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Opinion #20

What the newspapers won't tell you!

March 9, 2007

Nevada Legislature - Senate Bill 14

IT'S ALIVE!

***Juvenile smoking bill rises from the dead.
Threatens Las Vegas. Who will save us?***

Seriously, though, how are we going to fix this bill? Smoking by juveniles should be addressed, but how do we do it without damaging the juvenile justice system?

BY GLENN CAMPBELL

After the Feb. 8 Judiciary Committee hearing on Senate Bill 14 (See our Opinion #18), we felt pretty confident that the juvenile smoking bill was dead. An array of representatives from local juvenile justice systems spoke against the bill, along with the ACLU and a long-winded representative of Family Court Chronicles.

The proposed Nevada law would make it a matter for juvenile court if a

youth was caught in possession of tobacco or tobacco products—even just cigarette paper. The aim was to address open smoking by juveniles, especially at notorious “smokers’ corners” near schools. The downside was that the law could create huge burdens for juvenile justice systems. It might “criminalize” kids who were not otherwise involved in the system and draw court resources away from more serious youth crime.

At the hearing in Carson City, statewide health groups spoke in favor of the bill, along with students and school officials from rural Nevada, where such a law might work perfectly fine. The main question was whether it would be effective in Reno and Las Vegas.

Oh, and the good people of Phillip Morris spoke strongly in favor of the bill, along with the convenience store



owners of Las Vegas. In keeping with their new flamboyant position that smoking is bad for you, these commercial interests seemed eager to do anything to keep kids from smoking, even much harsher punishments than the law proposed.

Of course, they didn't offer to stop selling cigarettes altogether or to fund smoking treatment programs for youth. They also didn't offer any amendments to the bill to make it more workable. They just wanted to put on the record that they were 100% behind the law in whatever form it took. With humanitarian groups like this supporting the bill, you have to think it is good.

On the other side of the debate were representatives of just about everyone involved in the real juvenile court system. (See Review-Journal, 2/9.) They said that the bill would tax already strained juvenile resources, including probation departments, public defenders, district attorneys and court dockets, without doing anything to address smoking addiction.

An ACLU attorney said: "While going after juvenile smoking is a laudable goal, entering them into the criminal justice system without a clear treatment plan clearly comes off as more punitive than therapeutic."

The ACLU was also concerned about issues of search and seizure. If merely possession of tobacco or tobacco paper was sufficient for the charges, how far were authorities going to go to search for these items?

At the end of the hearing, the issue seemed well-defined: Everyone agreed that smoking by kids was bad, but the bill in its current form would be damaging to juvenile courts, and it was unclear that it would change behavior.

We thought the bill was dead. We were wrong.

On Feb. 28, we read in the Review-Journal that the bill's sponsor had proposed a new version: An escalating series of fines for teen smoking—\$10, \$20 and \$30—and a referral to juvenile court only on the fourth offense.

Unfortunately, this does little to address most of the concerns brought up by juvenile authorities. The assessing and collecting of such small fines is a

burden to local authorities and little deterrent to teens, while the court still doesn't know what to do with habitual smokers once they have entered the system.

Ten bucks hardly covers the cost of writing the ticket, and it's a trivial amount to smokers—little more than the cost of two packs of cigarettes! Las Vegas teens would see the fine as a joke, and word would get around quickly that you don't even have to pay it. (Is the court going to waste its enforcement resources on these trivial fines?)

By the time a kid becomes subject to the juvenile system on his fourth offense, he is obviously addicted to nicotine, just as surely as a meth or crack addict, and no punishment alone is going to break this addiction. If the court labels him "in need of supervision," then the court has a responsibility to provide that supervision.

In the case of meth and crack addicts, juvenile court in Las Vegas has a special Drug Court that tests them regularly and gives them intensive supervision and support. Nicotine addicts probably need the same.

Senate Bill 14 is not proposing to fund smoking cessation programs. Instead, it would be dumping the problem on the counties and effectively forcing them to establish such programs—draining resources from other areas. Without credible cessation programs, you would just have a judge lecturing a kid, "You've got to stop smoking," without offering him any treatment.

Instead of curing the kid of smoking, this law could do something deeply destructive: introduce him to the juvenile justice system and get him used to it. If a kid has already been hauled to court for smoking, then he is going to be much less afraid of committing more serious crimes. After all, he has already been through the court process and seen that it is powerless.

Thus, by using the juvenile justice system to try to solve the smoking problem, the law may actually be encouraging more serious crime.

Our Solution

We don't mean to say that the bill or the sentiments behind it are useless. Smoking by youth who are not yet addicted is very troubling, and we believe the government has an obligation to do something about it. However, the government shouldn't bite off more than it can chew and put itself in the position of treating an addiction without the resources to do so.

Let's go back to what is most obvious about teen smoking and why this bill exists at all: the smokers' corners.

What our society should not accept is the open flaunting of the law. What is offensive to most people is not the possession of tobacco by youth but open smoking by them in public places. For now, let's try to address the display of smoking rather than the addiction itself.

California is said to have a \$75 fine for underage smoking (although we don't know the details of their law). Nevada could have the same—but only for visible smoking in public, not for tobacco possession.

We propose a simple fine: \$75 for each public smoking offense, regardless of the child's history. It would be equivalent to littering or a minor traffic offense. There would be no escalating fines, no community service and no referral to juvenile court unless the kid chooses to contest the charge. There would probably be no active enforcement if the kid failed to pay, unless he came to court on another matter, in which case the unpaid fine would be added to his restitution.

A \$75 would be a hard hit to the pocketbook of most teens, and because it is uncomplicated, most of them would probably pay. The money, in turn, could fund the additional manpower needed to support the program.

The message to teens would be "If you smoke, don't do it where anyone can see you." It is not a whole solution to the teen smoking problem, but it's a start. Most importantly, it is not something that is likely to damage the rest of juvenile justice system.

—GC