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MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Assemblyman Bergevin, District 29
Steve Mahoney, Department of Agriculture
Barbara Durbin, Deputy Chief, Parole & Probation
Jim Barnes, Deputy Attorney General

Chairman Stewart called the meeting to order at 8:03 a.m. and asked for testimony on AB 129.

AB 129: Prohibits probation and limits parole for persons convicted of theft of certain animals.

Assemblyman Bergevin, District 29, testified stating that this bill is the result of a Nevada Cattlemen's Association resolution coming from their annual convention in Elko during November, 1980. He indicated that it has been the experience of those in the cattle industry that cattle rustling seems to be a crime that both law enforcement and judges look upon as a passing fancy with no serious intent. He commented that a stiffer sentence is imposed for stealing a loaf of bread than for stealing a \$1,000 animal out of the field. It was his opinion that as a result, cattle rustling is on the increase in the State of Nevada. Mr. Bergevin explained that usually a rustler will shoot a cow and just take the hind quarters and leave the rest lying in the field. He noted that in the last summer there was a bull cut in half with a chainsaw with the front half left behind. He conveyed the position of the cattlemen by stating that it is time that this particular crime be accompanied by harsher penalties so that the public is made aware that it is not taken lightly by the police and courts.

Mr. Bergevin continued by saying that it is difficult to find rustlers since they usually work at night, have the use of trailers for loading the cattle, etc. He indicated that Mr. Mahoney of the Department of Agriculture would be available to testify on his arrival.

Mr. Malone pointed out that most felons will get probation, regardless of the type of crime committed, and that it was not unusual for this type of person to get probation on a first offense. Mr. Bergevin stated that the Association has very strong feelings on the bill.

Barbara Durbin, Deputy Chief of Parole & Probation, began her testimony by reading from the attached EXHIBIT A. She continued by saying that one of the purposes of being placed on probation is so that the offender can pay restitution for the crime committed. She stated that very seldom are seen the very serious rustlers who use helicopters and vans, but those who are just drunk and rowdy. It was the recommendation of her department that the monetary limit of the bill be raised to reach the major violators of this law.

AB 133: Provides civil penalty for pyramid promotional schemes and endless chains.

Jim Barnes, Deputy Attorney General, appeared on behalf of Attorney General, Richard Bryan, and stated their support of AB 133. He stated that the penalties now provided in Chapter 598, which include a misdemeanor conviction, voiding of the contracts, injunctive relief, receivership and in quo warranto proceedings, are not effective or meaningful enough to put a halt to pyramid promotional schemes. He indicated that there has been a long line of these types of schemes and it is necessary to find a means of stopping them. It was felt that this bill would provide an effective penalty, a civil penalty up to \$2,500 and the award of attorney's fees and costs against the defendant. Mr. Barnes stated the best part of this type of penalty is that it can be assessed against the individual who passes the letter on, not just the individual who institutes the action. At the present time, if a conviction is made, the money is usually gone by the time the proceeding has run the gambit of the courts. It was felt that having a civil penalty would provide a deterrent to those originating the scheme as well as those passing it on.

Mr. Beyer pointed out that there is no limit specified in the bill as a minimum. Mr. Barnes felt that was to give the judges the discretion needed. Mr. Beyer felt this gave the judge the option to just "slap the hand" of the offender and suggested that a minimum be placed in the bill. Mr. Barnes stated he had no problem with that, but suggested the minimum not be set too high since that might create the tendency in the judges not to convict. He indicated it was his experience that if the judges feel the penalty is too stiff, they will try to find a technical reason not to convict. He felt it is a serious offense and the penalty should not be too weak. A \$500 fine was suggested.

Chairman Stewart asked if all the people involved in sending on chain letters would be in violation of this bill. Mr. Barnes stated that under the statute anyone who originates or passes the letter on would be in violation. Mr. Stewart commented that there were a lot of people unknowingly who would be in violation by passing on a \$100 chain letter. Mr. Barnes stated that was a concern with setting a minimum, since the judge might feel that \$500 would be too stiff a penalty for someone unwittingly involved. He further felt that a judge might not convict someone unwittingly involved since there would be the lack of intent. He agreed that the instituters were of main concern.

Mr. Stewart commented that this would also be in violation of the postal regulations. Mr. Barnes referred to a program in Nevada last spring where people stated in the chain letters that it was not illegal which led a number of people astray. He felt a large number of people were not aware of the illegality of these schemes.

Mr. Chaney commented that he was not in favor of setting a minimum fine since he wouldn't want to see an innocent person fined \$500 for being unaware that they were violating the law. He felt the judge should have the discretion to make that determination. Mr. Barnes stated that as the bill is drafted, any person who violates NRS 598.110 is the person who contrives, prepares, sets up, proposes, operates, or advertises or promotes any pyramid promotional scheme. The individual who just received the letter and didn't really operate it would not be subject to the penalty. He felt that passing the letter on would put that person in violation of the statute.

Mr. Beyer suggested that it be put in the statute that anyone who passed the letter on unwittingly or unknowingly might be exempted from the minimum penalty. He commented that there should be a public education program of some type to alert the public to exactly what is illegal such as raffles. Mr. Barnes agreed and referred to a press release which aided in alerting the public to these schemes. Mr. Stewart referred to one in Las Vegas as well.

Mr. Chaney felt that if a minimum fine was going to be established, there should also be an educational program established. Mr. Thompson agreed and felt that if the judge's discretion was taken away, innocent people would be harmed or no convictions made.

Chairman Stewart asked for information from Mr. Barnes on where the money from the fines went and felt it should be specified in the bill.

Mrs. Ham asked for an explanation of page 1, lines 14 through 20. Mr. Barnes explained that reimbursement was made to those who became participants in these schemes by anyone who proposes, operates, advertises or promotes the schemes. He noted that is already in the law at NRS 598.130(2), but has not been an effective penalty because the money isn't there when convictions are finally made. Mr. Stewart also pointed out that the paragraph questioned provides authority for the district attorney or attorney general to go to court, have the court appoint a receiver to take control of all the assets and distribute the assets on an equitable basis. He continued by noting that paragraph (a) authorizes injunction, at line 13 is given authority to appoint a receiver, and the second page gives authority to sue for a civil penalty. Mr. Barnes pointed out there is also a quo warranto proceeding and at Mr. Stewart's request stated that means to disband the corporation. He continued by saying that the State will go in and say the corporation is not performing the activities for which it was set up. He commented that it is not a real deterrent. He also noted that there is a misdemeanor conviction provided for in NRS 598.110, but there should be the ability to assess a civil penalty as well.

ADDITIONAL TESTIMONY ON

AB 129: Prohibits probation and limits parole for persons convicted of theft of certain animals.

Steve Mahoney, Director of the Brand Division, Department of Agriculture, stated his department was in favor of anything that would deter livestock theft. He stated his only concern was taking the prerogative of sentencing away from the judge. Chairman Stewart asked if Mr. Mahoney could state any reasons why people who steal cattle should be treated any differently from those who steal other types of personal property of the same value. Mr. Mahoney stated it is extremely difficult for livestock producers to keep track of their inventory with miles of open range and the difficulty in gathering. He indicated that it might take just a couple of hours to steal several head of cattle, valued at \$500 a head, at a substantial loss to the owner. He commented that it is extremely difficult to patrol and catch these individuals and then discouraging to have them turned loose. It was his feeling that the intent of the Cattlemen's Association in drafting this bill to have these individuals dealt with.

Mr. Chaney asked if it was the intent to make whomever might be caught pay for all the cattle missing, even though he might have only taken one. Mr. Mahoney stated that restitution does not serve as a very good deterrent, but that it is not their intent to make an example of any one individual. He felt a sentence of some jail time would be a good deterrent.

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Mr. Chaney pointed out that jail time does not seem to discourage other types of criminals. Mr. Price commented that the problem of cattle rustling is bigger than most people realized and asked if Mr. Mahoney had any figures on that. Mr. Mahoney indicated that nationwide it is a multi-million dollar problem and in Nevada there are reported losses of about \$2 million a year in theft. He stated that it is a difficult situation for a producer since he loses an animal as production means for his herd over a period of several years.

Mr. Price asked if a person had to own a ranch in order to get a brand. Mr. Mahoney indicated the person has to own livestock, which may be only one cow or horse. He further stated that they need only own the livestock at the time of application for the brand.

Mr. Thompson asked if the individuals caught stealing cattle usually repeated that offense. Mr. Barnes stated that professional livestock theft people are different from burglars, in that they are opportunists and have the knowledge of riding, roping, working stock, etc. He indicated there are some who work constantly at this. He felt that slaughter of cattle by someone out drinking is a rare occurrence, but that there are people who make their living at stealing cattle since it is so easy to market the cattle. Mrs. Ham asked who bought the stolen cattle. Mr. Mahoney stated there are states like Oklahoma and Florida who have no brand inspection laws where they can be sold without any questions. He noted that California has no brand inspection laws for horses.

Chairman Stewart then asked for committee introduction of the following bill drafts:

BDR 1-298: An act relating to the commission on judicial discipline; providing for the employment of a secretary to the commission and relieving the court administrator of the secretary's duties; and providing other matters properly relating thereto.
(AB 228)

Mr. Stewart stated this bill may be combined with the one already under consideration by the committee or treated separately. Mr. Sader asked if it would be advisable to incorporate this into the suggested amendments of the bill under consideration. It was determined by the Chairman that this bill should be introduced separately and any arising problems dealt with at the time for hearing the bill.

Mr. Chaney moved for committee introduction of the bill, seconded by Mr. Beyer, and carried unanimously by the committee.

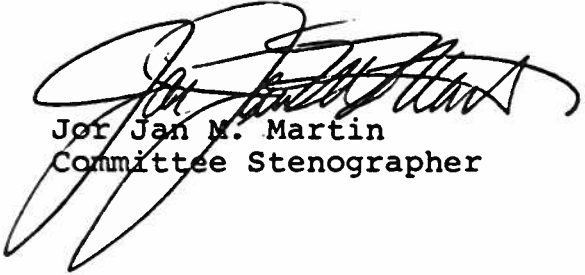
BDR 14-246: An act relating to the criminal procedure;
(AB 234) providing for a special examination as an
alternative to grand jury proceedings; and
providing other matters properly relating
thereto.

Chairman Stewart stated it was his basic understanding that this bill would allow the chief judge of the judicial district to appoint a JP to be an inquiry judge, serving in a similar capacity as a grand jury.

Mr. Sader moved for committee introduction, seconded by Mr. Malone, and carried by a 2/3 majority vote, with Ms. Foley, Mrs. Cafferata and Mr. Chaney voting nay.

Chairman Stewart reminded the committee that Thursday would be a work session to take action on the bills previously heard. He then adjourned the meeting at 8:50 a.m.

Respectfully submitted,



Jor Jan M. Martin
Committee Stenographer

Ass Jud 8:55 a.m.

AB 129

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We understand the motivation of the legislators that introduced this legislation. ~~XXXXXX~~ Having spent the first seven months of my employment with the department in the rural communities of Churchill, Nye, Mineral and Esmeralda Counties, I can appreciate the importance of livestock crimes to the ranchers and rural interests. However, we must not lose sight of the fact that just as we are addressing the main income and livelihood of a certain group of citizens, we have to keep in mind a fair and just application of the law.

Just as loss of livestock is significant to a rancher, so is a robbery of 7-11 to a store-keeper, or the theft of a social security check from an elderly person on the street. These crimes are probatable. We feel it is an unequal punishment given the crime in these cases. In essence this Bill is comparing the crime of theft of \$100 of livestock to that of Murder 1 or 2, Kidnapping, Armed Robbery, Sexual Assault or major Sales of Drugs cases, which are the only non-probatable crimes on record at present in Nevada.

restitution

If the intent is to avoid great loss to ranchers due to rustling or sophisticated thefts, ^{the case of} would suggest that it is more often/three drunks slaughtering one steer that comes to the court. If one wishes to take harsh action on the more sophisticated offender, then we would suggest upping the monetary limit of the proposed bill, to one of multi-thousands, to reach that major violator of the law.

By limiting the offense to a non-probatable one, it is also ignoring the individual facts of each case and limiting the options of the sentencing court to make a determination of those significant case factors.