

*Liberty*

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

MEMBERS ABSENT: None

GUESTS PRESENT: Tom Warburton  
Frank Enriquez  
Bill Furlong, Welfare Division  
Sally Loehrer, Clark County D.A. - Family Supp.  
Julie Oelsner, Intern - Dini  
Guy Louis Rocha, NV State, County & Municipal  
Archives  
Bob Warren, Nevada Mining Association  
Jim Barnes, Deputy A.G.  
Mike Harper, Welfare Division  
Fred Dreschler  
Ace Martelle, Welfare Division  
Michael de la Torre, Law Enforcement Assistance

Chairman Stewart called the meeting to order at 8:09 a.m. and proceeded first to AB 52.

AB 52: Provides punishment for participation in a criminal syndicate.

Chairman Stewart stated that AB 52 is similar to a bill being heard by the Senate. He decided to compare the two bills and possibly adopt provisions from the Senate bill, at which point the bill would be referred to the Senate in order to avoid double hearings on the same subject. He indicated that the Attorney General and the District Attorneys are currently looking over the two bills for comparison.

Chairman Stewart then asked for a sub-committee report on AB 112.

AB 112: Limits exercise of eminent domain to take land in historic districts for use in mining or related activities.

Vice Chairman Sader felt that the sub-committee was not yet in a position to take any action on the bill, but decided to give a status report on their research. He noted that Mr. Warren of the Mining Association had given the committee copies of a brief prepared by their attorneys pointing out the problems with the bill (EXHIBIT A). Mr. Sader stated it was his opinion that there are problems with the bill and was not in a position at that point to recommend an amendment to solve those problems. He asked for another week to complete the necessary research and did not feel it was a bill which should be allowed to die in the committee.

Mr. Malone felt that there had been sufficient time to look at the bill and noted that there had been quite a lot of testimony taken already. He did not feel it necessary to wait another week to make amendments.

Miss Foley pointed out that there is a very fine line in the bill between what might and might not be unconstitutional. She wanted to be able to give the Historic District something without having the whole thing thrown out in court. She felt the bill had far reaching ramifications and did not think the committee should move in haste. Mr. Stewart agreed with Miss Foley, stating he felt AB 112 is a very significant piece of legislation. He did not feel this was an attempt to bury the bill. He noted that the sub-committee had done a great deal of work on the bill and as a courtesy to them would hold the bill over for a week.

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

Mr. Stewart briefly outlined the bill and commented that when Barbara Durbin testified, she stated that this penalty would bring the crime in line with rape and kidnap in the sense that no probation would be allowed.

Mrs. Cafferata moved INDEFINITELY POSTPONE AB 129, seconded by Mr. Malone. The motion carried with Mr. Price voting nay, Mr. Chaney and Mr. Beyer being absent for the vote.

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

Chairman Stewart asked to hear from Jim Barnes, Deputy Attorney General, on the disbursement of money question. Mr. Barnes stated he had dropped off a letter to the Chairman answering that question. He indicated that it would appear that if nothing is said as it is now, the money would be deposited to the general fund. He pointed out that in NRS 598A.260 there is a provision that certain civil penalties can have 10% of the recoveries credited to the attorney general's special fund, which is a possibility the committee might want to consider. He also suggested that a section might be added that would specifically state the funds go to the general fund.

To Mrs. Cafferata's question about restitution, Mr. Barnes stated that AB 133 deals only with civil penalties and those could not be applied to restitution. There is already a provision in the existing statute that provides that there will be reimbursement to participants in the scheme, but it is rare that that is accomplished since the money is gone by the time the individuals are apprehended and convicted.

Mr. Thompson reminded the committee about the question which arose about people involved in chain letters, referring to testimony that anyone originating or passing a letter on would be in violation. He felt that \$2,500 per offense would be tough for someone involved unknowingly in a chain letter.

Chairman Stewart suggested a sub-committee be appointed to look into the questions raised.

Mrs. Cafferata asked Mr. Barnes what the attorney general does with its special fund. Mr. Barnes stated it would be used for prosecuting cases of this sort and possibly it could be used to prosecute other violations of the Unfair Trade Practices Act and Trade Regulations and Practices Act. He noted this would be a special fund which would appear in the budget, but would be in addition to the other monies ordinarily budgeted through the Legislature, and collected under the civil penalties provision of this bill. He cited NRS 598A.260 as stating, "All money obtained as awards, damages or civil penalties by the attorney general as a result of enforcement of statutes pertaining to unfair trade practices, all attorney's fees and costs and 10% of all recoveries will be credited to the attorney general's special fund." He stated that coming across this provision, he thought it might be something the committee might want to consider, otherwise the money would go to the general fund.

Chairman Stewart appointed Mr. Thompson, Mr. Malone and Mrs. Ham to a sub-committee to review these questions, with Mr. Thompson chairing the committee.

Mr. Price asked if this bill applied to chain letters for prayers, recipes, etc., or just to those involving money. Mr. Barnes stated that the existing statute specifies only where money is involved.

Fred Dreschler of Gardnerville asked the status of AB 129 and offered to speak in defense of the bill. Chairman Stewart advised Mr. Dreschler that the committee had moved to indefinitely postpone the bill and that hearings had been held previously on the bill.

Mr. Price asked if Mr. Dreschler would tell the committee about his prize bulls being cut up with chainsaws. On recognition from Chairman Stewart, Mr. Dreschler stated the cattle people feel there is too much of a tendency to put people who steal cattle on probation, turn them loose and have sympathy for them. He noted cases where cattle are shot and only portions of the cattle are taken, with the rest being left. He stated that a neighbor's purebred Angus bull had been shot and the hind quarters removed with a chainsaw. He felt this was wrong and that if this type of action was going to be condoned, there would be no encouragement for people to be in the cattle business. He stated that if the protection of these people did not come about, there would be no one in the business. He noted that there is no incentive for young people to go into the business. He felt that these offenders should be penalized to the full extent of the law.

Chairman Stewart stated that he had great sympathy with the problem since his father was a rancher who experienced having horses shot and losing cattle. He pointed out to Mr. Dreschler that the problem with this and other criminal statutes is that the judicial branch of government is not enforcing the penalties. He urged Mr. Dreschler to examine the judges in his district and their decisions and find another judge with more sympathy for the problem if they were found to be unsatisfactory. Mr. Stewart added that this bill had to be judged in reference to the rest of the crimes and, although serious, it doesn't compare with some of the other more serious crimes.

Mr. Malone expressed his sympathy as well and agreed with Mr. Stewart's comments. He pointed out that a continuing problem would be catching these individuals in spite of the penalties imposed.

AB 157: Requires report of abuse and neglect of older person and provides penalty therefor.

Mr. Sader passed out a proposed amendment to AB 157 (EXHIBIT B) and stated these amendments were suggestions from the testimony at the hearing on this bill. He indicated that Steve Coulter, the Department of Aging Services and the Welfare Department had reviewed the amendments and had agreed they seemed to solve the problems raised and made the bill palatable to them. Mr. Sader then took the amendments in order as they appear on EXHIBIT B and reviewed them with the committee. He stated "sexual abuse" had been inserted at Sec. 3, sub-paragraph 1, since testimony indicated this was an occurrence. In the same paragraph, "mis-treatment" was changed to "maltreatment" to conform to the juvenile statute.

Mrs. Cafferata asked for a definition of mental injury. Mr. Sader stated that he didn't know if there was any succinct definition for that, but left it in since there is a mental aspect of abuse which can occur in the long run and not be readily apparent. Mr. Malone agreed that it should be left in.

Mr. Stewart commented that this bill speaks to reporting abuse and does not make it a crime. Mr. Sader pointed out that this statute makes it a gross misdemeanor to do these things and is more than just reporting.

Mrs. Cafferata stated that she had a hard time with the lack of a definition for mental injury. Mr. Sader felt the worst thing that could happen would be being unable to get a conviction in a questionable case of mental injury, but it should be left in for the cases where conduct might be oriented towards causing a person extreme mental aggravation. Mr. Malone pointed out this is the reason psychiatrists are called in on these cases.

The next amendment addressed was the deletion of the words "by a person who is responsible for the older person's welfare". Mr. Sader stated that phrase was copied from the child abuse statute, but did not necessarily apply here since in most cases there is no legal guardianship in the case of an elderly person living with his children, whereas with children there is legal custody or guardianship.

In reference to Sec. 3, sub-paragraph 2, where an older person is defined as 62 years of age or older, Mr. Sader stated the Aging Services Division questioned whether that should be lowered. 62 was chosen because this sort of abuse appears to be most prevalent in the cases of people somewhat less capable of taking care of themselves. Mr. Sader felt 62 was young and probably

727

this age person would not fall prey to these problems as much as those in their 70's and 80's. It was his opinion that the age should not be lowered.

Mr. Beyer suggested that there might be people at 40 or 45 who might be just as helpless as an older person and under care by their family members. Mr. Sader pointed out that the common denominator in this bill is the age. Child abuse statutes go to the youth of a person and elderly abuse statutes go to the age of a person.

At Section 4, the word "promptly" was replaced by "within 3 days" since promptly is incapable of any precision. Mr. Sader felt that there must be some deadline set down for reporting. Mr. Malone posed the question of the 3 day deadline falling over a weekend or holiday. The wording was changed to read "3 working days" to alleviate that problem. Mr. Sader explained that Section 4 stipulates when the agency first receives a complaint, they shall report it to Aging Services within 3 working days. The remainder of this section and many of the remainder of the amendments involve the problem Steve Coulter presented about who was going to do the investigation and the cost. He recommended a change to require the Aging Services Division, Department of Human Resources to do the investigation since they indicated it could be done with the addition of one staff person, whereas the Welfare Department would require almost an entire new section to do this. Accordingly, the Welfare Division was taken out as the investigative agency and Aging Services Division was put in.

Mrs. Cafferata stated she had requested some research which she had not yet received. One of her main concerns was the privacy act as it relates to older citizens in terms of the records, questioning what that entails. Another concern was whether Aging Services could use their ombudsman with their federal money to execute this program. Mr. Sader stated he accepted the Aging Services Division's statement that they could. He did say that if she had a problem with that, he was willing to wait.

At Section 4, 2(c), Mr. Sader stated there was a question about the term "advanced emergency medical technician-ambulance", which appears to be a term that describes ambulance drivers in Washoe County and Clark County, but not necessarily anywhere else in the state. He felt that term should be deleted to include one that will make it clear that ambulance drivers are covered. He recommended the wording "ambulance drivers and ambulance attendants".

At Section 4, 2(d) and (f), the changes made were made to allow for the attorney/client privilege in the event the attorney is asked to represent a defendant in this type of case. It would not cover the situation where an attorney in any other way found out about abuse. The attorney would still have to report that.

Mr. Thompson understood that amendment, but contemplated a problem in the case of a priest taking a confession. Mr. Sader stated that this statute provides that attorneys, clergymen, and physicians, all of whom are traditionally privileged in the information their clients give them, do not have that privilege for purposes of reporting. An attorney would only have privilege if he is trying to defend a client accused of abuse.

On a question from Mr. Stewart, Mr. Sader stated that an attorney has an actual duty to report any crimes that are future in nature or ongoing at the time, but does not have an ethical duty to report a crime a client tells him about in a defense. Mr. Stewart asked what the duty would be in the case where a client confessed and no charges had been brought. It was agreed that it would have to be reported.

With regard to the amendment at Section 7, 2(h), Mrs. Cafferata asked how an individual unjustly accused would defend himself if he did not have access to the records. Mr. Sader stated that the District Attorney does not have the legal obligation to give a criminal defendant or his attorney a copy of whatever investigative or legal reports he might have. He can if he wants to, but is not required to. This amendment simply complies with the way criminal defendants are currently handled.

Mrs. Cafferata pointed out that in the case of credit reports and school records the law had been changed so that an individual could defend himself and obtain those records.

Mr. Sader stated that if a complaint is filed and a prosecutor is appointed to prosecute, the accused is then in the same position as any other criminal defendant and may or may not have access to his records.

Mr. Sader explained that the additional language proposed at Section 7 came as the result of testimony by the Nurses' lobbyist that if the person reported to have committed the abuse was some sort of health care professional, that report should be filed with the board or agency responsible for that professional.

Mrs. Cafferata indicated she had received the information she had requested. According to the U.S. Administration on Aging,

the nursing ombudsman can do the reporting as long as they do their ombudsman duties. This is done in Connecticut, Arizona and New York. To the question of confidentiality in nursing home complaints, the ombudsman must assure the report is confidential and must not disclose the identity of the complainant unless the courts subpoena the information.

Mr. Malone expressed concern that the language in Section 4, sub-section 2 might leave someone out. Mr. Sader felt that the reason the reporting requirements are specifically set out for these types of people is that these are the people who would normally be aware of abuse outside the family home. Mr. Malone suggested that if everyone was required to make the report, it would still make these types of people responsible for filing reports.

Mr. Thompson suggested that there be additional time for the committee to work with the bill. Chairman Stewart stated the bill would be postponed.

Mr. Beyer stated he felt concern over the time lapse involved in reporting the incidents of abuse. He outlined the time periods as follows: 3 days in which the welfare division or sheriff's department must move the report to Aging Services, which has another 3 working days to act on the report, making 9 days if there is a long weekend; additional time to make an investigation, write the report, and contact the District Attorney. He noted that this could be two or three weeks in which an individual could be suffering. He felt the local people should be immediately involved to solve the problem.

Mr. Sader pointed out that the agency which initially receives the report of abuse must immediately refer to Aging Services. He stated that the maximum time lapse from abuse to investigation is 6 working days. To the question of Mr. Beyer about immediate action, Mr. Malone stated that in the case of a serious incident, the local law enforcement agency is usually called in to rectify the situation at that time. He added that this is a very important bill and would not want to see it go through without postponing it to make a good, working bill.

Mrs. Cafferata read further research she had received, stating that Connecticut and Massachusetts have enacted elderly abuse legislation requiring the report of abuse by professionals, with the penalty for not making a report being \$500. Connecticut passed its law in 1977. Between June, 1978 and January, 1979 there were 640 cases of elderly abuse in Connecticut. Of those, 474 were substantiated with 87 being physical, 314 neglect, 65 exploitation, and 8 abandonment. Also during that period,



cases of elderly abuse were reported in 107 of 169 towns in Connecticut. She asked if Mr. Sader had reviewed that law.

Mr. Sader stated he had not, but that Mr. Coulter's testimony was that Nevada's law was patterned after other child abuse laws.

Chairman Stewart asked the sub-committee to continue its research on the bill.

AB 158: Revises statutes relating to aid to and support of dependent children.

Chairman Stewart noted for the committee that a question to be resolved was the use of the term "assistance unit" in the bill, which may include children not the children of the absent parent. It was recommended that term be eliminated wherever it appears, utilizing the old language which puts the responsibility back on the responsible parent.

Ace Martelle of the Welfare Division stated that language was originally requested and required by the Federal Government and it has since been found it is not legally acceptable. It was his recommendation that the language be removed in all instances.

Chairman Stewart further noted that the change at the bottom of page 2 had been made to accommodate the use of the term "assistant unit", and since the term had been removed, the language was to revert to the old language. At line 49 and continuing to page 3 the language, "the division shall attempt to notify the responsible parent" will remain. The remainder of the amendments using that term would also revert back to the old language.

Chairman Stewart stated there were two additional amendments recommended. At page 4, line 26, the Welfare Division is given the authority to obtain information from state, county and local agencies and from employers and employee organizations and from financial and credit institutions in order to determine eligibility. They will also be able to obtain information from public and private utilities which will help them to locate responsible parties.

Mrs. Cafferata asked if that was being done in other states. Bill Furlon of the Welfare Division stated that most of the other states have the ability to make inquiries of public utilities and a good number of states are allowed to make inquiries of credit bureaus and banking institutions. He stated that they would normally be required to obtain financial in-

formation. He indicated the law requires that the absent parent pay within his ability to pay. In order to provide evidence to the prosecutor so that he can provide the financial assessment, the Welfare Division must have the authority to seek locations where resources might be kept.

Chairman Stewart asked about Federal regulations which restrict disclosure of information. Mr. Furlong indicated his division would be restricted by those regulations. The Federal regulations would require that the program or the agency be authorized to receive such information and that the information be properly safeguarded. Mr. Furlong stated that the heavy safeguarding requirements are already in the Federal and state statutes. The division's information cannot be used for anything except the Title IV D program, and cannot even be released for criminal prosecutions to local district attorneys.

Chairman Stewart asked how much money had been recovered from responsible parents. Mr. Furlong stated that statewide approximately \$5 million was collected last year, of which \$647,000 was Nevada AFDC collections.

Mr. Martelle pointed out that the child support enforcement program, in his opinion, is one of the best programs for the State of Nevada. He stated it is cost beneficial, putting the responsibility back to the absent parents. The child support enforcement program unit, in conjunction with the district attorneys, has brought up its public assistance collections to approximately \$75,000 a month recently. They are continuing to increase collections in public assistance and in non-public assistance, keeping individuals off of welfare and making the absent parents responsible for payment, relieving the burden from the taxpayers of the state.

Continuing with the amendments, Chairman Stewart stated that Section 2 is required as the result of a recent Supreme Court opinion. Section 3 raises the penalty for \$100 to a felony. The remainder of the amendments are merely clean-up to aid in collections.

Mrs. Cafferata indicated she had research showing that child support was awarded in every divorce case involving children, even when not asked for. She noted that there are cases where men in prison divorce their wives so they can go on welfare.

Mr. Chaney commented that with program cut-backs, the case will be more and more that the only way a low income family can survive and get any assistance is if the man leaves and divorces the wife. As a result, when it is found that the man was actually living with the family, he is convicted of a felony.

732

He felt this was not right and the system was forcing these people to commit the crime in order to survive.

Mr. Martelle stated he was introducing legislation which would make ADC, food stamps, medicaid recipient fraud, as well as medicaid provider fraud all felonies. This would bring the laws into conformity with NRS 205.380, the general felony fraud statutes in the State of Nevada. He stated that Human Resources tries to protect the individuals and provide for those who cannot provide for themselves, but also protect and safeguard the taxpayers' dollars. He noted there has been an enormous increase in the incident of fraud, not in the cases of someone trying to feed their children. He pointed out the cases of individuals employed and earning \$2,000 to \$3,000 a month, and taking as much as \$28,000 or \$30,000 from the State of Nevada. He commented that 50% of the ADC dollars are state taxpayer dollars. He stated the division is not taking into court cases that are marginal situations, but cases which have proven absolute intent to defraud the State of Nevada and at this time no cases of less than \$1,000. He stated that these cases have been tried under NRS 205.380, but the attorney generals have agreed that since there is a specific chapter under 425 relating to AFDC, there must be a separate fraud provision under that chapter, resulting in this change. He noted this is a deterrent to fraud and to individuals who think that they can take money from the State of Nevada.

Mr. Chaney felt that there must be a problem existing somewhere or someone giving false information if these people can get away with that much money without being caught. Mr. Martelle stated there were 40 cases prosecuted last year, the majority of which went for felony fraud. The test that Mr. Miller testified about is an administrative test by the federal government on a case sampling basis to test the administrative conformity of federal regulations and laws. In that type of situation, Nevada is doing the finest job in the nation. However, for individuals that intentionally set out to defraud the state, including state and federal governments, have 15 aka's, 5 social security numbers and have intentionally set up a deceptive network in order to defraud the State of Nevada. In those cases, Mr. Martelle stated he wanted the ability to come down on them as hard as possible. He pointed out that in cases where the state has been defrauded, his primary thrust is restitution. The District Attorney wants the prosecution. Mr. Martelle stated his division recommends probation, but as a stipulation of that, restitution to get the dollars back for the taxpayers. He noted that this is very different from an individual who unintentionally does not submit wage stubs. He stated that the division has to prove beyond any reason of doubt that the person has intentionally defrauded the state.

To Mr. Chaney's comments about a family having to separate in order to receive aid, Mr. Martelle stated it is a national requirement that one or both of the parents not be available or that incapacity exists. Mr. Chaney commented that is not the case in California. Mr. Martelle stated it was a requirement under the ADC program, but under the Unemployed Parents Program, unemployed parents are allowed to participate. He noted this is a very expensive program. He thought that in Nevada it would cost \$5 million to \$7 million a year for this program. He noted that many states have found the program extremely costly and riddled with fraud and abuse.

Mrs. Cafferata asked what the statute of limitations was on this. Mr. Furlong stated it complies with Chapter 11. Mr. Sader stated that in the case of a support order, the courts interpret a judgment of support as final each month. Therefore, if \$200 is to be received, the judgment is final when due. By state law 6 years are allowed in which to enforce a judgment. After that time, it has expired.

Chairman Stewart commented that with budget cuts, there are smaller portions allotted which must go to the hard pressed people. He did not see any difference in robbing a store of \$100 and cheating the government out of \$100. He recommended the adoption of the proposed amendments.

Mr. Sader moved DO PASS AB 158 AS AMENDED, seconded by Mr. Malone, and carried by the committee with Mr. Chaney voting nay.

SB 150: Replaces "and/or" with an appropriate term in Nevada Revised Statutes.

Chairman Stewart asked for action on SB 150, heard on March 11. Mr. Sader moved DO PASS SB 150, seconded by Miss Foley, and then unanimously carried by the committee, Mr. Chaney being absent.

AB 232: Clarifies age of and eliminates citizenship requirement for directors of corporation.

Chairman Stewart asked for action on AB 232, heard on March 11. Mr. Sader moved DO PASS AB 232, seconded by Mrs. Cafferata, and carried unanimously by the committee, Mr. Chaney being absent.

Chairman Stewart then stated that AB 178 had not yet been reported out of committee. He noted the committee needed to rescind its action so that it could take further testimony.

AB 178: Requires game wardens to enforce additional criminal statutes.

Mr. Malone moved RESCIND ACTION ON AB 178, seconded by Mrs. Cafferata, and carried unanimously by the committee, Mr. Chaney being absent.

Chairman Stewart asked for committee introduction of the following bills:

BDR 43-1247: Removes limitation on motor vehicles eligible for temporary permits.  
(AB 327)

Mr. Beyer moved for COMMITTEE INTRODUCTION of BDR 43-1247, seconded by Mr. Sader, and carried unanimously by the committee, Mr. Chaney being absent.

BDR 1-1152: Requires justice of peace to be resident of appropriate township and in certain townships, be attorney.  
(AB 328)

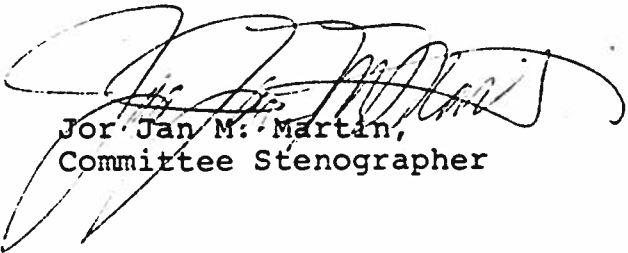
Mr. Price moved for COMMITTEE INTRODUCTION of BDR 1-1152, seconded by Mr. Malone, and carried unanimously by the committee, Mr. Chaney being absent.

BDR 14-800: Requires standard form to record convictions and permits use of form to prove prior convictions.  
(AB 336)

Mr. Malone moved for COMMITTEE INTRODUCTION of BDR 14-800, seconded by Mr. Sader, and carried unanimously by the committee, Mr. Chaney being absent.

There being no further business, the Chairman adjourned the meeting at 10:10 a.m.

Respectfully submitted,

  
Jor Jan M. Martin,  
Committee Stenographer

**61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION**

DATE: March 12, 1981

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

MOTION:

DO PASS      AMEND      INDEFINITELY POSTPONE XX  
RECONSIDER     

MOVED BY: Cafferata SECONDED BY: Malone

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	XX	—	—	—	—	—
Foley	XX	—	—	—	—	—
Beyer	ABSENT	—	—	—	—	—
Price	—	XX	—	—	—	—
Sader	XX	—	—	—	—	—
Stewart	XX	—	—	—	—	—
Chaney	ABSENT	—	—	—	—	—
Malone	XX	—	—	—	—	—
Cafferata	XX	—	—	—	—	—
Ham	XX	—	—	—	—	—
Banner	XX	—	—	—	—	—
TALLY:	<u>8</u>	<u>1</u>	—	—	—	—

ORIGINAL MOTION: Passed      Defeated      Withdrawn       
 AMENDED & PASSED      AMENDED & DEFEATED       
 AMENDED & PASSED      AMENDED & DEFEATED       
 INDEFINITELY POSTPONED XXX     

ATTACHED TO MINUTES OF March 12, 1981

**61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION**

**DATE:** March 12, 1981  
**SUBJECT:** AB 158: Revises statutes relating to aid to  
and support of dependent children.

**MOTION:**  
DO PASS XX AMEND XX INDEFINITELY POSTPONE \_\_\_\_\_  
RECONSIDER \_\_\_\_\_  
**MOVED BY:** Sader **SECONDED BY:** Malone

**AMENDMENT:**

**MOVED BY:** \_\_\_\_\_ **SECONDED BY:** \_\_\_\_\_  
**AMENDMENT:**

**MOVED BY:** \_\_\_\_\_ **SECONDED BY:** \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	—	—	—	—	—
Foley	<u>XX</u>	—	—	—	—	—
Beyer	<u>XX</u>	—	—	—	—	—
Price	<u>XX</u>	—	—	—	—	—
Sader	<u>XX</u>	—	—	—	—	—
Stewart	<u>XX</u>	—	—	—	—	—
Chaney	—	<u>XX</u>	—	—	—	—
Malone	<u>XX</u>	—	—	—	—	—
Cafferata	<u>XX</u>	—	—	—	—	—
Ham	<u>XX</u>	—	—	—	—	—
Banner	<u>XX</u>	—	—	—	—	—
<b>TALLY:</b>	<u>10</u>	<u>1</u>	—	—	—	—

**ORIGINAL MOTION:** Passed \_\_\_\_\_ Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_  
**AMENDED & PASSED** XX **AMENDED & DEFEATED** \_\_\_\_\_  
**AMENDED & PASSED** \_\_\_\_\_ **AMENDED & DEFEATED** \_\_\_\_\_

ATTACHED TO MINUTES OF March 12, 1981.

**61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION**

DATE: March 12, 1981  
 SUBJECT: SB 150: Replaces "and/or" with an appropriate term in Nevada Revised Statutes.

MOTION:  
 DO PASS XX AMEND \_\_\_\_\_ INDEFINITELY POSTPONE \_\_\_\_\_  
 RECONSIDER \_\_\_\_\_  
 MOVED BY: Sader SECONDED BY: Foley

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_  
 AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	---	---	---	---	---
Foley	<u>XX</u>	---	---	---	---	---
Beyer	<u>XX</u>	---	---	---	---	---
Price	<u>XX</u>	---	---	---	---	---
Sader	<u>XX</u>	---	---	---	---	---
Stewart	<u>XX</u>	---	---	---	---	---
Chaney	<u>ABSENT</u>	---	---	---	---	---
Malone	<u>XX</u>	---	---	---	---	---
Cafferata	<u>XX</u>	---	---	---	---	---
Ham	<u>XX</u>	---	---	---	---	---
Banner	<u>XX</u>	---	---	---	---	---
TALLY:	<u>10</u>	---	---	---	---	---

ORIGINAL MOTION: Passed XXX Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_

ATTACHED TO MINUTES OF March 12, 1981



61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION

DATE: March 12, 1981

SUBJECT: AB 232: Clarifies age of and eliminates citizenship requirement for directors of corporation.

MOTION:

DO PASS XX AMEND \_\_\_\_\_ INDEFINITELY POSTPONE \_\_\_\_\_  
 RECONSIDER \_\_\_\_\_

MOVED BY: Sader SECONDED BY: Cafferata

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	---	---	---	---	---
Foley	<u>XX</u>	---	---	---	---	---
Beyer	<u>XX</u>	---	---	---	---	---
Price	<u>XX</u>	---	---	---	---	---
Sader	<u>XX</u>	---	---	---	---	---
Stewart	<u>XX</u>	---	---	---	---	---
Chaney	<u>ABSENT</u>	---	---	---	---	---
Malone	<u>XX</u>	---	---	---	---	---
Cafferata	<u>XX</u>	---	---	---	---	---
Ham	<u>XX</u>	---	---	---	---	---
Banner	<u>XX</u>	---	---	---	---	---
TALLY:	<u>10</u>	---	---	---	---	---

ORIGINAL MOTION: Passed XX Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_

AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_

ATTACHED TO MINUTES OF March 12, 1981

61st NEVADA LEGISLATURE  
ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION

DATE: March 12, 1981

SUBJECT: AB 178: Requires game wardens to enforce additional criminal statutes.

MOTION:

DO PASS \_\_\_\_\_ AMEND \_\_\_\_\_ INDEFINITELY POSTPONE \_\_\_\_\_  
 RECONSIDER \_\_\_\_\_ RESCIND COMMITTEE ACTION XX

MOVED BY: Malone SECONDED BY: Cafferata

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

AMENDMENT:

MOVED BY: \_\_\_\_\_ SECONDED BY: \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	—	—	—	—	—
Foley	<u>XX</u>	—	—	—	—	—
Beyer	<u>XX</u>	—	—	—	—	—
Price	<u>XX</u>	—	—	—	—	—
Sader	<u>XX</u>	—	—	—	—	—
Stewart	<u>XX</u>	—	—	—	—	—
Chaney	<u>ABSENT</u>	—	—	—	—	—
Malone	<u>XX</u>	—	—	—	—	—
Cafferata	<u>XX</u>	—	—	—	—	—
Ham	<u>XX</u>	—	—	—	—	—
Banner	<u>XX</u>	—	—	—	—	—
TALLY:	<u>10</u>	—	—	—	—	—

ORIGINAL MOTION: Passed XXX Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_  
 AMENDED & PASSED \_\_\_\_\_ AMENDED & DEFEATED \_\_\_\_\_

ATTACHED TO MINUTES OF March 12, 1981

NEVADA MINING ASSOCIATION, INC.

ROOM 709 • ONE EAST FIRST STREET  
RENO, NEVADA 89505

ROBERT E. WARREN  
Executive Secretary  
W. HOWARD WINN  
Consultant

March 11, 1981

POST OFFICE BOX 2498  
TELEPHONE 323-8575

BOARD OF DIRECTORS

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Honorable Janson F. Stewart  
Chairman, Assembly Judiciary Committee  
Nevada State Legislature

Re: Assembly Bill 112 (Dini)- Limits exercise of eminent domain to take land in historic districts for use in mining or related activities.

\* \* \* \*

Dear Mr. Stewart, members of the committee:

During testimony by the Nevada Mining Association on Assembly Bill 112, I stated:

-- Assembly Bill 112 appears to be unconstitutional. The bill singles out the mining industry for restricted use or loss of the right of eminent domain within an historic district. But it permits other private interests - such as a logging company, a water company, or an agricultural operation - to exercise the right.

-- Assembly Bill 112 is redundant and unnecessary legislation. County authorities, i.e. planning commissions and boards of commissioners, have broad discretionary powers to place conditions and limitations upon or to deny outright the use for mining or other purposes of land and improvements within an historic district.

-- If a mining company were to acquire a parcel of land or a building by use of eminent domain, the mining company would still have to apply to the county authorities for a permit to use the land or alter or remove the building. This, of course, can be denied. Thus a prudent mining company would seek approval of authorities prior to exercise of eminent domain. We can properly presume that such approval would be granted only after the county authorities have stipulated restrictions to safeguard the historical values or have decided such values do not need protection

Mr. Chairman, I have since asked legal counsel to offer citations to demonstrate (or deny) the validity of my testimony. The law firms are:

- Woodburn, Wedge, Blakey and Jeppson, acting on behalf of the Nevada Mining Association; and
- Lionel, Sawyer and Collins, acting on behalf of United Mining Corp. of Virginia City.

A summary of their legal findings follow:  
(Citations available upon request)

- (1) AB 112 cannot pass constitutional muster. The proposed law is special legislation which violates Article 4, Section 21 of the Nevada Constitution.

Special legislation is "one which ... imposes special burdens, or confers peculiar privileges upon one or more persons in no wise distinguished from others in the same category...."

- (2) AB 112 violates the separation of powers doctrine mandated by Article 3, Section 1 of the Nevada Constitution.

In making a determination whether eminent domain should be exercised, the Comstock Historic District Commission or the Board of County Commissioners would be impermissibly exercising a judicial function. Whether a use is either a public use or the most necessary public use as between competing public uses is a justifiable issue presenting a legal question which must be determined by the judicial branch of government. Certainly placing such burden upon the executive branch (an historic or county commission) will expose the decision making process to intense and persuasive political and economic pressures during the heat of public controversy. This may not result in a reasoned and dispassionate decision by the executive branch.

- (3) County authorities have total control over use of land and improvements within the Comstock Historic District (and such historic districts as may be created in other counties). County authorities, therefore, presently can protect (with advice of historic district commissions) all historic values and buildings from private activities within the district.

Examples of agency control:

- (a) Special use permit recommendation by the Lyon and Storey County Planning Commissions.

Mr. Janson F. Stewart

-3-

March 11, 1981

(b) Approval of Special Use Permit by Board of County Commissioners of Lyon and Storey County.

--"Any person seeking a Special Use permit shall file a request with the County Building Inspector, together with evidence showing that the intended use is consistent with the public health, convenience, safety, and welfare of the county, and that such use will not result in material damage or prejudice to another property in the vicinity."  
- Storey County ordinance.

(c) Building permit from the Storey County Architectural Commission; and

(d) Certificate of Appropriateness from the Comstock Historic District Commission.

-- Before any structure can be erected, reconstructed, altered, restored, moved, or demolished, a Certificate of Appropriateness must be obtained from the Comstock Historic District Commission.

Mr. Chairman, the Nevada Mining Association respectfully suggests that existing county agencies have the responsibility and full authority to protect all historical values within the famed Comstock Lode mining district of Lyon and Storey Counties. Assemblyman Joseph Dini, author of AB 112, has stated this is his sole objective - he does not wish to place an unnecessary and costly regulatory burden upon the mining industry or to inhibit the revival of future mining in old mining camps and districts within Nevada.

AB 112 is redundant and unnecessary. It should not, therefore, be added to the rapidly growing mass of local, state and federal regulations and controls which now confront the mining industry.

Sincerely,

*Robert E. Warren*  
Robert E. Warren

ASSEMBLY BILL NO. 157 - ASSEMBLYMEN COULTER, BARENGO, HAYES, FOLEY, THOMPSON, BANNER, SADER, PRENGAMAN, WESTALL, JEFFREY, BREMNER, PRICE, HORN, RUSK AND GLOVER.

February 13, 1981

Referred to Committee on Judiciary

SUMMARY - Requires report of abuse and neglect of older person and provides penalty therefor.  
(BDR 16-697)

FISCAL NOTE: Effect on Local Government: Yes  
Effect on the State or on Industrial Insurance: Yes

Explanation - Matter underlined is new; matter in parenthesis () is to be omitted.

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AN ACT relating to crimes; requiring the report of the abuse or neglect of an older person; providing a penalty; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly do enact as follow:

SECTION 1. Chapter 200 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

SEC. 2. It is the policy of this state to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in relation to preventing, identifying and treating the abuse and neglect of older persons, through the complete reporting of the abuse and neglect of older persons and investigation of such reports by a social agency and the provision of services where needed, to protect the best interests of the older person, to offer protective services in order to prevent any further harm to the person, to preserve family life whenever possible and to provide the person with a temporary or permanent safe environment when necessary.

SEC. 3. As used in sections 2 to 11, inclusive, of this act, unless the context otherwise requires:

1. "Abuse and neglect of an older person" means the non-accidental physical or mental injury, sexual abuse, negligent treatment or <sup>(mild)</sup> maltreatment of an older person [by a person who is responsible for the older person's welfare] under circumstances which indicate that the older person's health or welfare is harmed or threatened thereby.

2. "Older person" means a person who is 62 years of age or older.

SEC. 4. 1. A report must be made <sup>promptly</sup> within 3 days to the local office of the welfare division of the department of human resources or to any police department or sheriff's office or the aging services division of the department of human resources when there is reason to believe that an older person has been abused or neglected. If the report of abuse or neglect involves an act or omission of the welfare division or a law enforcement agency, the report must be made to an agency other than the one alleged to have committed the act or omission. Upon receipt of a report concerning the possible abuse or neglect of an older person, the welfare division or law enforcement agency (shall investigate within 3 working days. The law enforcement agency) must immediately refer the report to the aging services division. The aging services division shall investigate the report within 3 working days of the date it receives it. An older person may not be removed from his residence or the residence of his guardian by a law enforcement agency unless, in the judgment of the (reporting physician or law enforcement agency) aging services division, immediate removal is essential to protect the older person from further injury or abuse.

2. Reports must be made by:

- (a) Every physician, dentist, chiropractor, optometrist, resident and intern licensed in this state who examines, attends or treats an older person who appears to have been abused or neglected.
- (b) The superintendent, manager or other person in charge of a hospital or similar institution, upon notification, which must be given by every physician who has attended an older person who appears to have been abused or neglected pursuant to his performance of services as a member of the staff of the hospital or institution.
- (c) Every professional or practical nurse, physician's assistant, psychologist and <sup>ambulance</sup> advanced emergency medical technician-ambulance licensed or certified to practice in this state, who examines, attends or treats an older person who appears to have been neglected or abused.
- (d) Every (attorney) clergyman or social worker.
- (e) Every person who maintains or is employed by a group care facility.
- (f) Every attorney, unless he has acquired the knowledge of abuse or neglect through representation of a person who is or may be accused of said abuse or neglect.

3. A report may be filed by any other person.

SEC. 5. 1. The report required pursuant to section 4 of this act may be made orally, by telephone or otherwise. The person who makes the report must reduce it to writing as soon as possible.

2. The report must contain the following information, when possible:

- (a) The name and address of the older person;

- (b) The name and address of the person responsible for his care;
- (c) The nature and extent of the abuse or neglect; and
- (d) Any evidence of previous injuries.

SEC. 6. The (welfare division of the department of human resources) aging services division shall (:)

[(a) File with the aging services division of the department of human resources a copy of each report of abuse or neglect of an older person received by or referred to them.]

[(b) Investigate each report of neglect or abuse of an older person which [was] received by or referred to it [by a law enforcement agency to determine the circumstances surrounding the injury, its cause and the person responsible for the injury.] to determine:

[(c) Report to the aging services division upon completion of the investigation.]

(a) Identity and demographic information on the older person alleged to have been abused or neglected, and the person allegedly responsible for the abuse or neglect.

(b) The facts of the alleged abuse or neglect, including the date and type of abuse or neglect, the manner in which the abuse was inflicted and the severity of the injuries.

[(d) Upon disposition of the case, report the nature of the disposition to the aging services division and the referring law enforcement agency, if any.]

2. If the [welfare] aging services division determines that further action is necessary to protect the person who is the subject of the report, as well as any person under the same care who may be in danger of abuse or neglect, the division may refer the case to the district attorney for criminal prosecution.

SEC. 7. 1. Reports made pursuant to sections 4 and 5 of this act, as well as all records concerning such reports and investigations thereof, are confidential.

2. Any person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse and neglect of older persons, except:

(a) Pursuant to criminal prosecution under the provisions of sections 3 to 11, inclusive, of this act; and

(b) To persons or agencies enumerated in subsection 3 of this section, is guilty of a misdemeanor.

3. Data or information concerning the reports and investigations of the abuse and neglect of an older person is available only to:



(a) A physician who has in his care an older person who he reasonably believes may have been abused or neglected;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of:

(1) The older person; or

(2) The guardian or other person who is responsible for the welfare of the older person.

(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse and neglect of the older person;

(d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person, if the identity of the person who was responsible for reporting the alleged abuse and neglect to the public agency is protected and the legal guardian is not the person suspected of the abuse or neglect; or

(i) The person named in the report as allegedly being abused or neglected, if that person is not legally incompetent.

SEC. 8. Immunity from civil or criminal liability extends to every person participating in good faith in:

1. The making of a report pursuant to sections 4 and 5 of this act;

2. The instituting of actions pursuant to section 6 of this act; or

3. A judicial proceeding resulting therefrom.

SEC. 9. In any proceeding resulting from a report made or action taken pursuant to sections 3 to 11, inclusive, of this act or in any proceeding where the report of its contents or any other fact related thereto or to the condition of the older person who is the subject of the report may not be excluded on the ground that the matter would otherwise be privileged against disclosure under chapter 49 of NRS, except as provided in Section 4, (2) (f).

SEC. 10. Any person who knowingly and willfully violates sections [3 to 11, inclusive,] <sup>4, 5, 6, 7, 8, 9, 10, and 11</sup> of this act is guilty of a misdemeanor.

SEC. 11. 1. Any adult person who willfully causes or permits an older person to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or who willfully causes or permits an older person to be placed in a situation where the person may suffer physical pain or mental suffering as the result of abuse or neglect is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse, neglect or danger.

2. A person who violates any provision of subsection 1, if substantial bodily or mental harm results to the older person, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years.

3. As used in this section, "permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care and custody of an older person.

Further amend Sec. 7

4. If the person reported to have abused or neglected an older person is a licensed health care professional, a copy of the report must be sent to the board or agency responsible for issuing his license.