roy	Robbery	12 years	1/27/75-5/2/78	Parole
MITCHELL, Charles	Robbery	10 years	2/23/76-4/22/78	Parole
DAVIS, Theresa	Robbery	6 years	6/15/77-4/3/78	Parole