

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

MEMBERS ABSENT: Mr. Chaney

GUESTS PRESENT: Colleen Lindstrom, For Kids Sake
George Lindstrom, For Kids Sake
John H. Sarb, We Can, Inc.
Bruce Laxalt, Washoe County D.A.
Penny Carter, her child
Lynette Wilhelm, her children

Chairman Stewart called the meeting to order at 8:10 a.m. and asked for testimony first on AB 241.

AB 241: Provides procedure for return of child where petitioner for child custody decree acts wrongfully.

Assemblyman Bob Sader, District 32, the prime sponsor of AB 241, stated that this bill would be part of the Uniform Child Custody Jurisdiction Act, patterned after a model act and passed to attempt to deal with the problem of child snatching and transportation of children across state lines. This bill is an attempt to give the act more teeth. He outlined the intent of the bill as follows:

Section 1: If a person comes into Nevada and attempts to get a decree of custody in court and it is ascertained that this individual has snatched the child from another state, the court is required to refuse to take jurisdiction. This state will not condone the snatching of children.

Section 2: This section involves modification of a decree under the same circumstances as Section 1.

The additional language that AB 241 proposes provides an additional mechanism for the district judge which does not exist at the present. This language would require that the judge notify the parent in the other state that the child is here and then the judge can do a number of things as stated in par-

agraphs 3 and 4. It is not enough for this state to simply refuse jurisdiction, but there should be provisions for taking affirmative action to rectify the situation.

Mr. Sader noted that there may be a problem with the drafting, possibly requiring an amendment after discussion with the bill drafter.

Mr. Malone questioned the use of the term "reasonable time". Mr. Sader noted that is not defined and that the language comes from the California statute which follows the model act. He felt it should be changed to state a time limit since there is not a concise definition to the term "reasonable time".

Mr. Malone commented about a case where a man had snatched his children and taken them from state to state in an effort to avoid being apprehended through the court system. At some point in time the wife eventually went broke trying to run them down. He asked Mr. Sader if he knew how many states belong to this act. Mr. Sader did not, but stated this act is receiving a lot of popularity.

Since there was no further testimony on AB 241, Chairman Stewart asked for testimony on AB 246.

AB 246: Adds to provisions for assignment of wages of responsible parent for child support.

Chairman Stewart noted that the Senate has recently processed a similar bill. He stated there would be a hearing on both this bill and the Senate bill in which the two bills would be married together.

Lynette Wilhelm stated she just appeared in support of the bill since she was the mother of two children and was having difficulty in obtaining the ordered child support from her ex-husband.

Mr. Price asked if there were currently procedures for attaching wages. Chairman Stewart explained that the court has to award a judgment on the arrearages before property can be attached, whereas this bill would allow for the initial attachment of wages.

Mrs. Wilhelm stated she had been to the Washoe D.A., Carson City D.A. and the Douglas County D.A. without any success.

Penny Carter asked if this bill would go to ex-husbands out of state. Chairman Stewart did not think it would be automatically applicable to an out of state parent.

Since there was no further testimony on AB 246, Chairman Stewart asked for testimony on AB 269.

AB 269: Permits district attorney to refer person suspected of child abuse or neglect to social agency for treatment or counseling.

Vice Chairman Sader noted that the reason AB 269 was being heard and not on the agenda was because he was misinformed. He stated he would save his testimony for the later hearing of the bill.

George and Colleen Lindstrom, of For Kids Sake of Nevada, appeared on behalf of AB 269. Mr. Lindstrom stated his organization was all volunteer, privately funded, 24 hour hotline for child abuse in the Reno/Carson City area. He stated that their interest in AB 269 is that presently the way the statutes read, a party can be arrested for child abuse and only after going through the court system be referred for counseling at the judge's discretion. This bill would allow a district attorney to review the facts in the case and determine that the person involved could be helped by professional counseling, without going through the court system, by agreement with the attorney of the accused and with the concurrence of the people to be doing the counseling. The judge could defer the court proceedings by written agreement with the defendant into a counseling situation at the cost of the defendant.

Mr. Lindstrom stated that one section of the bill is taken out of a California statute. California has been using the diversion bill successfully and heavily in sexual abuse cases where the abuser needs to be pulled out of the family situation for counseling, and then reuniting the family as quickly as possible with close supervision. He stated that California compacts with the abuser for a period of two years, with the district attorney having firm control of the counseling of the abuser and the entire family. He added that it is also used in all other types of abuse.

Mr. Lindstrom felt that at line 3, Section 1(1), where it reads "the district attorney may refer a person who is suspected of violating a provision of NRS 200.508 to an appropriate agency of the state or county for . . . ", the words "or an appropriate non-governmental agency" should be added after "or county". Mr. Lindstrom said his organization is not geared at this time to handle counseling, but there are other groups in the state which are privately funded non-governmental agencies that have psychiatric counseling available and would be able to relieve the workload of the Welfare Department people in the family counseling end of it.

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Mr. Price asked if For Kids Sake was a non-profit organization. Mr. Lindstrom stated it is, with his wife being the unpaid full-time director, working 80 hours a week in addition to Mr. Lindstrom's 40 to 45 hours per week. He indicated that all the volunteers who man the 24 hour hotline work for free and pay the expenses for the telephones, printing, etc.

Mr. Sader asked if For Kids Sake had been successful at receiving funding. Mr. Lindstrom stated they were about to hold their first fund-raiser, sponsored by Arby's, to be held on April 11, with Arby's matching whatever public funds are raised during that day. He indicated there would be publicity, including on-site radio broadcasting. He added that there will be another one held on June 9 through 13, with family events during the week and culminating in a 90 minute show at the Coliseum in Reno. First National Bank has agreed to sponsor and underwrite all the costs of the program. Mr. Lindstrom stated all the funds would be used to pay for costs such as phones and possibly professional counseling if that can be developed during the year.

Mr. Stewart asked if the hotline was particularly for child abuse problems. Mr. Lindstrom stated child abuse is the only thing they address, receiving calls from both the abusers and the children being abused.

Mr. Stewart asked if Mr. Lindstrom anticipated that there would be some cases the district attorney felt so severe that they should be prosecuted. Mr. Lindstrom stated he did. He indicated that in Sacramento County only about 70% of the people considered for diversion are taken out of the judicial system and put into this type of program. If, in the opinion of the district attorney, and the psychiatric people, an individual might be helped by the diversion, they are put into the program. He stated they have had about a 90% success ratio in the ones they have selected.

Colleen Lindstrom read a letter from Lawrence C. Dennison, Lieutenant, Reno Police Department, attached as EXHIBIT A. Also attached as EXHIBITS B and C are the Sacramento County Proposed Diversion Contract and the Description of Possible Agency Roles in Diversion Process.

John Sard, Director of WE CAN, a community based child abuse and neglect prevention and treatment project in Las Vegas, stated he is in favor of AB 269 and requested similar legislation be drafted. He felt the important aspect of this bill is that it gets the district attorney and treatment providers communicating. He stated that in present times too often these people do not know what the others are doing and are sometimes doing opposite things. He indicated it was his intent to forge a

link between the district attorney's office and treatment providers. Mr. Sard stated the only negative comment he has received in reference to the bill is the concern by some treatment providers that the district attorney is going to be able to tell them which cases they must treat. He felt it is imperative that the treatment provider be able to say whether they can or cannot handle certain cases, and that it is equally imperative that the district attorney be able to prosecute any case that he deems fit. Mr. Sard felt the language with regard to the district attorney is clear and would not be opposed to language that makes it equally clear that treatment providers could choose whether or not to provide treatment for a given client.

Mr. Sard stated that a big advantage of AB 269 is that it can be a tremendous cost savings. As an example, rather than removing an abused child from a home at the state's expense, the abuser should be required to move out at his expense. He stated that currently the State pays \$58 per day for anywhere from weeks to years for victims who have been removed from their homes and feel punished because they are out of their homes.

Bruce Laxalt of the Washoe County District Attorney's Office, stated his office and the County entirely support the proposition that in child abuse cases, the treatment of the family unit is very important. With respect to AB 269, he indicated there were a few problems which could be cleared up.

First, he stated it was their legal position that the district attorney already has the implicit power, with an agreement on behalf of a defendant to waive his right to a speedy trial, to defer all prosecution for a period of one or two years and to place that defendant in a program. He indicated that this had been done in cases where it seemed appropriate.

Second, he indicated that treatment of this sort in a child abuse case is almost always the best alternative. It is a very rare case where the abuser is "thrown away"; very few child abusers actually go to jail. He stated that it was the feeling of his office that the treatment should be done after a conviction has been entered on the record. There needs to be a record on the national computer system of the offense and incident. If a person is deferred in a California pre-plea and moves to Illinois and repeats the incident, the police need to be informed very quickly if it has happened before or is an accident.

Mr. Laxalt indicated that the supervision and the treatment might be better supervised by the Department of Parole and Probation. Under the bill as it stands now, he was not sure who would actually supervise treatment and how the D.A. would know if a person was complying with the treatment program. Under

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Parole and Probation, the court or D.A.'s office would be getting periodic reports of non-compliance. It was his recommendation that the bill be amended to a post-conviction alternative, leaving the district attorneys with the power to divert some special cases on a pre-plea basis. He suggested that on line 3 of the bill at Section 1, it should be amended to read "a district attorney may, in special circumstances, refer a person . . ." which makes the assumption that a prosecution is the best alternative in most cases, however, in some unusual cases a prosecutor may defer. He commented that if that amendment is made, Section 2(b) is no longer necessary (lines 13 and 14).

Mr. Laxalt stated that at the suggestion of Mr. Lundstrom, he contacted Neil Anderson, Chief of the Sexual and Child Abuse Section of the Sacramento County District Attorney's Office. They actually do divert a fair number of people, but by far the most are in the incestuous type situation. Diversion is not available in a felony child abuse in that County. It is available for misdemeanor violence related child abuse, although not used that much. He stated they have had some very good success in the sexual abuse areas. Mr. Laxalt stated Mr. Anderson pointed out that it is very important to place total discretion within the district attorney's office so that defendants do not feel they have a right to apply for this and courts do not feel that they can order this over the objection of the district attorney.

Mr. Beyer asked what agencies currently provide counseling treatment. Mr. Laxalt mentioned Sierra Counseling and Northern Nevada Mental Health. Mr. Lindstrom stated that COPE has counselors available as well as the Welfare agencies. He indicated that COPE is a non-profit organization which receives some government funding.

Chairman Stewart asked if a defendant could be referred for counseling during prosecution. Mr. Laxalt stated that at the present time that would be up to the defendant, but during that period of time the abuser is generally denying the existence of a problem.

On a question from Mr. Price, Mr. Laxalt stated that, most commonly, once a conviction is made either through a plea or through trial, the Washoe County D.A.'s Office will recommend that as a condition of probation, the defendant undergo counseling. He indicated that they do not generally seek prison or jail time in these cases. He added that in one case he was aware of, in a pre-plea situation, the district attorney's office agreed that if the defendant would go to counseling for one year with no problems during that time, all charges would be dismissed.

Mr. Price commented that it was his understanding of the bill as it presently reads, that a person suspected of child abuse could be referred to a treatment program without being charged on the record. He felt that if the person at least had charges filed and then be deferred, this would solve the problem and give more leeway than trying to solve it without having any type of a permanent record.

Mr. Laxalt pointed out that if another agency can determine through the NCIC that a person has had a charge, conviction and treatment program for child abuse in the past, they can better deal with any future problems.

Mr. Sader asked if the NCIC shows the arrest record. Mr. Laxalt stated it did. Mr. Sader then commented that as long as the person was arrested, although they may have been deferred at that point, their record would show that they had been suspected of this activity. Mr. Laxalt agreed that it would show a child abuse arrest with no disposition. Mr. Sader then suggested that if the main purpose to have a conviction is that it show on their record to flag another law enforcement agency, if they were at least arrested the purpose would have been achieved. Mr. Laxalt stated it would not be confirmed as with a conviction. He indicated that the other benefit of a conviction is to having Parole and Probation actually supervise the program and enforce it.

Mr. Stewart asked if Mr. Laxalt felt that if there were a diversion concept to abuse, people would feel that it is not really a very serious crime. Mr. Laxalt agreed that might occur. He added that child abuse trials generally get a lot of press and a conviction of first or second degree murder can only have a very sobering effect upon other people considering counseling.

Mr. Price asked how this bill would apply to serious abuse not resulting in death. Mr. Laxalt stated it was his understanding in California that there is no diversion if there is substantial bodily harm and a felony situation. He pointed out that in the cases where the district attorney and welfare people know there has been abuse but cannot prove it, pre-plea diversions are useful.

To Mrs. Ham's question, Mr. Laxalt felt that this bill does apply to felony abuse. He stated that as Nevada law reads, felony child abuse is when the child actually suffers bodily harm to a substantial degree, defined by the courts as prolonged pain or suffering or a great risk of death. As the bill is currently drafted, the district attorney would have the power to defer those types of cases. For clarification to Chairman Stewart, child abuse is a

gross misdemeanor, unless the child suffers bodily harm to a substantial degree. In the case where abuse occurs in conjunction with another crime such as rape, etc., then it is a felony as defined by that other crime.

Chairman Stewart asked if Mr. Laxalt's office was currently using pre-plea referrals. Mr. Laxalt stated there was one that he is aware of, but as a rule, his office seeks and obtains probation with one of the conditions of probation being that the defendant undergo counseling for child abuse under the authority of Parole and Probation. He did not know where Parole and Probation refers the individuals to for the counseling.

Since there was no further testimony on AB 269, Chairman Stewart stated there would be a second hearing on the bill.

As there was no further business, the Chairman adjourned the meeting at 9:10 a.m.

Respectfully submitted,



Jor Jan M. Martin
Committee Stenographer

EXHIBIT A

March 12, 1981

Assembly Committee On Judiciary

RE: Assembly Bill No. 269

Gentlemen:

It had been my intention to appear on March 16th, 1981, for the purpose of testifying in behalf of this proposed legislation.

Unfortunately, a personal tragedy has prevented my being there to share with you thoughts concerning the legislation itself.

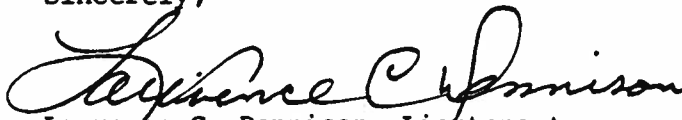
I am respectfully submitting this letter in lieu of that personal testimony. Having been involved in law-enforcement for eighteen (18) plus years, with the past four (4) intimately having been involved in youth services activities, both from the law-enforcement aspect and more particularly from the Community Services aspect, it has become abundantly clear that unless the cycle of abuse can be broken through treating both victims in the abuse (the abuser and the one abused) from a humanitarian standpoint, in addition to or instead of the retribution standpoint traditionally held by some public agencies, abuse perpetuates itself.

Having reviewed A.B.269, I find it personally and professionally refreshing to know that treatment and counseling may be on the horizon where abuse is involved. I firmly believe that there are those who may not readily be rehabilitated, and both deserve and require incarceration. My experience has shown that that number is limited and in many instances rehabilitation of the offender and habilitation of the victim may well be a more positive and cost-effective reality.

The concept offered here tends to be almost alien in law-enforcement. However, when dealing in the welfare of children, that welfare must be kept uppermost in priority and necessitates novel approaches to complex problems.

Please feel free to contact me if I may be of any further service, particularly with reference to this type of positive legislation.

Sincerely,


Lawrence C. Dennison, Lieutenant
Renō Police Department

LCD/dsd



DISTRICT ATTORNEY
SACRAMENTO COUNTY

EXHIBIT B

P.O. Box 749 • 901 G Street • Sacramento, California 95804
(916) 444-6520

HERB JACKSON
District Attorney

L. ANTHONY WHITE
Chief Deputy

Dear Mr. _____

I have carefully reviewed Sacramento _____ Report Number _____ and the accompanying request for an arrest warrant charging you with violations of Penal Code Sections _____.

While I have concluded that there is a factual basis for prosecution, it nevertheless is my judgment that the interests of justice will be adequately served by your participation in a pre-trial diversion program pursuant to Penal Code Section 273ab in lieu of any felony prosecution. Accordingly, the Sacramento County District Attorney's Office does hereby offer and stipulate to forego any criminal prosecution whatsoever regarding any conduct by you against _____ that occurred prior to today's date, upon the following terms and conditions:

1. You must consult with an attorney with whom you should review this document and each of you sign, date and return (by _____) the duplicate original letter; your own signature must be notarized by a notary public after showing proper identification; your signature and the signature of legal counsel will thereby indicate an acceptance of the diversion program and constitute a waiver of time for trial from today's date until the time of the resumption, if any, of criminal proceedings, said criminal proceedings never to be resumed if the below enumerated conditions are successfully concluded and completed.
2. The period of diversion shall commence on the date you affix your signature to this letter and shall run for a period of two (2) years from said date. The Sacramento Child Sexual Abuse Treatment Program (S.C.S.A.T.P.) may terminate the requirement that you participate in S.C.S.A.T.P. at any time after a period

of one year, provided you have made adequate gains from full participation in the program during the preceeding one year.

3. During the period of the diversion program you do not commit any criminal offenses involving sexual conduct against children or members of your family.
4. You do participate in S.C.S.A.T.P. by regular attendance and full participation at the meetings and sessions of that group, pursuant to the schedule established by S.C.S.A.T.P., for a period of two (2) years from the date of your signature, or until terminated by S.C.S.A.T.P., whichever is shorter.
5. If directed and for the period so specified by S.C.S.A.T.P., you shall not reside in the same residence as _____ during this period of diversion.
6. Unless personally approved by S.C.S.A.T.P., you shall have no visits with _____ during this period of diversion, unless there is also present a responsible adult who has been previously approved by S.C.S.A.T.P.
7. You do obtain and maintain psychiatric or psychological counseling by a counselor of your choice as approved and directed by S.C.S.A.T.P. during the period of diversion.
8. You acknowledge, without reservations of any sort, by your signature on this document that you are responsible for sexual acts with _____ including _____ during the years _____ in the County of Sacramento.
- 9.

If you do agree to fulfill the above conditions, the Sacramento County District Attorney's Office does further stipulate and promise as follows:

- A. Nothing said or written by you during the two (2) year period of diversion and in the response to the fulfillment of the terms of said diversion shall be used against you in any manner whatsoever in the event prosecution of criminal charges in this case is undertaken against you for any crimes, whenever committed, prior to the date of the commencement of the present diversion program.

- B. Neither the Sacramento County District Attorney's Office nor any of its deputies, investigators, employees, nor anyone at the request or suggestion of the previously mentioned, shall request, discuss, read or inform themselves in any manner whatsoever of any statements or documents which pertain to your participation in the S.C.S.A.T.P. as outlined in paragraph 4 above, except to verify your regular attendance and participation at the meetings and sessions of said group.

- C. Upon the termination of the two (2) year period of diversion, or as soon thereafter as reasonably practical, the Sacramento County District Attorney's Office will communicate in writing to you, upon your written request, indicating that you have successfully fulfilled the terms of diversion as outlined in this letter and that the Sacramento County District Attorney's Office will at no time in the future institute criminal proceedings against you based upon the alleged conduct or any such conduct by you against _____ which occurred prior to the date of this letter and that the Sacramento County District Attorney's Office is in fact closing its file in this case.

Very truly yours

HERB JACKSON
District Attorney

Deputy District Attorney

DATE

Counsel for

DATE

EXHIBIT C

**THIS EXHIBIT IS MISSING FROM BOTH THE ORIGINAL
MINUTES AND THE MICROFICHE.**