

Lehman

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: Gary Wolff, Nevada Highway Patrol
Steve Robinson, Department of Prisons
Judge Donald M. Mosley, LV Muni Courts
Enrico Togneri, Washoe County Sheriff,
Crime Lab
S. Morrow, Nevada Appeal

Chairman Stewart called the meeting to order at 8:05 a.m. and asked for testimony first on AB 205.

AB 205: Fills gap and makes technical corrections in statute on registration of convicts.

Chairman Stewart asked Frank Daykin to explain the bill and reminded the committee that this bill was a section amended out of SB 112.

Mr. Daykin stated that this bill amends the session laws of the last session to ratify and make the technical correction that Section 6 of Chapter 524 had to become effective at 12:01 instead of 12:00, and read as a modification of the earlier enacted statute. It also ratifies the specification in NRS of the effective date, March 15, 1955, of the original statute. Then, with NRS ratified, Section 1 of the bill makes the change to fill the gap by specifying "any person who before, on or after March 15, 1955. . .", just in case there is someone who may have been convicted on that date of some felony.

Mr. Daykin explained that the reason this amendment had to be handled separately is that it makes a substantive change in NRS.

Mrs. Cafferata asked about the wording on page 2, lines 45 and 50, and page 3, line 14, and questioned why the word "on" does not appear there as well. Mr. Daykin stated that it does not appear in NRS now, explaining that what is in the printed text of NRS must be ratified first and then one minute later it is amended.

Mrs. Ham commented that a column written by George Franklin accuses the legislators of adding the date of March 15, 1955 for the sake of somebody who was convicted on that date. Mr. Daykin indicated that Mr. Franklin knew that March 15, 1955 was the date on which Governor Russell signed the original statute which provides for the registration of convicted offenders and stated the date was not selected out of thin air.

Mr. Price added that Mr. Franklin indicated that what had actually been voted on by the Legislature and what actually finally appeared in the statutes were different. Mr. Daykin stated that is true and is routine because the Legislature enacts from time to time statutes which say before, or most frequently, on or after the effective date of this act, and the act is effective on passage and approval. Routinely, when that occurs, the actual date of passage and approval is inserted so that when a person reads NRS he does not have to refer to the session law to find out the date the Governor signed it.

Mrs. Ham briefly reiterated Mr. Daykin's previous explanations of the bill to be sure that she had an accurate understanding of the reasons. Chairman Stewart did likewise in the event he had to explain the bill on the Floor.

In summation, Mr. Daykin stated this is the technique used since 1959 in correcting multiple amendments. Each amendment ought to amend the law as enacted by the most recent change. If there are two effective at the same instant, neither can be doing that so one is postponed one minute. He stated they used to be postponed one day, which eventually created statutes that were not effective until July 4, at which point the technique of using the one minute interval was developed.

Since there was no further discussion or testimony, Chairman Stewart proceeded to hear AB 227.

AB 227: Requires arrested person to pay costs of positive test for alcohol or controlled substance.

Gary Wolff of the Nevada Highway Patrol, stated the support of the Highway Patrol for AB 227. He gave the following figures for the cost of blood alcohol and drug screen tests: Elko - \$27 for each blood alcohol; Southern Nevada - \$16 (blood alcohol) and \$40 (drug screen); Reno - \$18.25 (blood alcohol) and \$50 (drug screen). Mr. Wolff stated it is the position of the Highway Patrol that if people are going to be drunk on the highways, causing harm and injury to others, they should pay more for their activities on the highway.

To Mr. Sader's question, Mr. Wolff explained that a drug screen is a test used to determine the presence of amphetamines or barbiturates in the blood. Mr. Sader asked if Mr. Wolff had the total cost figures on these types of tests, to which Mr. Wolff responded he did not.

Mrs. Ham asked where these tests were conducted. Mr. Wolff stated in Southern Nevada, Reno and Carson City they are done in hospitals and in Elko they are done in a clinic, which accelerates their costs.

Mrs. Cafferata asked what the effect of this bill would be if those tests came out negative. Mr. Wolff and Mr. Stewart indicated that the bill went to those arrested and have a sufficient amount of alcohol for the presumption. Mrs. Cafferata then asked if the drug screens indicated that a person was an addict. Mr. Wolff felt the intent of the bill is if in fact they do have a presumptive level within their system, they have to pay for the tests.

Mrs. Ham wondered if the ACLU might object by saying that a person can't be forced to pay for a test they did not request. Mr. Malone stated the individual must volunteer to have the test done or have their license suspended.

Mr. Sader assumed that the section referring to a lien contemplated the holding of personal property confiscated at the time of arrest until the test was paid for. Mr. Wolff did not know how that would be done, but stated that it was his opinion on reading the bill that it would be part of a punitive action where the judge would fine the individual, plus the cost of the tests. He understood the concept to be that the taxpayers would not be burdened by the cost of people continually drinking and driving.

Mr. Sader pointed out that he thought the lien section gave the Highway Patrol or other law enforcement agencies the ability to confiscate the person's personal property in possession at the time, including the car. He felt that was good.

Mr. Stewart commented that the problem would then become how to foreclose.

Mr. Beyer asked at line 8 why the required blood alcohol content was not included in the language of the bill rather than the presumption. Mr. Wolff commented that the presumption levels are indicated in the law as .05 is not a presumption and .10 is the presumptive level. Mr. Beyer again asked why the bill did not just state that level. Chairman Stewart noted that the bill does not speak to a conviction, but only to the presumption of intoxication.

Mr. Price thought that presumption might go to the fact that alcohol and drug effects are sometimes different due to the weight of an individual and other factors, and that by defining that level too tightly, lawsuits could arise over whether or not the tests were conducted properly and the equipment was functioning properly. He gave an example of an individual who was tested three times before a reading appeared.

Mr. Price asked what would happen if the individual's case was dismissed or the charge reduced. Mr. Stewart understood the intent of the bill to be that an individual presumed under the influence of drugs or alcohol would pay for the tests whether or not he was convicted or charged.

Mrs. Cafferata asked who was paying for the tests at the present. Mr. Wolff indicated they were paid by whatever entity had jurisdiction. Mr. Malone commented that the cost to the taxpayer has got to be exorbitant based upon Mr. Wolff's figures since everyone arrested is given the option of taking the tests and about 95% agree to the testing.

Mr. Sader asked if Las Vegas used the breathalyzer, to which Mr. Malone replied the blood alcohol test was used primarily due to the fact that is most requested by the individuals.

Mr. Wolff pointed out that in the Reno office they have a machine called an intoxalyzer, which costs around \$4,000, and the cost of submitting the samples used to test the machine cost the Highway Patrol, and the solutions have to be changed about every 10 days, making maintenance of this equipment expensive.

Mr. Chaney felt it was improper to expect individuals to pay for the instruments the police use, and did not like the idea of a car being confiscated if the individual did not have the money to pay for tests.

Enrico Togneri, Lab Director, Washoe County Sheriff's Crime Lab, stated his office was in favor of AB 227. He felt it was good to have the people responsible for the testing program pay for the cost of the tests. He noted that a similar bill has been in effect in California for two years with excellent results. He noted that this bill has no provisions for collecting the funds, and added that California tacks on a \$35 fine to the drunk driving fine, directly earmarked for a fund which is released to the county and local agencies to pay for the testing program. He suggested the committee might consider something of that nature rather than putting a lien on a car.

Miss Foley commented that assessing a fine of that nature would mean the individual would not pay unless convicted. Mr. Togneri indicated this type of fine was also assessed by California on charges which might come down from a drunk driving conviction such as reckless driving and agreed that it was tied to a conviction rather than a general testing.

Mr. Price asked for an estimate of the number of tests run in Washoe County last year. Mr. Togneri stated the testing is done by Washoe Medical. He indicated that in Washoe Valley alone, the Highway Patrol pays in the neighborhood of \$4,000 a year, with the Reno Police Department paying around \$12,000 and the Washoe County Sheriff paying around \$3,000 a year. He stated he could not get figures out of Sparks and these figures do not include Incline. He commented that the figures were hurriedly put together and not exact. He added that these were early 1980 figures and do not include drug testing figures.

On a question from Mr. Price, Mr. Togneri stated these fines should go back into the testing program to pay for the tests performed by the agencies.

Mr. Price next asked if most of the tests given come back positive. Mr. Malone indicated they do since these people are given field sobriety tests prior to testing and officers are very loaded down with paperwork as a result of the testing making them cautious not to make unnecessary tests.

Mr. Togneri commented that the testing in California for marijuana done by National Traffic Safety Institute and Department of Justice will be opened up for field testing which will result in more drug testing due to the increase of drug use by citizens.

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Mr. Price asked if .10 is a low level of blood alcohol. Mr. Togneri stated he is not a toxicologist, but felt that was a level consistent with more than just a couple of drinks. Mr. Togneri indicated that level was pretty standard among the states with some being lower and that .10 had been determined through an impairment study.

Mr. Togneri suggesting further adding to the bill a provision where a person arrested for possession of a controlled substance be required to pay for the tests conducted in order to prove the material was a controlled substance. Chairman Stewart asked if that couldn't be construed to include ballistic tests. Mr. Togneri felt those fell under the realm of investigative leads, whereas it is mandated by law that a narcotic be proven to be present.

Mrs. Cafferata suggested that the bill be amended to address where the money collected be distributed. It was noted that these were reimbursement of costs expended by the agencies.

Judge Donald M. Mosley, suggested that Nevada follow California's lead and tie the reimbursement to a conviction. To do that would alleviate many of the problems mentioned. He noted it would be much easier to collect the money in court as a fine or fee after conviction than to proceed civilly on a lien basis. Judge Mosley suggested that the bill be couched in discretionary terms due to the fact that there are many people who are indigent and there is no way at all to collect a fee from that type of individual.

Mr. Price suggested that requiring these individuals to pay these types of fees at some point in time would be character building. Judge Mosley stated that as a practicality, collecting a fee of \$40 through bench warrants and court appearances, would cost more than the advantage of the taxpayers being reimbursed for these costs.

Mr. Malone pointed out that the courts are already ordering that jury fees are paid by a convicted individual in the form of a fine.

Judge Mosley added that if these fees or fines are tied to a conviction it does raise the problem of a reduced charge, but indicated the judge could require that fee be paid regardless of the type of negotiation made. Mr. Beyer asked if the courts could be looked to to give more DUI convictions. Judge Mosley felt there a number of things that could be done to raise the number of convictions, but the bill currently being heard on DUI convictions is not one of them, especially since it speaks to sentencing.

Mr. Beyer suggested that a solution to the problem of indigents would be to put them to work at the minimum wage doing janitorial work of cleaning up parks, etc. Judge Mosley agreed with that concept, but noted the problems arising in trying to employ alcoholics. He added he had been trying to effect this type of thing for two years, but needed the enabling law. He noted that there is an 8th Amendment problem which can arise as a result.

Mr. Sader suggested that the intent of the bill was to reach a lower point of the scale, where if a police officer had reason to believe an individual was intoxicated and that was substantiated by a test, the individual should be required to pay for the test. He added that the lien provision gives the law enforcement people the right to tie up assets as private towing companies do when impounding a vehicle. Judge Mosley stated that the City Attorney and District Attorney have enabling laws to bring civil actions in liens against individuals who fail to pay a fine. He indicated he was not opposed to that but felt it more burdensome to bring a civil action of that type. He further believed that the law as proposed indicates that from .10 on a fee would be required.

Mr. Sader stated that NRS 484.381 says that between .05 and .10 there is no presumption. Judge Mosley thought it was a rebuttable presumption. Mr. Sader read that it stated if there was in excess of .05 or less than .10 by way of alcohol, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor but such fact may be considered. He noted this was the statute dealing with the testing presumption and added the possibility that the municipal code may read differently. Judge Mosley felt a further reading would indicate a rebuttable presumption between .05 and .10. Mr. Sader agreed there is a difference between a rebuttable presumption and allowing it to be considered as evidence, but stated this law does not create a rebuttable presumption.

Judge Mosley stated there are many problems which would be alleviated if the fine were taxed after the finding of guilt.

Mr. Sader indicated that being able to hold a person's personal assets such as watches, jewelry and a car, would alleviate the problem of a judge having to assess a fine and later having to collect it. He added to a question from Mrs. Ham that when a person is arrested for DUI, the car is impounded and the towing company must be paid before the car is released. Judge Mosley stated that if a lien is automatically enforced on a vehicle, there is a due process argument that the person owning the car can require proof of guilt, which could result in a very involved civil suit -- much more burdensome than a fine situation.

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Chairman Stewart posed again the question of being required to pay for services not requested, to which Mr. Price gave the example of a car being towed and impounded for improper parking, noting that service had not been requested and there was no implied consent. He added the towing company does not care how much money you do or do not have, but you do not get your car back until you've paid the fees. He felt that if a private industry could do that, so could a law enforcement agency.

Mr. Togneri pointed out that blood alcohol results might not be out for 72 hours after the arrest. He asked how a car could be held if after 72 hours the result was negative. Mr. Price pointed out that in the case of a borrowed car, the owner still cannot get the car back without paying towing and impound fees. Mr. Togneri felt there would be a legal problem with holding the car of an individual who was not proven to be intoxicated.

Mr. Sader conceded the argument.

Mr. Wolff added that he felt the intent of the bill is that the taxpayers should not have to pay for other people's problems. He felt that if the law were enacted, failure to pay a bill from a blood alcohol test which came back positive would be a violation of the law. Chairman Stewart stated the bill does not make this a misdemeanor, to which Mr. Wolff indicated it possibly should be amended to read that way.

Mr. Price asked if the law were amended to read that plea bargaining could not fall below a certain level, including the costs of testing, etc., would that be a fair requirement. Judge Mosley felt that if it were made mandatory that the fee for testing be collected, there would not be enough latitude necessary to work with indigents.

Chairman Stewart appointed a sub-committee to work on AB 227 consisting of Mrs. Cafferata, Mr. Chaney and Mr. Thompson, with Mrs. Cafferata being appointed chairman. Chairman Stewart asked that they speak with the counties and cities about earmarking the funds from this bill.

Chairman Stewart pointed out that AB 187 would be continued to another date since Mr. Rusk had not yet received some material requested for that bill.

Chairman Stewart then asked for consideration of AB 205. Mr. Sader moved DO PASS AB 205, seconded by Miss Foley, and carried unanimously by the committee.

Chairman Stewart then noted that the proposed amendment to SB 55, adding gross misdemeanors, had proven to create substantial difficulties with other areas of the law. Mr. Malone moved to RESCIND THE AMENDMENT TO SB 55, seconded by Mr. Price, and unanimously carried by the committee.

Chairman Stewart then asked the committee to consider SB 107, to which Mr. Sader stated that he had requested information from Judges Van Waggoner and Miner and had still not received a response. The Chairman agreed to consider that bill at a later date.

Mr. Price proposed the drafting of a bill with regard to regulation of individuals parking in handicap parking spaces. Mr. Chaney moved DRAFT such a bill, seconded by Mrs. Cafferata and unanimously carried by the committee.

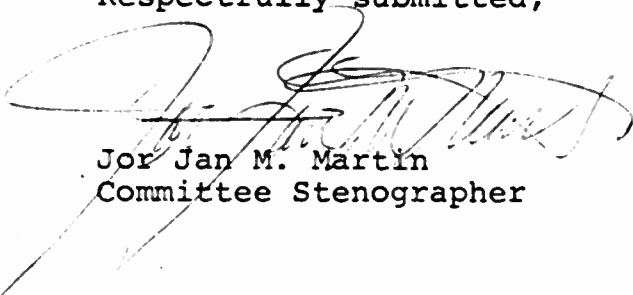
Mr. Price proposed another bill be drafted dealing with people who had purchased kits which picked up television signals transmitted by satellite. He felt individuals who had purchased such kits in the past should not be subject to multi-million dollar lawsuits. He cited the subject statute as NRS 205.470.

Mrs. Cafferata moved DRAFT the bill, seconded by Mr. Thompson, and unanimously carried by the committee.

Mrs. Cafferata stated she was under the impression that area was regulated by federal regulation, to which Mr. Price noted there had been statutes created to develop the cable TV companies. Chairman Stewart suggested that the FCC regulations be researched.

Chairman Stewart adjourned the meeting at 9:34 a.m.

Respectfully submitted,



Jor Jan M. Martin
Committee Stenographer

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

DATE: March 6, 1981
SUBJECT: AB 205: Fills gap and makes technical corrections in statute on registration of convicts.

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>XX</u>	—	—	—	—	—
Malone	<u>XX</u>	—	—	—	—	—
Cafferata	<u>XX</u>	—	—	—	—	—
Ham	<u>XX</u>	—	—	—	—	—
Banner	<u>XX</u>	—	—	—	—	—
TALLY:	<u>11</u>	—	—	—	—	—

ORIGINAL MOTION: Passed XXX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF March 6, 1981

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

DATE: March 6, 1981
SUBJECT: SB 55: Revises eligibility for preliminary evaluation of convicted felons.

MOTION:
 DO PASS _____ AMEND _____ INDEFINITELY POSTPONE _____
 RECONSIDER _____ RESCIND AMENDMENT OF 3/4/81 XXX
 MOVED BY: Malone SECONDED BY: Price

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	XX	---	---	---	---	---
Price	XX	---	---	---	---	---
Sader	XX	---	---	---	---	---
Stewart	XX	---	---	---	---	---
Chaney	XX	---	---	---	---	---
Malone	XX	---	---	---	---	---
Cafferata	XX	---	---	---	---	---
Ham	XX	---	---	---	---	---
Banner	XX	---	---	---	---	---
TALLY:	11	---	---	---	---	---

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
 PASSED AS ORIGINALLY DRAFTED XXX

ATTACHED TO MINUTES OF March 6, 1981