

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, February 23, 1967

Meeting was called to order at 2:10 P.M.

Present: Wooster, White, Dungan, Schouweiler, Torvinen, Kean, Lowman (late)

Absent: Hilbrecht, Swackhamer

Mr. Wooster passed out copies of Mr. Raggio's written comments on the wire tapping bill

AB 233: Requires facts to be alleged in taxpayer petition for summoning grand jury, and makes summoning discretionary.

Mr. Paul May, whose bill this is, was present to answer questions and explain the reasons for the bill. He said the bill is in draft form and some changes may be necessary. He has talked with several attorneys and they say they can live with it. He said the purpose of the bill is to tighten up acts under which people can summon a grand jury. He welcomes any suggestions from the committee.

Mr. Wooster pointed out this bill would make it discretionary at the District Court level. It is already discretionary at the Supreme Court level.

Mr. May said he doesn't think it is fair for any three people to impanel a grand jury. Mr. Wooster asked if there had been an abuse of this privilege and Mr. May replied there is one case going on in North Las Vegas right now.

AB 265: Increases filing fees in civil cases.

State Budget Director, Howard Barrett, was present to answer questions on this bill.

Mr. Wooster said this bill was in the Ways and Means Committee, but that he had had it sent to this committee because it has a place here also. He promised to return it to the Ways and Means Committee.

Mr. Torvinen explained that he had asked Mr. Barrett if he could obtain relative filing fees from other western states.

Mr. Barrett said that when they were preparing the Governor's Budget, it was apparent that they were going to have to get additional revenue for court costs. The Lybrand Report had indicated that this increase in civil action filing fees could be absorbed without causing too much trouble. At \$15, this will bring in \$273,000 next year.

Mr. Barrett said he had sent people to the library to get the cost of these fees from other states but they had found it quite complicated. They did get comparative figures on divorce actions. They found the following charges: Alaska \$30, California \$22, Colorado \$16, Hawaii \$18, Idaho \$18.50, Montana \$12.50, Nevada \$35.00, (including county costs), Utah \$5.00, Oregon \$60.00, Wyoming \$5.00 and Washington \$15.00. Under this new bill, Nevada would go to \$50.

Mr. Torvinen said this was deemed necessary with the over-all picture, which included repeal of the Cabaret Tax. Mr. Barrett affirmed that this is part of the total over-all revenue side of the budget.

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AB 215: Authorizes judges to impose fine or require attendance at traffic school of juvenile traffic offenders.

Mr. Wooster said he had the amendments which Mr. Lowman had had drawn up and he read these to the committee. The provisions of the amendments are: 1. Impose a fine; 2. Recommend suspension of driver's license; 3. Order child put on probation and require his successful completion of Survival School; 4. Pay costs of child's attendance at traffic survival school.

Mr. Wooster said that these amendments seem to meet the discussion that came out of the committee.

Miss Dungan moved amend and Do Pass
Mr. White seconded
Motion passed unanimously

AB 233: Requires facts to be alleged in taxpayer petition for summoning grand jury, and makes summoning discretionary.

There was some discussion as to whether "reasonable cause" should be substituted for "reasonable evidence".

Mr. Wooster pointed out that we are not abolishing the procedure, just trying to tighten it up. If we go to other language, it will be looser. "Reasonable evidence" is more precise.

Miss Dungan said that if a grand jury doesn't have evidence you don't get an indictment

Mr. Wooster said he was not quite sure just how important this bill is because he did not know how much the thing was being abused.

Mr. Kean asked if a grand jury does not do a lot of good even if no indictment is issued

Miss Dungan said she would tell him what it accomplished in the case of the grand jury which she served on. She said it cost over \$350,000 and accomplished nothing.

Mr. Kean said he would like to hear from a smaller county on this. Mr. Wooster asked him who he would like to talk to and it was suggested that Mr. Swackhamer would be a good one to ask about the matter. It was decided to hold the bill over until next week when Mr. Swackhamer would be present.

AB 265: Increases filing fees in civil cases.

Mr. Torvinen said he thinks this is highly premature until we raise the limits of the Justice Court. To pay a \$50 filing fee to try to collect \$300 is ridiculous. He said when he talked to Barrett, he got the impression that the Cabaret Tax was not going to be repealed, so this bill may not be necessary. He moved to hold the bill until it is determined whether this is going to be absolutely necessary revenue. This filing fee schedule puts us way out of line with neighboring states.

Mr. Kean moved Do Not Pass
Mr. Torvinen moved to Postpone Indefinitely
Mr. White seconded
Motion passed unanimously

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AB 251: Abolishes notice requirements of suppliers of labor and material before bringing action on contractor's bond on public works.

Mr. Torvinen gave some background on the bill.

Mr. Wooster said that on public works bonds are required, 50% on work and 50% on materials. The notice can be a trap.

Mr. Schouweiler moved Do Pass

Mr. White seconded

Motion passed unanimously

Mr. Wooster said he had been asked by the Bar Association to introduce three more bills. He read a brief description of each of the bills to determine if there any objections to their being introduced as Committee Bills.

1. Has to do with court appointed attorneys for absent or minor heirs. There were no objections to its introduction.

2. This one is from the Probate Committee. The law was amended to say that the administrator and executive of an estate must be a resident of the state, but also said that a non-resident heir could not appoint a resident administrator. This is a result of a recent Supreme Court case.

There were no objections.

3. Another bill on estates, provides for automatic revocation of a will in case of divorce or annulment.

There were no objections.

AB 71: Revises criminal procedures and provides for determinate sentences.

Mr. Wooster said he has put together all the objections to all the sections of 71 and when we get through them we will have considered all the objections made to this bill.

Section 1. Objection is that common law crimes should be retained.

Frank Daykin, who was present to help with this bill, said that the committee decided that common law crimes should go out since we had not had one in Nevada in 100 years. He said the objectors had not noticed the catch-all phrase which takes care of all felonies.

Mr. Lowman moved to reject the objection

Mr. White seconded

Motion passed unanimously

Section 6, page 2: Objection is that "substantial bodily harm" is too limited.

DAYKIN: In both Rape and Kidnapping, we gave punishment according to the amount of bodily harm done. We gave much attention to the defining of the term "bodily injury".

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Mr. Lowman moved to reject the objection
Mr. White seconded
Motion passed unanimously

Section 8:

The objection is that a minimum of \$5,000 is too high as being the value point when a felony attaches. It should be lowered to \$1,000.

DAYKIN: The scale was very carefully considered and the committee did not feel that a penalty should be attached unless it arrived at a substantial figure, which is why \$5,000 was chosen.

Mr. Wooster asked if there was much discussion in the committee about the matter.

Mr. Daykin said there was no particular argument about it.

Mr. Kean moved to reject the objection
Mr. Lowman seconded
Motion passed unanimously

Sections 20 and 36:

Mr. Brian and Mr. Torvinen both had objections to these sections. Mr. Brian said that section 20 of the proposed change would make the hindrance to any public official in the discharge of his duties a misdemeanor and he doesn't like that. Also he thinks the language of sections 20 and 36 are overlapping.

Mr. Torvinen said that in his experience as City Attorney he had many cases like this. This is the same conduct as a misdemeanor in municipal law. He said his first objection is that these matters are handled in the city courts. It will foul things up to make this a gross misdemeanor.

DAYKIN: I agree with Roy basically. I can't see any reason this could not be reduced to a misdemeanor. This could be called too great an interference with Municipal Justice. To some extent, the language of 20 and 36 is overlapping. Section 20 amends chapter relating to crimes against the state. Section 36 relates to crimes against public justice. Could we amend 36 by leaving a dangerous weapon as a felony and cutting the other down to a misdemeanor?

Mr. Torvinen asked what is a public officer.

DAYKIN: There is a definition built into section 17, page 2, of AB 81, anyone involved in the continuous exercise of public power, trust or duties.

Mr. Kean moved to reduce sections 20 and 36 to misdemeanors
Mr. Lowman seconded
Motion passed unanimously

Section 28:

Mr. Torvinen had an objection to this section. The part that is questionable in his mind is subsection 2, paragraph B.

DAYKIN: The same rationale carries through here. Force was being used to obstruct public justice. The committee thought it should be made a gross misdemeanor.

Mr. Lowman moved to eliminate gross misdemeanor in section 28, 2 B.

Mr. Torvinen seconded

Motion passed unanimously

Section 42:

Mr. Torvinen explained his objection to this section as being that it makes something unlawful but makes no punishment. Should have a section making punishment a misdemeanor.

Mr. Torvinen moved to amend as above

Mr. Lowman seconded

Motion passed unanimously

Section 44:

DAYKIN: The proposed changes in involuntary manslaughter section are in the statute most frequently used in traffic accidents. Under present law the court may use discretion and not mete out a felony to a traffic offender. It should be left this way. It is the intention of the committee to study this for another two years. Let's meet the objection by simply returning the gross misdemeanor option.

Mr. Torvinen said the bill does not have an involuntary manslaughter definition.

DAYKIN: No, but you have it in the present law. I am of the opinion this can be met by leaving in the gross misdemeanor option.

Mr. Lowman moved to restore the gross misdemeanor option

Mr. Kean seconded

Motion passed unanimously

Section 59:

The D.A.'s have an objection to this section. They feel the suggested minimum for robbery of 1 year is not adequate. Was there discussion of this in your committee?

DAYKIN: Yes. Virtually the only 20 year offenses were the heinous crimes. 1 to 20 years on this would be equating robbery with rape and kidnapping and murder.

Mr. White moved to reject the proposal.

Mr. Wooster asked what is the term for rape?

Mr. Daykin said it was 5 years to life.

Mr. Torvinen said if we are going to determinate sentencing, we may as well stay with this.

Mr. Torvinen seconded Mr. White's motion to reject the proposal.

Motion carried with 6 Ayes and Mr. Wooster voting No

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Section 61:

Mr. Wooster reminded the committee that we have been holding SB 22 for a discussion of this part of AB 71. SB 22 provides for a greater penalty for assault against a peace officer or fireman.

Mr. Lowman said he thinks this is unnecessary and undesirable. These people know the risks they are going to take when they accept these jobs.

Mr. Torvinen said the penalty goes from 1 to 6 years to 1 to 15 years.

Mr. Wooster said it provides a special penalty for assaulting peace officers.

Mr. Daykin said the maximum penalty for assault has been changed from two years to six years.

Mr. Torvinen moved to indefinitely postpone SB 22

Miss Dungan seconded

Motion passed unanimously

Section 66:

The District Attorneys would like to change the words "present ability" to "present apparent ability".

Mr. Torvinen moved to reject the objection

Mr. Lowman seconded

Motion passed unanimously

Miss Dungan brought up the wording in Section 61 "crime against nature" and asked if we couldn't take out this wording.

Mr. Wooster said this seems to be a subject for the study on substantive crime and Mr. Lowman asked if such a study would get into this. Mr. Daykin said yes it would. It would not affect these bills now but would go back into definitions.

Section 95:

Mr. Wooster said this is the section that we should probably put AB 26 into. This is the bill we have been saving to insert into AB 71.

DAYKIN: That would be the logical place to put it. It would be 95½.

Mr. Lowman moved to include AB 26 as a part of AB 71, as an addition to section 95.

Mr. Torvinen seconded

Motion passed unanimously

Section 99:

DAYKIN: Here the criticism is probably well taken. What happened is that three sections of existing law were combined into 1 section to refer to the same offense. It was a slip to leave out the exception that a parent or guardian can give liquor to a child in the home if he so desires.

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Mr. Kean moved the exemption be inserted.

Miss Dungan said there would be no problem if we leave it a misdemeanor in both places.

Mr. Schouweiler seconded Mr. Kean's motion.

Motion was carried with 7 Ayes and Mr. Lowman voting No.

DAYKIN: Should there be a limit on this exemption as regards the age of the child?

Mr. Torvinen said No, the aim is to do away with laws that cannot be enforced.

DAYKIN: Exempting only from subsection 1.

Mr. Lowman moved to reject

Mr. Kean seconded

Motion passed unanimously

Section 114:

Mr. Lowman: Why should we have this date in here?

DAYKIN: It should come out. There is no reason to retain this temporary language.

Mr. Lowman moved to delete the date

Mr. Schouweiler seconded

Motion passed unanimously

Section 209:

Mr. Wooster said that the objection is to the part giving the trial judge the right to dismiss the charge after the man has been brought to trial. Objectors think this should be left out.

DAYKIN: This is a question of policy, which the committee debated at considerable length.

Mr. Torvinen: Three petit larcenies could put you in this position. They used to convict children of petit larceny. A man of 45 might have been guilty of two petit larcenies when he was a child, then do nothing until he was 45 but he would still have three petit larcenies against him.

Mr. Wooster said the substantive law on this should be changed.

DAYKIN: There is no such crime as habitual criminal. The committee thought giving the judge this power would be in keeping with the general concept of determinate sentences.

Mr. Torvinen: The court appoints you to defend someone on a felony. The D.A. gets the report sheet and it shows two petit larcenies. He says unless you plead innocent we are going to go "habitual". I don't think we are going much out of the way here with this, granting him authority to dismiss a charge. When a judge grants probation, he is allowing the crime to be erased.

Mr. Torvinen moved to reject the objection

Miss Dungan seconded

Motion carried with 6 Ayes and Mr. Wooster voting No

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Mr. Kean suggested we make some of the changes needed in substantive law.

Mr. Wooster said you can put in a bill to make these changes.

Mr. Kean said the "habitual criminal" law needs to be studied. He asked that a note be made on this.

Section 217:

Mr. Daykin said this is a coercion bill.

Mr. Torvinen said he thinks it is inconsistent with petit larceny.

Mr. Daykin said it is not the deprivation alone that is being called a felony. It is the deprivation coupled with coercion. It is not all that important.

Miss Dungan moved to eliminate "gross" and leave "misdemeanor".

Mr. Torvinen seconded

Motion carried with 5 Ayes and Mr. Lowman and Mr. Wooster voting No

Section 228:

The suggestion here is that the word "willfully" be inserted before "allow".

Mr. Lowman moved to follow the suggestion

Mr. Torvinen seconded

Motion passed unanimously

Section 230:

Mr. Torvinen has an objection to this being a gross misdemeanor.

Mr. Daykin said the committee's thought was that this is a wilfull offense against public justice and should be more than a misdemeanor even though the original act was only a misdemeanor.

Mr. Torvinen asked what is the punishment for being an accessory when it is a member of the family. This seems to be about the same thing.

Mr. Daykin said that in 195.040 family is excluded from the accessory definition.

Mr. Lowman moved to make it consistent, a felony for a felony, gross misdemeanor for a gross misdemeanor, and a misdemeanor for a misdemeanor. Also to put in the word "wilfully".

Mr. Schouweiler seconded the motion

Motion passed unanimously

Section 237:

The objection to this is that if we do change to the determinate sentence, parole eligibility should be changed to one-third instead of one-fourth of the sentence.

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DAYKIN: This is fundamental. They are referring to the minimum, when the act really refers to one-fourth of the maximum.

Mr. Lowman moved to reject the objection
Mr. White seconded
Motion passed unanimously

Mr. Wooster asked how about the complaint on the "good time"?

Mr. Torvinen asked for a definition of "good time credits".

DAYKIN: 209.280 contains a definition of these. With an eight year sentence, you serve one-fourth, which would be 2 years. Good time would give you four months off. You would be eligible for parole in 20 months.

Mr. Torvinen: There are two good time credits, one off minimum sentence and one to be eligible for parole.

Mr. Wooster: We are never talking realistically about what a sentence is. We speak of a sentence of 1 to 10 years but the criminal gets out in two years. I am in favor of omitting the term "less good time" on minimum sentence.

Mr. Lowman moved to be consistent and take good time credits out of both places.
Mr. White seconded
Motion passed with 5 Ayes and Dungan and Schouweiler voting No

Section 387:

There is an objection on this section to the gross misdemeanor penalty.

Mr. Lowman moved to delete "gross" from the section
Mr. White seconded
Motion passed unanimously

Section 440:

Miss Dungan suggested that this section was too big a thing to be talked about in just a few minutes.

Mr. Wooster said that Mr. Brian had wanted marijuana treated separately.

Mr. Wooster announced that the committee will meet Monday at 2:00 and there will be a hearing at 3:00 on the traffic demerits bill.

Meeting was adjourned at 5:00 P.M.