

Date: May 4, 1981

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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: David B. Small, Carson City District Attorney  
Karen Hayes, Assemblywoman  
Renny Ashelman  
Kaye Anderson, Distributor, WCA  
Bob Shriver, NTLA

Chairman Stewart called the meeting to order at 8:05 a.m. and asked for testimony on AB 187. Since there was no testimony forthcoming, he asked for testimony on AB 483.

AB 483: Increases limitation on value of property subject to homestead exemption.

Mike Malone, Assembly District 4, stated that AB 483 changes the Homestead Act from \$50,000 to \$75,000, to become effective July 1, 1981. This change is as a result of inflation.

Mr. Sader explained that a homestead exemption can be filed and recorded to exempt a person's residence from execution as allowed by law. If subject to a lawsuit, the home is excluded from any possible taking, regardless of what's been done, who's been injured, and the extent of the damages, up to the amount of \$50,000 currently and \$75,000 if this bill is passed. The rationale is that even if filing bankruptcy, an individual should be allowed to keep his home along with other exemptions such as one car, tools if a craftsman, and other such things. The question then becomes to what extent should the home be exempt.

Mr. Malone commented that there are not too many homes around worth less than \$75,000. Mr. Sader stated the equity is what is being addressed and commented that the amount had been previously raised from \$35,000 to \$50,000. He suggested that the creditors should be present since they are the ones who cannot execute against the home or other assets.

1698

Miss Foley moved DO PASS AB 483, seconded by Mrs. Cafferata, and carried unanimously by the committee.

AB 490: Provides for continuation of child support after death of responsible parent.

Patty Cafferata, Assembly District 25, stated that one of her constituents had requested this bill and understood that it is not legally possible. The young man's parents were divorced and the father died without making provisions for the children, resulting in their going to Welfare. The son desires to attach the father's estate. Dave Stankow of the Legislative Counsel stated it was not possible.

Dave Small, Carson City District Attorney, Mr. Sader and Chairman Stewart all felt it would be possible to attach the estate as long as the money had not been distributed to the heirs. Child support would be handled as any debt against the estate. Mr. Sader commented that as an attorney, he would set up an annuity or some other provision for periodic payments for the child if the estate were well funded. He added that this bill would not require the reopening of closed estates.

Chairman Stewart asked Mrs. Cafferata to have the Counsel Bureau research continuing support obligations beyond the death of the individual. He further suggested having them look into priority claims against the estate and where this obligation would fall.

AB 561: Exempts small tear gas weapons for use in self-defense from certain statutory regulations.

Karen Hayes, Assembly District 13, stated that this bill deals with a small defensive device and trying to make the substance in the device legal. She commented that her daughter works in one of the malls in Las Vegas and has to walk from the store to the parking lot in the evening and has one of these devices. Young kids are frightened about the possibility of being assaulted or raped and they are using such things to protect themselves. Ms. Hayes stated that 42 of the 50 states have already legalized this device, with the last two being Michigan and Carolina due to the increase of 20% in rapes. She commented that a girlfriend of her daughter's had been murdered two weeks ago. She felt that this device could perhaps save some of the lives.

Ms. Hayes stated that women and girls are using all kinds of devices to protect themselves such as small cans of hairspray as well as carrying keys in between their fingers. She commented that one problem could be the use of the device in committing a crime and suggested providing a penalty for use in this manner.

Mr. Malone commented that there is a penalty for this device which falls under carrying a concealed weapon. Mr. Price referred to the bill passed in 1977 allowing the use of pepper guns. Ms. Hayes stated this would be more convenient since it is smaller and can be carried on the key ring. The device was passed around the room for inspection by the committee with warnings not to push the button. It was noted that there is a safety on it.

Ms. Hayes stated she was told by some of the people at Metro that Sheriff McCarthy does support this bill. Miss Foley commented that fewer women would carry guns. Mr. Malone agreed but felt that there was the possibility of having it turned on yourself.

Mr. Chaney expressed concern over the possibility of having these devices used to commit crimes. Ms. Hayes commented that she would rather have someone use this on her than a gun. Mr. Chaney felt it might increase and encourage burglaries, etc.

Renny Ashelman stated that testimony from police officers indicated they favored this. He added that the devices are sold through distributors in the states where they are legal. As far as using it in a home or closed room, it tends to get both the attacker and attackee. Mr. Chaney gave examples of how that situation could be avoided. Mr. Ashelman referred to the quantity limitation on the substance used since the kind officers carry is enough to make someone unconscious. He stated that the effects are very painful. Aside from the tearing and nausea, it is painful causing screaming and disorientation, making it other than a silent attack weapon. It is not a lethal substance which makes it better than others. He stated this is about 25% more obnoxious than the substance used in the pepper gun.

Mr. Ashelman agreed with the drafting of the bill, leaving the general substance illegal and exempting a narrowly defined range of these weapons as used for personal defense.

Mr. Thompson related the effects of chlorinated benzene (chlorell) and suggested this substance to be some sort of derivative of that.

Mr. Beyer asked the cost of the devices, to which Mr. Ashelman responded between \$8.00 and \$10.00. He commented that regardless of the price, they are very accessible even now to juveniles.

Mr. Sader asked about the language referring to a "bomb". Mr. Ashelman stated it was an attempt to parallel the prohibitory language so that there is not any confusion in the minds of the people enforcing the statutes. He did not have any opposition to leaving that term out.

Mr. Malone commented that the device passed around the room appeared to be 22 grams, where the police officers use 120 grams. Mr. Ashelman stated that the device comes in 4 sizes, with a very small one, 20 grams, 50 grams and 100 grams (professional use).

To Mr. Beyer's question about the range, Mr. Stewart read from the brochure that the one passed out was from 6 to 8 feet.

To questions from the committee about the pepper gun, Mr. Ashelman stated that it takes considerably more skill to use than this device. The pepper gun is very effective, but is bulky to use. However, the substance in this device very disabling where that used in the pepper gun is just obnoxious.

Mrs. Cafferata suggested that since the language of the brochure and the bill differ in their use of grams and cubic centimeters, it should be rectified to alleviate confusion. Mr. Ashelman suggested keeping the cc formulations since the distributors and the new legislation uses this. He added that he would check further with them for additional comments, but the association which manufactures the device says cubic centimeters is the accurate way to describe the small personal weapon.

Kaye Anderson, a distributor for WCA which sells Chem Shield, stated that Chem Shield does not come out in an aerosol spray but comes out in a liquid stream. This way wind is not a severe problem. She referred to two incidents of which she was aware in which attacks were averted with the Chem Shield. Both assailants went to the ground immediately. She explained that the chemical exposes the nerve endings in the skin and when the air hits, the reaction is as with acid. She stated she had some on her accidentally and had seen movies of a volunteer who had the chemical sprayed on him. There was a time delay of a few seconds, his nasal passages started draining, and he was on the ground for about 15 minutes clawing at his face. If this were used to attack a girl, the man would not be able to rape her. Ms. Anderson favored the device for young people, but especially for the elderly so they can have the peace of mind in protecting themselves without harming someone else. After about a 20 minute period, the effects disappear with no permanent damage of any type.

Miss Foley commented that a lot of people are afraid to use a weapon which would really injure someone else and as a result end up unprotected. She felt this would be good for those people. Ms. Anderson stated that two teenage boys mistook the Chem Spray for mouth spray and both sprayed it in their mouths. They thought they were going to die, but were fine after about a half hour with no lasting effects.

1701

Mr. Malone commented that this substance will not work with mentals. Jan Chastain, an insurance broker from Reno, stated that this product is not mace. Mace does not have an effect on people on drugs, alcohol or mentals and can cause brain damage. This substance does affect mentals and does not cause brain damage. Mr. Malone recited incidents with mentals where mace has no effect whatsoever on them.

Ms. Chastain spoke of the many cases heard by the grand jury when she was sitting with them in Reno in which people were intimidated, especially with the elderly, raped and assaulted. She felt these crimes need not have been committed if they had something of this type to defend themselves with.

Chairman Stewart appointed a sub-committee of Mr. Beyer, Mr. Malone, and Mrs. Ham to look into the weights and measures problem and enhanced penalty for using the device to commit a crime.

AJR 39: Proposes constitutional amendment to abolish trials by jury in justices' courts.

Dave Small, Carson City District Attorney, stated that for petty crimes as opposed to the common law crimes, it is not necessary according to the federal constitution to have jury trials. It is also clear that for crimes which did not exist in the common law at the time the Constitution was adopted won these jury trials. He referred to Hudson v. City of Las Vegas, a misdemeanor case involving a municipal ordinance offence. The dicta in the case makes clear that our court speaks in terms of the federal approach, i.e. the difference between serious crimes and petty crimes and the difference between crimes which existed in the common law prior to the constitution (1864) and those which followed. The holding in that case was that if it is a municipal petty crime that did not exist prior to that, it is not necessary to have a jury trial. In the municipal courts around the state there are not jury trials.

It was Mr. Small's opinion that the same fate would be seen in the Supreme Court if, by statute, it were passed that there would no longer be jury trials in justice court. He further suggested that there would be a great fiscal effect on the good side. Even now there are frequent jury trials which are very expensive and the justice courts are not geared for it, especially in the cow counties. The effect of abolishing jury trials in justice court would be very good and positive on both budget and the judicial economy. One of the problems which will follow the new DUI laws will be a massive increase in jury trials.

Mr. Small supported the concept of AJR 39 and suggested that an immediate effective statutory approach would be better.

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Mr. Malone asked if this would impact the district courts considerably. Mr. Small stated it would, especially in the context of DUI. He suggested the district court is far more able to deal with that sort of impact than are the justice courts. He added that he thought there were probably 6 jury trials in the justice courts in Carson City during the last year. He felt it would probably quadruple if this bill does not pass.

Mr. Sader asked if the focus in petty crimes was on the amount of fine and jail time possible under the specific offense. Mr. Small stated that is addressed in the Hudson case, speaking in terms of petty crimes and felonies in a constitutional sense. As a matter of law, petty has been equated to the misdemeanor. If the jurisdiction of the justice court is maintained at 6 months maximum in jail, there would be no constitutional problem with disallowing jury trials.

Bob Shriver of the Nevada Trial Lawyers Association stated they do not endorse any concept which would infringe upon a person's right to a jury trial, regardless of economic conditions or anything else. The 6th Amendment of the Constitution says a person has a right to be judged by his peers. Any infringement on that is a violation of his constitutional rights. Mr. Shriver understood Mr. Small's problems in dealing with it, but that is one of the hazards of passing a DUI bill of that impact. He disagreed with Mr. Small and felt this change would have to be made in the constitution.

To Chairman Stewart's question, Mr. Shriver felt there would be a great demand for jury trials if the DUI bill is passed, whether at the justice court or district court level. If this bill is passed they will take a trial de novo in order to protect themselves. He did not feel that DUI should be the central focus for abolishing a trial by jury.

Miss Foley commented that now that justice court is a court of record, there is no trial de novo, but simply an appeal on the record. She found it amazing to consider taking jury trials away from people because of the DUI penalties. She did not feel economics a good reason to deny jury trials.

Mr. Sader stated that the constitution provides that petty offenses do not receive jury trials. If the DUI still qualifies for being a petty offense, then it would be constitutionally proper to deny jury trials at that level.

Chairman Stewart appointed Mr. Sader to look into AJR 39 further.

1703

AJR 30: Proposes constitutional amendment to remove prohibition against adding judges and changing districts during term of incumbent.

Bob Shriver of the Nevada Trial Lawyers Association stated that this constitutional amendment would take care of a lot of the problems being dealt with each session with the judges' bills. The Association feels that any way the judges and district courts can be helped in adding judges during their term, increasing salaries, etc. should be done in order to get competent and distinguished judges on the bench. He commented to the problems with all of the judges bills due to the constitutional provisions. This bill would alleviate those problems. This will allow the legislature to add district judges due to population problems immediately. This is necessary due to the increasing population in Nevada and the impact on the court system.

Mr. Shriver stated that the State Bar of Nevada, the district judges and other similar organizations and people are supporting this bill. He stated that the average caseload in Clark County is double that of a city like Phoenix, Arizona, which has 55 district judges. Clark County has presently only 12 judges. He added that the Governor with the Judicial Commission would make recommendations for the appointments of judges.

Mrs. Ham asked if there was the possibility of needing fewer judges. Mr. Shriver did not feel that would happen. Chairman Stewart commented that this bill provides only that the number cannot be reduced during a term. If there is a vacancy at the end of the term, it can be deleted. Miss Foley commented that the boundaries of districts could be changed to allow for areas decreasing in population and include them in other districts.

Mrs. Cafferata moved DO PASS AJR 30, seconded by Mr. Sader, and carried by majority vote, Mr. Banner voting nay, Mr. Price and Mr. Thompson being absent.

Since there was no further business, Chairman Stewart adjourned the meeting at 10:05 a.m.

Respectfully submitted,

  
Jor Jan M. Martin  
Committee Stenographer

61st NEVADA LEGISLATURE  
 ASSEMBLY JUDICIARY COMMITTEE  
LEGISLATION ACTION

DATE: May 4, 1981

SUBJECT: AB 483: Increases limitation on value of property  
 subject to homestead exemption.

MOTION:

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

MOVED BY: Foley SECONDED BY: Cafferata

AMENDMENT:

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

AMENDMENT:

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

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	---	---	---	---	---
Foley	<u>XX</u>	---	---	---	---	---
Beyer	<u>XX</u>	---	---	---	---	---
Price	<u>XX</u>	---	---	---	---	---
Sader	<u>XX</u>	---	---	---	---	---
Stewart	<u>XX</u>	---	---	---	---	---
Chaney	<u>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 XX Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_

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

ATTACHED TO MINUTES OF May 4, 1981



61st NEVADA LEGISLATURE  
 ASSEMBLY JUDICIARY COMMITTEE  
 LEGISLATION ACTION

DATE: May 4, 1981

SUBJECT: AJR 30: Proposes constitutional amendment to  
 remove prohibition against adding judges  
 and changing districts during term of  
 incumbent.

MOTION:

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

MOVED BY: Cafferata SECONDED BY: Sader

AMENDMENT:

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

AMENDMENT:

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

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>ABSENT</u>	_____	_____	_____	_____	_____
Foley	<u>XX</u>	_____	_____	_____	_____	_____
Beyer	<u>XX</u>	_____	_____	_____	_____	_____
Price	<u>ABSENT</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>8</u>	<u>1</u>	_____	_____	_____	_____

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

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

ATTACHED TO MINUTES OF May 4, 1981