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

MEMBERS ABSENT: Mr. Price (excused)

GUESTS PRESENT: Paul Prengaman, Assembly District 26
Bob Gagnier, State of Nevada Employees' Association
Bob Shriver, Nevada Trial Lawyers' Association
Shannon Zivic, Mobile Home Owners' League of the Silver State
Vickie Deemas, Mobile Home Owners' League of the Silver State
Robert Manley, Attorney General
Bill Curran, Clark County District Attorney's Office
Phyllis Otten, Health Division
R. Ulrich, Attorney General
Donald Klasic, Attorney General
Bob Gibb, Nevada Industrial Commission
Karen Hayes, Assembly District 13
Donna Sheehan, Division of Motor Vehicles
James D. Salo, Department of Administration
John Jeffrey, Assembly District 22

Chairman Stewart called the meeting to order at 8:05 a.m.

ACR 10: Urges district attorneys of Nevada's more populous counties to acquire staff necessary to prosecute properly crimes involving mobile homes.

First to testify on this Resolution was Assemblyman Paul Prengaman, of Assembly District 26. He explained that this resolution urging the District Attorneys (DA) in the three most populous counties in Nevada to acquire more staff to prosecute violations concerning mobile home tenants is a result of a recommendation of the interim study committee.

Mr. Prengaman said during this interim study committee a lot of cases involving fraud, forgery, and deceptive trade practices

regarding the sale of mobile homes and accessories, and other violations by landlords in mobile home parks came to light.

Mr. Prengaman said the interim committee had representatives from the DA's offices come in, and these attorneys said that while they had a lot of complaints, it was difficult to assign staff personnel to handle these complaints when they were also swamped with other criminal cases. Major crime cases had to have priority over violations such as those noted above.

Mr. Prengaman said that while the interim committee's report was being written there were 12 major cases in Clark County involving mobile home violations, and there was only one staff person assigned to those 12 cases. He went on to say that the intent of the resolution is simply to encourage the DA's offices to acquire more staff and to assign these people to prosecute the violations for mobile home tenants.

In reply to Mr. Thompson, Mr. Prengaman said that the DA's are currently attempting to do the best they can with the staff they now have, but it is a matter of priorities: they must prosecute the major crimes that occur before these violations.

Mrs. Cafferata asked about the cost of implementing this resolution, and was told this would probably come to around $25,000 per additional staff member. This was only a guestimate.

Next to testify was Ms. Karen Hayes, of Assembly District 13. She said in addition to what Mr. Prengaman has said, it should be noted that the Legislature keeps passing laws dealing with mobile homes and unfortunately there is no one to enforce these laws. She went on to explain that there are innumerable types of crimes being committed in connection with mobile homes, and the people are currently finding it very difficult to obtain satisfaction from the DA's offices.

Ms. Hayes then went on to cite several examples of how these crimes are perpetrated.

Ms. Vickie Deemas, representing the Mobile Home Owners' League, was next to testify on ACR 10.

Ms. Deemas outlined how following the last Legislative session, mobile home owners felt they had seen some excellent laws passed and that they could now return home and get help from their DA's. In Clark County, the owners met with their DA, who told them he had established a new fraud division which would work with them on their problems. She said they got very little help from this office.

Ms. Deemas told the Committee that of the 12 major cases cited earlier, which involved over $1 million, not one was prosecuted. She then explained how some of these crimes are committed, citing specific cases.

Ms. Deemas then said that, based upon their unsatisfactory experiences with the DA's office, the mobile home owners no longer go to the DA for assistance. She pointed out that it was not the DA's fault he was unable to help the owners, he was simply too swamped with work to do anything. She then described what she had observed of the DA's working conditions.

Ms. Deemas stressed that none of the perpetrators of these crimes are ever prosecuted, so they keep right on "ripping off" the people. Mr. Sader noted he was aware of only once case which involved the defrauding of an owner that was ever prosecuted.

In reply to Ms. Foley the witness stated she did not believe there was any other reason besides lack of staff for the non-prosecution of these people. This understaffing includes investigators as well as prosecutors.

At this point Ms. Hayes pointed out that the one DA assigned to help the mobile home owners in Clark County was handling all consumer fraud cases, not just those dealing with mobile homes. She further noted that this resolution requests additional staff not just for the mobile home people, but for the entire consumer fraud area.

Ms. Shannon Zivic, also of the Mobile Home Owners' League, testified next on ACR 10. She said she wished to note that an important consideration which should be included here is that the mobile home laws are so poorly written that in many cases the DA's office just doesn't feel it is worth prosecution. She cited terms such as "unreasonable denial", "similarly situated", "reasonable", etc. These nebulous terms make prosecution extremely difficult and give the criminals a lot of leeway. She said there is current legislation pending which would help clear up some of these problems, and she hoped the Judiciary Committee would concern itself with this legislation in an attempt to remove any loopholes which might exist in it.

Mr. Sader noted he had spoken with an investigator in the consumer fraud division of the Washoe County DA's office, and he said the same thing Ms. Zivic said about the laws being poorly written.

Ms. Zivic further noted that a majority of these "rip offs" are of elderly people, who often suffer much more severe repercussions from such occurrences.

At Ms. Foley's request, Bill Curran of the Clark County District Attorney's office was asked to testify next. He explained to Ms. Foley that he works in the Civil Division of the DA's office and is therefore not really cognizant of the cases being handled by the Criminal Division of the office. He did say, however, that in general he could say the problem is simply one of available manpower, throughout the entire legal system: police, investigators, prosecutors, judges, etc.

Mr. Curran noted that in the last two years the Clark County DA's office has established a consumer fraud unit in an attempt to devote as much attention as possible to these matters. He said this unit consists of one attorney, his secretary and an investigator, but there are a large number of cases brought to this man's attention; the DA's office has simply been in a position where it has been compelled to devote manpower to the most serious cases. Thus, felonies get preference over misdemeanors, violent crimes get precedence over non-violent crimes.

Mr. Curran said he wished to point out that this resolution is directed at the DA's, however it is the County Commissions which determine the budget for, and therefore the size of the staffing of the DA's offices. He further noted the cost of adding an attorney to the Clark County DA's staff is not simply that of the attorney's salary, but also that of additional space, equipment, secretarial and record-keeping support, investigators, etc. Currently the ratio is approximately three additional people for every attorney added.

Ms. Foley then wondered if this resolution would help at all, if it meant anything.

Mr. Chaney said he wanted it noted that Legislators are, for the most part, lay people and not lawyers, and that while they try their best to write good laws, it is very difficult to foresee all the possible loopholes that might exist in a statute. He said the Legislators did not knowingly place loopholes in a law in order to allow someone to escape prosecution through them, and that it was impossible for any Committee, be it Judiciary or some other one, to guarantee a proposed law does not have unseen loopholes in it.

Ms. Hayes told Mr. Beyer that the problem is not one of the DA's ignoring the defrauding of mobile home owners in order to pursue other areas of consumer fraud; the entire area of consumer fraud is neglected by the prosecutors. She said she has stressed this aspect of the problem because the interim committee was studying the problems of mobile home owners.

Ms. Hayes said she wished to make one more point: while a felony may get more attention than some of the other crimes, oftentimes felonies involve only one or two individuals while fraud can affect thousands. Thus while the crime is not as serious, it can and does have far-reaching effects.

Ms. Hayes also pointed out to Ms. Foley that ACR 10 at least gives some clout to those individuals favoring the addition of staff to the DA's office in order to handle these cases; these people can state that the Legislature has gone on record as favoring such action and can also remind local officials that the Legislature sometimes helps the local government with money situations.

Mr. Chaney wondered if it might be better to look at this problem in terms of other agencies: Commerce, etc. Mr. Curran noted that handling a problem at the administrative level is almost always preferable to going through the criminal law system, which takes much longer. It was noted that while the Consumer Affairs Office does not prosecute consumer fraud, it might be another avenue to consider in an attempt to obtain return of the funds lost by the consumer. Mr. Chaney added he was not looking for a replacement for prosecution of these criminals, but for another, additional way in which consumers might be able to get their money back.

Mr. Thompson said that, while it's a terrible thing to have someone rob you at gunpoint, to allow someone to "legally" steal your money repeatedly is worse.

Mr. Curran said that if it is a case of obtaining money under false pretenses, it is treated as any other criminal case and is not "cubby-holed" as being a mobile home type case. This is because obtaining money under false pretenses is a felony.

As there was no further testimony on ACR 10, Chairman Stewart closed the hearing on this resolution.

AB 336: Requires standard form to record convictions and permits use of form to prove prior convictions.

Mr. Robert Manley of the Attorney General's (AG) office was first to testify on this bill. He explained the purpose of this bill is to make it as standardized as possible, so as to make it as effective as possible, to charge people with habitual criminal violations; thus, felons who are a significant problem to society will be imprisoned for a substantial length of time.

Mr. Manley explained that the habitual criminal law states that if an individual has been convicted of two prior felonies, and all that person's constitutional rights were met in connection with the imposing of those two felony convictions, and that same person is convicted of yet another felony, the punishment for that new felony can be almost double what it ordinarily would be. Additionally, if a person has been convicted of three felonies prior to the present felony, and all of those convictions have been obtained with the person's constitutional rights having been met, the person can be put in prison for life, with parole.

Mr. Manley explained that the problem is one faced by the prosecutors: in order to cite the habitual criminal law the prosecutor must get papers from the places where the person was convicted before that show the individual's constitutional rights were met throughout the prosecution process. Right now, in Nevada, this involves large amounts of paperwork, including transcripts of preliminary examinations, transcripts of

arraignments, transcripts of significant portions of the trials, etc.

AB 336 proposes that there be one standardized form, put out by the administrative offices of the courts and used by all the clerks' offices throughout the state, that would show that all the constitutional rights--including counsel at every critical stage--had been given to the individual. The prosecutors would then simply send for copies of this form from each of those places where the felon had been previously convicted and, using these papers, establish those previous convictions in court.

Mr. Manley suggested one change to AB 336: removal of the word "arrest" from line 18 on page 1. He explained there is no requirement for representation by counsel during the process of arrest, only during adjudication and conviction. He also said these other two processes could also be covered by the term "prosecution process" in the bill.

Mr. Manley explained to Mr. Malone that, while he had referred only to what is called the "big habitual" criminal, this bill would also apply to the "little habitual". He said that on both of these the prosecutor must establish the priors: on the little habitual two priors must be established while on the big habitual three priors need be shown. In both instances it must be established that all of the constitutional rights of the person were met in regard to each of those priors. Mr. Manley further explained that with misdemeanants five prior misdemeanor convictions and demonstration of moral interpretude permits a prison sentence for the sixth misdemeanor conviction.

It was further noted that the reason there are not more prosecutions under the habitual criminal law is because it is often used as a bargaining tool. This bill will permit its use, both in bargaining and in prosecution, on a much more frequent basis because it will simplify the entire process.

It was explained to Mr. Chaney that parking tickets, moving violations, etc. would not be included under the habitual criminal law because they are not considered to be, under the law, moral wrongs. It was further noted that this bill does not affect the habitual criminal law, it only simplifies use of that law.

Mr. Bill Curran of the Clark County District Attorney's Office testified this office and the District Attorneys' Association also support AB 336. He noted his office intends to increase the number of convictions for the little habitual which come out of Justice and Municipal Courts, and this bill will greatly aid this process.

Following this testimony the Chairman closed the public hearing on AB 336 as there was no further testimony offered.

AB 345: Enlarges functions of hearings division in department of administration.

Mr. Chaney, of Assembly District 7, testified first, explaining that this bill was originally introduced three sessions ago by Assemblyman Barengo. The purpose of the bill is to prevent a person working for an agency or department from having to sit before his superiors in the event of a hearing involving that employee. The bill had several problems at the time of first introduction, as well as during succeeding introductions, but it is hoped most of these have been resolved and that this time the bill will pass.

Mr. Chaney noted that the bill has been greatly altered since its first introduction. He stressed that the sole reason for the bill is to guarantee an employee a fair and unbiased hearing, and suggested that the Committee keep this in mind while hearing testimony on this bill. He hoped that the Committee would be able to resolve any problems which might come to light during the testimony and get the bill passed this time around.

Next to testify was Mr. Bob Gagnier, Executive Director of the State of Nevada Employees' Association, who stated that while he was well aware of the intent of AB 345, as currently written he must oppose it. He noted that his Association favors a separate hearing department, which was Mr. Barengo's original proposal. He suggested such a department be headed by a director appointed by the Governor, with the concurrence of the Legislature. He explained that, by giving the Legislature input into the appointment, it would prevent the problem of the Executive branch of government reviewing decisions made by one of its own officers, thus guaranteeing a certain independence of operation. Additionally, he pointed out that a separate department would carry more credibility.

Mr. Gagnier then cited some of the principal portions of the bill which he feels present problems: he stated he did not understand section 4, page 2 nor subsection 1 of section 7, page 2 at all. He also said that subsection 3 of section 7, page 2 actually gives the agency people hearing a case in conjunction with a hearing officer the power to overrule the hearing officer. Thus, even though the fact that the hearing officer was overruled must go on record, it is almost assured the ruling will be appealed, since any independence on the part of the hearing officer effectively has been eliminated.

Mr. Gagnier also noted that while the bill was originally proposed primarily for the Department of Motor Vehicles, the Nevada Industrial Commission, and the Employment Security Department, the current version also affects the State Employees' Association; he cited sections 15 and 16 in particular. He pointed out that the Association already has two personnel hearing officers who are independent; i.e., they do not work

for the agency for which the hearing is being conducted. These officers are hired on a contract basis; appointed by the Chairman of the Personnel Advisory Commission, which is a five-member body that supervises the merit system law; and are not state employees, as such, since they are hired on a contract basis. He said that if passed as currently written, AB 345 would eliminate these two positions and return them to the Department of Administration.

Mr. Sader asked if setting up a separate hearing department would change the fiscal impact. Mr. Gagnier did not think the cost of a separate department would be much different from having a division within the Department of Administration, but he was not certain of this. He did point out that if this version of AB 345 passes, there will be an added cost to the state agencies, since they will have to reimburse the hearing division for the costs of the hearings held under sections 14 and 15. He explained that, at present, the two personnel hearing officers are paid fully out of the budget of the Personnel Division.

Mr. Gagnier told Mr. Chaney it was his impression there would have been minimal cost impact under the original bill, which called for all hearing officers to be transferred from their agencies of employment to the new department, with the exception of the Association's hearing officers, who are not state employees, per se, but attorneys on contract and paid an hourly wage for their services.

Next to testify was Mr. James Salo, an Appeals Officer with the Hearings Division of the Department of Administration, whose testimony was based on the prepared statement attached as EXHIBIT A.

Mr. Salo also noted that the language in section 4 might also be included in any amended version of AB 345, since this apparently means the division would be authorized to hear cases even from those agencies not covered by NRS 233B, if these agencies requested such assistance from the division.

Mr. Salo went on to explain that at present the Hearings Division has 3 hearing officers and 2 appeals officers; the hearing officers are non-lawyers, the appeals officers are lawyers. In addition there is a supporting staff of secretaries, etc. Mr. Salo felt the present staffing of hearing officers is adequate for current needs, however there is a backlog at the appeals officer level. He added that there is legislation currently before the Legislature requesting the appointment of an additional appeals officer. He explained that while the division has the funds to cover this additional officer, there is currently a statutory limit on the number of such officers which must be raised prior to the additional appointment.

Regarding the fiscal note, Mr. Salo said this bill is broad enough to encompass virtually every state agency except for those few excluded from coverage under NRS 233B. He explained that while some of the larger agencies do have hearing personnel who could be assigned to the new department, most state agencies do not need nor have full-time hearing officers; hence, there would be a requirement for additional staff hired from the outside, as well as for space, equipment, etc. for these new employees.

Mr. Salo went on to explain that, because it is not clear how many hearings would result during the first few years, it was very difficult to judge the fiscal impact of AB 345. Therefore, the fiscal note attached to this bill is a guestimate, and was arrived at simply by tripling the current budget.

Mr. Salo added that there was a consensus of opinion that the present version of the bill would not pass, and it was deemed preferable to wait until a final version was decided upon before expending the time and effort necessary to formulate a more exact fiscal note.

Regarding recommendation 1 of Mr. Salo's presentation, Mr. Sader asked which agencies should be included in the original phase of implementation. Mr. Salo replied this had not been worked out yet, but they should be chosen after careful screening. He suggested these should include those agencies which currently have existing hearing officer positions; this would help minimize the fiscal impact. He named DMV, Commerce, and possibly Tax although they do not have a full-time hearing officer position, since these would undoubtedly have staff qualified for this work.

Mr. Salo explained that their intent was, rather than opening the door to all agencies, to expand his agency's jurisdiction to a named number of agencies for the next two years--preferably fairly large agencies--and then use the knowledge obtained in this limited arena to implement this program on a statewide basis.

In reply to another question from Mr. Sader, Mr. Salo said his office would be reluctant to take on the Employment Security Department right away because this is primarily a federally-funded agency--in a sense it is a federal agency staffed with state employees--and there could be a great many problems due to the number of federal regulations involved. He added that, following the preliminary, 2 year "experiment" which he suggested earlier, it might be easier to include the Employment Security Department in this program.

Mr. Salo said he wished to note for the record that both Mr. Robert Gibb of the Industrial Commission and Mr. Nusbaum, who is chairman of the Commission, have indicated to Mr. Salo that they are fully in support of the present hearing system in

existence for workman's compensation appeals and they would not like to see it fundamentally changed or altered. He said they liked the review system, and that the Industrial Commission's Advisory Board also supports the present system.

In reply to Mr. Beyer, it was agreed that the same possibility for bias exists in section 7 of AB 345 (see page 1, item 1 of EXHIBIT A) as currently exists in those agencies which do not now have a hearing officer, per se, but use one or more of their personnel to adjudicate the contested case. Mr. Salo added this is one reason his office objects to inclusion of section 7 in the bill.

Mr. Salo again stressed the desirability of implementing this proposal gradually. He said that, ideally, his office should gain experience with this program on a limited basis. This would allow for the setting up of the "mechanics" of this broader hearing agency, while at the same time allowing for the contacting of smaller agencies in order to develop information and statistics as to their caseload of administrative hearings, how they currently handle them, what types of expertise might be necessary for their hearing officers, whether or not they have staff people who potentially could make a lateral transfer, etc.

Mr. Salo agreed with Mr. Beyer that provision would have to be made to assure that a separate hearing agency had the expertise necessary to properly conduct hearings for all agencies. He cited the example of Minnesota, where some of these experts laterally transfered from their parent agency, while others had to be "new-hire".

Mr. Salo then pointed out that his office is not "recommending" any one of the three options listed in his testimony (see page 2, EXHIBIT A); these are simply an attempt to point out that there are other avenues open to the Committee besides those listed in AB 345.

Mr. Salo went on to explain that alternative 1 listed in his presentation is basically how the Hearings Division currently operates vis-a-vis workman's compensation: once the Industrial Commission makes a decision and it is appealed, it goes to the Hearings Division and from that point on the Commission has no direct role except as a party in the litigation. While this system works very well in the area of workman's compensation, Mr. Salo pointed out that it might not work as well in all instances.

Mr. Salo concluded his testimony by stating that, if the Committee indicates which direction it wishes to take in approaching this problem--be it one of the three alternatives he has suggested, or some other avenue--it should not be too difficult to get together with the bill drafters and come up with a workable bill.

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Chairman Stewart said he would like to appoint a subcommittee to go over the various possibilities with Mr. Salo and possibly come up with either new language or recommendations for the next session. He went on to note he was fascinated by the California system, especially those cases involving the disciplining, by the professional boards, of their own officers.

Next to testify on AB 345 was Mr. Donald Klasic, Chief Deputy Attorney General for the Civil Division of the Attorney General's Office. He said he was essentially in agreement with Mr. Salo, noting they had been in close contact on this bill. He stated he had a few additional points he would like to make regarding this bill, however.

Regarding the possible "due process" problem in section 7 of the bill, wherein the agency can infringe upon the independence of the hearing officer, section 8 also presents the same problem. Mr. Klasic explained that, under section 8, once the initial decision is made, there can be a review process by the agency. Thus, the hearing officer's decision is still susceptible to reversal by the parent agency against which the complaint was filed in the first place.

There is also another problem with section 8 in that it sets up an inefficient system. Mr. Klasic noted there are some agencies, including Personnel and the Industrial Commission, wherein there already exists a 3- or 4-step level of review--the initial decision, the hearing officer's decision, a review decision and finally the courts. In 90% of the instances, however, there is only a 2-step level: the agency makes a decision, and the next step is into the courts. Section 8 would add another step: first the hearing officer decision, then the agency decision (which could reverse the hearing officer's decision), and then to the courts. He said this is inefficient, awkward and places a burden on the citizen caught up in this administrative red tape. He said this same problem also exists in the first of the three alternatives outlined by Mr. Salo. Mr. Klasic said he therefore favors either the California or Minnesota approach, since these keep the 2-step process.

Mr. Klasic said his office really has no position one way or the other on the question of whether there should be a centralized hearing officer staff; that is a policy matter for the Legislature to decide. He is simply here to assure that whatever decision is made, it is "done up right".

Ms. Phyllis Otten, a technical writer with the State Health Division, testified next on AB 345. She stated she had not come to this hearing with the intent of testifying, however after hearing the testimony presented she felt impelled to raise several points.

Regarding subsection 1 of section 7, she wished to point out the type of case the Health Division would hear under this

provision of the bill. She explained that in the case of the Health Division, the type of hearing differed greatly from the Industrial Commission examples cited by previous witnesses.

Ms. Otten cited the example of a food inspection program. A member of the Health Division staff inspects a food establishment and refuses a license on the basis of regulation violations; the owner of that food establishment contests the decision of the staff member. Under AB 345, this type of case would go to a hearing officer. At the present time, the case goes to the State Board of Health, who under the provisions of NRS 233B hear the case. Thus, in this instance, the agency makes a decision, it then goes to the State Board of Health, and finally to the courts.

Ms. Otten wondered if, in those instances where there is already an effective system in operation under NRS 233B, the Committee feels there should still be a change. She asked the Committee to consider those less obvious cases (like the one she just cited) where AB 345 might not be as pertinent as it is, for example, to personnel cases.

Chairman Stewart said he was not certain AB 345 would affect the type of case cited by Ms. Otten. Mr. Klasic, in reply to Mr. Stewart, said he felt it was definitely arguable the bill could apply to such cases, since the definition of "contested case" in NRS 233B is awfully broad and the operative language in this bill is "contested cases must be heard by hearing officers". Chairman Stewart said he was beginning to strongly agree that it is necessary to review all the kinds of cases which might come under this bill, and that unless all the other statutes which might be involved are integrated into this bill many such conflicts might arise. He thanked Ms. Otten for bringing this problem to the attention of the Committee.

As there was no further testimony, Chairman Stewart closed the public hearing on AB 345 and appointed a subcommittee to further study the matter: Mr. Chaney, chairman; Mr. Sader and Ms. Ham.

AB 346: Authorizes state and local agencies to obtain background checks of Federal Bureau of Investigation.

Mr. John Jeffrey, Assembly District 22, testified first on this bill. He explained the genesis of the bill, saying that in certain instances licensing agencies and/or those employing or contracting for personal services where there might be concern over the type of individual applying go through the local agencies for an in-state background check, and for out-of-state information go through the Federal Bureau of Investigation (FBI). Recently, the FBI has taken the position that without statutory authority they will not release this type of information. Thus, AB 346.

Mr. Jeffrey then cited the example of an ice cream vendor license applicant who was denied a license on grounds that he had been convicted of child molestation. He noted that such information is obviously of use in certain instances, and should be available to those agencies and/or employers with legitimate need for it.

In reply to Mr. Malone regarding how small a "political subdivision" would be empowered to request such information, Mr. Jeffrey said he was not sure, but assumed it would go at least down to the school district level, since he could see the need for school administrations having access to this type of information, for example, when hiring a teacher.

Mr. Jeffrey said he did not believe those agencies and/or political subdivisions which have no need for this type of background check would request it needlessly, since this would simply add to their paperwork.

Ms. Foley questioned if this bill is sufficient to get the FBI to pass the information. Mr. Jeffrey said it was his understanding that the FBI would not release information to the Gaming Control Board in one case because the Board is not a police agency. He said if this was the case, then a school board probably couldn't get the information either, unless they did it through a police agency somehow. He pointed out that AB 346 is primarily an attempt to help cities and counties to obtain this type of information, and in those cases the police agencies do the investigations anyway, so there would be no problem. He added that there might be another bill necessary to solve this problem for the Gaming Control Board, possibly one establishing the Board as a police agency under law.

Mr. Sader asked if, for example, the police in Henderson had been able to obtain background information from the FBI. Mr. Jeffrey replied that according to the information available to him, sometimes the Henderson police have been able to obtain what they need from the FBI, sometimes not; it seems to depend on whom you talk to in the FBI. When denied, it is on the basis that the Henderson police are not specifically authorized in Nevada law to request and hold such information.

In reply to Mrs. Cafferata, Mr. Jeffrey reiterated that these background checks would not be made by every political subdivision, nor by every agency, nor in all cases, but only in specific cases. He cited, as an example, liquor license applicants, in addition to those examples cited earlier. He admitted that, as written, the bill is extremely broad, but he felt the local subdivisions could be trusted to be discretionary in using this tool.

Mr. Chaney then raised the point that as currently written, AB 346 simply grants the statutory authority to "request" information from the FBI; anyone can request information, with or without a law. He felt additional wording should be included in the bill authorizing the state agencies and political subdivisions

to have access to and/or handle such information. In this way the FBI would have less reason for denial of the requests.

Mr. Stewart noted that the FBI is subject to the Privacy Act, which spells out who, specifically, can receive and/or hold such information. He said this can be circumvented to some extent by having the applicant sign a consent form granting the investigator access to these records.

Mr. Chaney then suggested the wording in the bill be changed to "are entitled to" the information. Mr. Jeffrey agreed this might be a better way of putting it. He said it was his understanding that part of the problem is that there is a complete lack of statutory authority to even request the information, but Mr. Chaney's point should probably also be included in the bill. Ms. Foley said she had interpreted the bill in the same manner as Mr. Chaney.

Mr. Donald Klasic, of the Attorney General's Office, testified on AB 346 also. He explained the root of the problem was the Privacy Act of 1974, which states that "no federal agency is supposed to disclose any of these (law enforcement) records, except to another agency or to an instrumentality of any governmental jurisdiction within the U.S. for a civil or criminal law enforcement activity, if the activity is authorized by law." He said the purpose of AB 346 is to authorize these activities.

Mr. Klasic explained that currently some state agencies do have specific provisions in the laws governing them which allow them to request this type of information; these agencies have experienced no trouble with the FBI. Other agencies, however--for example, many licensing boards--do not have any authorization to obtain records from the FBI, and that is why their requests have been denied.

Mr. Klasic remarked to Mr. Chaney that he felt the suggested change in language would tie in very nicely with the privacy act: "activity authorized by law". He added that, while the current version appears to be alright, Mr. Chaney's version would have more muscle.

There was no further testimony on AB 346, so Chairman Stewart closed the public hearing on this bill.

ACR 10: Urges district attorneys of Nevada's more populous counties to acquire staff necessary to prosecute properly crimes involving mobile homes.

Mr. Sader moved DO PASS ACR 10, seconded by Mrs. Cafferata.

During the ensuing discussion, Mr. Beyer said that, since the District Attorneys do not really have the authority to hire additional staff without the authorization of the County

Commissions, this is basically a useless resolution. Mr. Sader pointed out this resolution could result in a rearrangement of priorities within the District Attorneys' offices, without necessarily requiring that additional personnel be hired.

Mrs. Cafferata suggested amending that section of the resolution starting on line 15 so as to address it to the County Commissioners rather than to the District Attorneys. She also recommended replacing the words "to acquire staff necessary to" with "to shift priorities and" or with "to assign more time to" in that same section of the resolution.

During the ensuing discussion, it was decided that wording which would basically state that "The Nevada Legislature urges the County Commissions of Carson City, Clark and Washoe Counties to devote staff necessary to investigate and prosecute properly crimes involving mobile homes" should be inserted in the resolution, starting at line 15.

As the above wording was the result of input from all the Committee members, no vote was taken on the amendment; Mr. Sader simply changed his original motion to DO PASS ACR 10 AS AMENDED, seconded by Mrs. Cafferata and passed unanimously, with Mr. Thompson and Mr. Price absent at the time of the vote.

AB 336: Requires standard form to record convictions and permits use of form to prove prior convictions.

Chairman Stewart suggested lines 18 and 19 be amended to read as follows: "counsel at each step in the prosecution where counsel is required by the United States Constitution,..." He explained this would eliminate the words "process...conviction", and substitute instead "prosecution", making the bill both more succint and more specific.

Mr. Beyer moved AMEND AB 336 as noted above, seconded by Mrs. Cafferata and passed unanimously, with Mr. Thompson and Mr. Price absent at the time of the vote.

Mr. Beyer then moved DO PASS AB 336 AS AMENDED, again seconded by Mrs. Cafferata and passed unanimously, with Mr. Thompson and Mr. Price absent at the time of the vote.

AB 346: Authorizes state and local agencies to obtain background checks of Federal Bureau of Investigation.

Chairman Stewart stated that, while he would prefer to leave the specific wording up to the bill drafter, he felt this bill should be amended to provide for authorization to both solicit and obtain this information.

Mr. Malone stated he was very concerned about this bill because, as previously noted by Mr. Chaney, if the FBI does not want to release certain information, they will not release it, no matter what.

Chairman Stewart proceeded to appoint a subcommittee to further identify the problems involved and attempt to come up with some sort of wording which will encourage cooperation from the FBI. The subcommittee consists of Ms. Foley, chairman; Mr. Malone and Mr. Thompson.

AB 265: Increases certain fees for services of constables.

Chairman Stewart noted that the Committee members had been given copies of an amendment to this bill (EXHIBIT B). He explained that there was no fiscal impact because the constables retain their fees since they are on a very low or no salary.

Mr. Malone, who served on the subcommittee which drafted this amendment, then explained the rationale behind the suggested changes. He said the recommendation of the witnesses to make the fee for evictions $20 seemed a little too high, since most constables were receiving $5-$10 for this service, so the subcommittee decided $10 would be sufficient.

Mr. Malone moved AMEND AB 265 as noted in EXHIBIT B, seconded by Mr. Sader and passed unanimously, with Mr. Thompson and Mr. Price absent at the time of the vote.

Mr. Malone then moved DO PASS AB 265 AS AMENDED, again seconded by Mr. Sader and passed unanimously, with Mr. Thompson and Mr. Price absent at the time of the vote.

AB 53: Amends certain provisions relating to controlled substances and dangerous drugs.

Chairman Stewart noted testimony had been heard on this bill yesterday, 31 March 1981, and that one problem which had been raised at that time concerned page 4, subsections 6 and 7, lines 31 through 35. Mrs. Cafferata said she also had technical problems which had occurred during the first re-drafting of the bill that still needed to be corrected:

Page 3, lines 44-45: the original language should remain in the bill; it is more legally defensible than the proposed version.

Page 4, lines 12-13: again the original language should remain. The term practitioner includes additional people besides those who actually write prescriptions, and if the intent is to tighten up the law, then the most precise term possible should be used. This change must be made in almost every instance in which it occurs.

She said there is also the change making it a felony to sell drugs for remuneration of any sort, rather than a misdemeanor; this includes retail and hospital pharmacies.

Finally, she noted she agreed that those portions cited by Mr. Stewart should be deleted from the bill.

It was further noted that lines 19-20 on page 5 should be deleted entirely.

Mr. Sader moved AMEND AB 53 as noted by Mrs. Cafferata, seconded by Ms. Foley and passed unanimously, with Mr. Price, Mr. Banner and Mr. Thompson absent at the time of the vote.

Mr. Beyer then moved DO PASS AB 53 AS AMENDED, seconded by Ms. Ham and passed unanimously, with Mr. Price, Mr. Banner and Mr. Thompson absent at the time of the vote.

AB 204: Empowers attorney general to subpoena documents.

Chairman Stewart then noted that there had been some confusion over whether or not AB 204 had been voted out of Committee. He said it has already been reported out, however there is a second amendment, requested by the Attorney General, to be added to it. Mr. Stewart said he would have this second amendment tacked onto the bill, and then would bring it back to the Committee. All were agreed this should be done.

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

Mrs. Cafferata gave an interim report on the subcommittee's progress on this bill. She explained the question of whether a conviction should be required prior to charging the person for costs of the test arose. She also said that it was the legal opinion that the money thus collected would be an administrative court fee, not a fine, if it was not dependent upon a conviction; it would simply be a charge in connection with the enforcement of the state traffic laws. The monies would therefore not go into the state school fund.

Mr. Stewart noted it could still be dependent upon a conviction and yet not be a fine, but an administrative fee.

Mrs. Cafferata explained to Ms. Foley that the monies would, instead of going to the school fund, go to offset the costs of these tests, so the taxpayers would not have to bear the burden for this.

Next Mrs. Cafferata gave the statistics connected with her research on this bill. According to Nevada Highway Patrol, statewide in 1980, there were 2,634 Driving under the Influence (DUI) arrests, broken down as follows:

Reno	1,393
Las Vegas	1,187
Washoe	221

Mr. Malone explained that every DUI arrested must take the test or lose their driver's license automatically, by law.

Mr. Chaney questioned the cost of these tests, and it was explained that the cost varies, depending upon who performs it; a hospital, the arresting agency, etc. It was agreed, however, that the savings in connection with this bill would be substantial.

Ms. Foley raised the point that Mrs. Cafferata's statistics are based upon arrests, but there is a possibility the bill will be amended to require a conviction prior to assessing the cost of the test upon the individual. Mr. Stewart agreed, noting that some courts have had very few convictions for DUI, even though they have heard many such cases.

Mr. Stewart requested the subcommittee obtain information as to how much money would be collected if the fee were limited to those actually convicted.

Ms. Ham asked why the subcommittee favored changing the bill to limit it to convictions. Mrs. Cafferata replied that it was because they had felt it to be unfair to charge someone if they have not been convicted.

There followed a discussion as to whether a positive test was sufficient reason to charge the person, or whether a conviction should be required.

The subcommittee agreed to look into these matters further before returning the bill to Committee.

As there was no further testimony the meeting adjourned at 10:40 a.m.

Respectfully submitted,

Pamela B. Sleeper

Pamela B. Sleeper
Assembly Attache

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: ACR 10: Urges district attorneys of Nevada's more populous counties to acquire staff necessary to prosecute properly crimes involving mobile homes.

MOTION: DO PASS AS AMENDED XX
DO PASS ___ AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. SADER SECONDED BY: MRS. CAFFERATA

AMENDMENT:

Wording to the effect that: "The Nevada Legislature urges the County Commissions of Carson City, Clark and Washoe Counties to devote staff necessary to investigate and prosecute properly crimes involving mobile homes" added at line 15.

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 336: Requires standard form to record convictions and permits use of form to prove prior convictions.

MOTION:

DO PASS ___ AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. BEYER SECONDED BY: MRS. CAFFERATA

AMENDMENT:

Lines 18 and 19 should be amended to read:
"Counsel at each step in the prosecution where counsel is required by the United States Constitution..."

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 336: Requires standard form to record convictions and permits use of form to prove prior convictions.

MOTION: DO PASS AS AMENDED XX
DO PASS ___ AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. BEYER SECONDED BY: MRS. CAFFERATA

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 336: Requires standard form to record convictions and permits use of form to prove prior convictions.

MOTION: DO PASS AS AMENDED XX
DO PASS ___ AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. BEYER SECONDED BY: MRS. CAFFERATA

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 265: Increases certain fees for services of constables.

MOTION:

DO PASS ___ AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. MALONE SECONDED BY: MR. SADER

AMENDMENT:

See EXHIBIT B attached to these minutes

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 53: Amends certain provisions relating to controlled substances and dangerous drugs.

MOTION:

DO PASS ___ AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. SADER SECONDED BY: MS. FOLEY

AMENDMENT:

1) Page 3, lines 44-45: retain original language.

2) Remove proposed term "practitioner" and retain original language throughout the bill.

3) Change penalty for selling drugs for remuneration of any sort from misdemeanor to felony.

4) Delete subsections 6 and 7 of section 5 entirely.

5) Page 5, lines 19-20: delete entirely.

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	ABSENT					
TALLY:	8	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Wednesday, 1 April 1981

SUBJECT: AB 53: Amends certain provisions relating to controlled substances and dangerous drugs.

MOTION: DO PASS AS AMENDED XX
DO PASS ___ AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. BEYER SECONDED BY: MS. HAM

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	X					
Malone	X					
Cafferata	X					
Ham	X					
Banner	ABSENT					
TALLY:	8	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

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

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Wednesday, 1 April 1981

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION

ROBERT LIST
Governor

HOWARD E. BARRETT
Director

EXHIBIT A

HEARINGS DIVISION

April 1, 1981

REPLY TO
1050 E. William St.
Suite 450
Carson City, NV 89710

TO: Assembly Judiciary Committee

FROM: James D. Salo
Appeals Officer

SUBJECT: A.B. 345

The Hearings Division of the Department of Administration supports the concept of a centralized hearings division empowered to hear the contested cases of various state agencies. We believe, however, that A.B. 345 contains several provisions which are not desirable, and, due to its wide ranging impact would be extremely difficult to implement without many months of planning and administrative action.

Specifically, we note the following difficulties with the present language of A.B. 345:

1. Section 7 authorizes the agency producing the contested case to assign one or more of its personnel to administratively adjudicate the contested case with the hearing officer and to overrule many of his rulings, potentially nullifying his independence.

2. Section 7 provides in part that "Each hearing in a contested case arising under this chapter must be conducted by a hearing officer" as an amendment to NRS Ch. 233B. This language would appear to encompass all contested cases of all state agencies with the exception of those specifically excluded from the coverage of NRS Ch. 233B by NRS 233B.039. While we have had insufficient time to poll all 100 - plus State agencies, we believe most produce contested cases at least occasionally and we know many do regularly, making the Bill too expansive to be properly implemented by July 1, 1981.

3. A.B. 345, Sections 16, 17 and 18 effectively abolishes the Appeals Officer position thereby nullifying the bi-level appeals process for worker's compensation approved by the Legislature in 1979 after much study. We do not believe the present appeals - review system applicable to workmen's compensation should be altered in any fundamental manner.

ALTERNATIVE DRAFTS

Several possible approaches are available to implement the concept of an independent hearings division in State government. With specific "goal direction" from this Committee, we are confident the bill drafters could produce a more workable Bill. Alternatives include:

1) The totally independent hearings division could be given broader authority to hear contested cases from various agencies. The agency determination would be appealed to the independent Hearings Officer whose decision would become the final administrative decision subject to judicial review. This basic concept is currently in place and functioning for workman's compensation claims but would likely be opposed by some agencies unwilling to surrender the power to make the final decision to a Hearing Officer who may not possess the skills or orientation they feel desirable.

2) An intermediate Hearing Officer - fact finder system could be created such as the "Minnesota Plan." Independent Hearing Officers would be assigned to hear all contested cases and make a report with recommended action to the agency with supporting findings of fact and conclusions. The agency would review the record, report of the Hearing Officer, and objections or arguments of the parties and make the final administrative decision subject to judicial review. Some might question the fairness of the final decision if it reversed or modified the Hearing Officer's recommended action.

3) A modified intermediate plan might be created similar to California's. An independent Hearing Officer would preside over each contested case acting either alone, or at the agency's option, in a panel with the agency officials. If the Hearing Officer acted alone the resulting report would be only recommendatory to the agency which would make the final administrative decision. If a panel hearing was held, the Hearing Officer would preside, make necessary procedural rulings, and "assist" in the panel's deliberations but would not vote on the final administrative decision.

Other possible approaches no doubt could be devised with appropriate direction. We believe a clearer Legislative goal needs to be stated before productive Bill drafting can occur.

RECOMMENDATIONS

The hearings Division of the Department of Administration recommends:

1. A.B. 345 as presently drafted should not receive favorable action by the Committee on Judiciary. A clear statement of goals or purposes would allow for prompt drafting of amendments or an alternate bill and allow for time for proper phased implementation. We believe a limited expansion of authority to contested cases arising from a list of named agencies, to be effective in 1982, would be the most efficient approach for this biennium.

2. We request that any Legislative action to expand the jurisdiction of the Hearings Division be drafted so as to not alter the fundamental workmen's compensation appeal - review system currently in effect. Additionally, the funding of such activities must be kept inviolate since its source is a constitutional trust fund.

3. We suggest retention of the strong portions of A.B. 345 including the "Chief's" discretion to assign cases and to contract outside personnel, the disqualification provisions, and the revolving fund provisions for reimbursement of costs by the agencies.

JDS:jv

EXHIBIT B

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		Assembly AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Assembly
Lost	☐	Lost	☐	Bill No. 265 ~~Joint Resolution No.~~
Date:		Date:		BDR 20-1011
Initial:		Initial:		Proposed by Committee on Judiciary
Concurred in	☐	Concurred in	☐	
Not concurred in	☐	Not concurred in	☐	
Date:		Date:		
Initial:		Initial:		

Amendment No. 359

Amend section 1, page 1, by inserting between lines 20 and 21:

"For all services in an eviction..... 10.00".

Amend section 1, page 2, line 10 by deleting "$10" and inserting "[$10] $16".

Amend the title of the bill on the first line before "and" by inserting:

"setting a fee for evictions;".

Assembly Judiciary Committee
Wednesday, 1 April 1981

To: E & E
LCB File
Journal ✓
Engrossment
Bill

Drafted by CS:ab Date 3-27-81

1059