

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, February 27, 1967

Meeting was called to order at 2:35 P.M.

Present: Wooster, Swackhamer, Hilbrecht, Torvinen, Kean, Dungan, White, Lowman  
Schouweiler

Absent: None

AB 203: Driving license demerits bill.

Present to speak against the bill were George B. Mackelroy, Managing Director, Nevada Safety Council, Mr. Glover, Chief of the Drivers License Department, Don Brown, Superintendent of the State Highway Department, Hale Bennett, Drivers License Department and Bob Gwynn.

Mr. Mackelroy said he has worked with the Drivers License Division for a long time. He said they have at present a good scale on which to measure the driving habits of the people of Nevada. Using this scale, they have come to the conclusion that 70% of the fatal accidents on Nevada's highways are caused by multiple violators.

This bill would provide that the professional driver would be allowed three additional points before having his driver's license suspended. Currently the license is suspended at 12 points. However, at this point, the driver may obtain a work permit to go on driving if he is entirely dependent on his driving to earn his livelihood.

Mr. Mackelroy said he has driven a million miles as a professional driver, so he feels he can speak on professional drivers. They are expected to set an example for all people on the highway. The argument is made that a large amount of driving exposes a driver to more citations but the opposite is true, also. A large amount of driving gives more ability and makes a person better able to drive and less apt to get into a problem that would cause a citation.

When you get 8 points you attend traffic school. Mr. Mackelroy said he is appalled at the number of people who are responsible for fatal accidents and the points that they have. He said we cannot give benign attitudes toward people with this problem. It takes four speeding tickets in a year to lose a license.

He said with this bill we would have to go to 16 points to lose the license as there are no odd point penalties. It is a discriminatory law. You would have to drive 30,000 miles. If it is passed, another group will come in and say we drive 50,000 miles. We want to go to 21 points. The law should rest right where it is. Mr. Mackelroy said he drives 40,000 miles per on state business, yet he would lose his license at 12 points because he is not classified as being dependent upon his driving to earn his living. The professional driver who might drive less miles would not lose his license at 12 points, with this bill.

Miss Dungan asked if speeding tickets are the only things to get demerit points.

Mr. Mackelroy said no, and then went on to explain the point system. He went on to explain that a person can get a "restrictive driving to work" license if circumstances warrant it.

Mr. Swackhamer asked what is reasonable for the work permit and was told that taking away the only means of livelihood was considered reasonable.

Mr. Mackelroy said the department sends out notices at 8 points and advises them at the same time that they will lose their license at 12 points. These are the people that cause the majority of the accidents on Nevada's highways. The demerit system is our best way of judging drivers on the highway.

Mr. Glover said that Mr. Mackelroy had brought out most of the points he had meant to make and expressed his feelings very well. He said we should not use exposure as a criteria for judging driving ability. This law would require a suspension order being issued, and then after the 30,000 miles had been validated, a revoking of the suspension. He said that since the point system went in the number of accidents and the insurance rates had dropped greatly in Clark County. Most of the problems have been from taxicab drivers and he assumes this is where the bill originated.

Mr. Hilbrecht: Is this a question of exposure?

Mr. Glover: No, there are many other things to take into consideration. We seldom have requests for relief from bus drivers or interstate drivers. 95% of professional drivers complaints are from taxicab drivers.

DON BROWN: We are faced at this time with a controversial issue called the Highway Safety Act of 1966. This says there must be a point system. We will be in conflict with Congress if we fool around with this too much. We are not tough enough on drivers. If this bill passes, it will be a step backward. If any changes are made, it should be to change the points from 12 down to 10.

HALE BENNETT: This bill would create a great deal of additional work in the department. We would have to issue a suspension, then wait to see if the driver is going to request reinstatement, then if he does we have to reinstate him. The situation would be difficult to administrate.

The point system finds your problem driver. Many trucking companies have told us they are happy to have us find this information. What we are talking about is the multiple violater. What you are considering doing is giving special privileges to the multiple violater.

MR. HILBRECHT: This is trying to point out that some people drive much more than do others. Consequently their violations increase. The purpose of the bill is to give equal protection to people who drive more.

MR. BENNETT: Not necessarily. A person could accumulate 12 points on one trip.

MR. HILBRECHT: How about broken tail lights and headlights?

MR. GLOVER: Defective vehicle violations are not counted at the present time.

MR. SWACKHAMER: What if a man gets drunk and gets enough violations to use up all his points at this one time? Do they use them all?

MR. GLOVER: We use only the highest one committed at that time.

MR. MACKELROY: Let's work this in reverse. If I drive only 1,000 miles in a year do I lose my license at 2 points? We have a problem in this state. In 1964 we were the number one death state in the nation. In 1965 we were number two. We are not putting enough emphasis on the multiple violator. We would rather keep the points down to where the police can do something with this problem.

MR. HILBRECHT: Why doesn't it make perfectly good sense to lower my points if I drive only 1,000 miles in a year? Why is this ludicrous? It makes sense to me. If a man doesn't drive much maybe he is a poor risk. Why shouldn't the points be adjusted to the amount of driving a person does.

MR. MACKELROY: Statistics show that most accidents are caused by the multiple violator.

MR. HILBRECHT: What is wrong with having a man file an affidavit as to how many miles he has driven?

MR. GLOVER: I might point out that if a man has more violations while driving on a temporary work permit, he will lose that too.

ROBERT GWYNN: The points should be high enough to prevent a man from losing his license on an inadvertency. The only reason for having any given number of points is to prevent a man from losing his license inadvertently. The Driver-Of-The-Year Award was given last year to a man who drove 2,500,000 miles over the Donner Summit without a citation.

We should expect more from a professional driver than from a non-professional driver. He should be better able and more prepared to avoid accidents. I would caution you against establishing a precedent here. I am definitely opposed to the bill.

MR. LOWMAN: Question of Mr. Glover: Would you prefer not to have discretion to give a work permit? - Is it necessary or desirable?

MR. GLOVER: Yes, I would prefer not to have it. The law would be more effective if we didn't have it.

MR. SWACKHAMER: What is an inadvertent citation?

MR. GWYNN: Speeding. You might be talking or looking and for a minute or two not notice how fast you were going. Sometimes, too, it is a question of judgment as to whether there was a violation or not. There may be a difference of opinion as to whether you came to a full and complete stop or not.

MISS DUNGAN: Does anyone wish to speak for the bill?

MR. HILBRECHT: I introduced this bill at the request of a number of people in Clark County. Since I was absent on Thursday I did not know you were to have a hearing on it today. Consequently I did not notify these people.

MR. WOOSTER: I have no objection to holding the bill over if there are people who want to be heard.

MR. HILBRECHT: The teamsters would like to be heard.

MR. WOOSTER: We will hold the bill over until next Thursday at 2:00 o'clock.

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

MR. WOOSTER: We discussed this last Thursday and decided to hold it over to hear from Mr. Swackhamer as a representative of small counties. The bill doesn't have much effect on large counties where a grand jury is always in session, so we wanted to find out if there would be any objections from small counties.

Mr. SWACKHAMER: I think it would be OK in small counties.

MR. KEAN: I found fault with the word "evidence". Would you buy it for your small counties without the word "evidence"?

MR. SWACKHAMER: I can see no fault with the word "evidence".

MR. WOOSTER: I see nothing wrong with the word. It tightens things up.

Mr. Lowman moved Do Pass

Miss DUNGAN: Why don't we use the words "at the last general election"? We are doing that with other bills.

Miss Dungan moved to amend line 5 "number 5% of the number of voters who voted within the county at the last preceding general election" and give Do Pass

Mr. Lowman seconded

Motion passed unanimously

SB 203: Makes State Soil Conservation Committee a division of Department of Conservation and Natural Resources.

MR. WOOSTER: I can see nothing wrong with the bill. It seems simple.

Miss Dungan moved Do Pass

Mr. Hilbrecht seconded

Motion passed unanimously

Mr. Hilbrecht asked what happened to Senator Young's other bill and Mr. Wooster replied that Judge Thompson is to come in tomorrow to speak on it.

Mr. Wooster said he has been given two more probate bills for the committee to introduce.

1. Would extend probate of a decedent will in a county other than the one in which he died, but notices would have to be published in the county where he died, also.

There were no objections to a committee introduction of the bill.

2. If a minor has no guardian and trial value is not over \$2500 there can be a distribution in care of the parent. The bill saves trouble and time.

There were no objections to a committee introduction of the bill.

AB 210: Includes deeds of trust in single action rule for foreclosure proceedings, establishes procedure for determining amount of deficiency judgment, and forbids deficiency judgment for purchase money.

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MR. HILBRECHT: I have talked to some people from the South and we heard from the man from Reno, and they are all for it.

MR. TORVINEN: I have only one objection, the wasted property part. I can see where a \$20,000 house could be worth \$10,000 after six months.

MR. HILBRECHT: I have no objection to putting something in on waste, but I thought this was covered under a separate action. However, this apparently does not affect the market as it has been done in several jurisdictions. We have no provision now for reducing deficiency. I would certainly accept an amendment to take care of waste. What we are trying to do is get solid land values in two sections of the state where now we don't have them. The amendment should pertain to unreasonable losses and damage done.

MR. WOOSTER: I will assign Mr. Torvinen to draw an amendment and bring it back, at which time we will act on the bill.

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

Section 440:

MR. WOOSTER: We have objections from Mr. Brian and the district attorneys. Mr. Brian objected because there was no distinction between marijuana and heroin. He would like to have a distinction and penalties given for each drug. He would also like a different penalty for those who are in the business for financial gain only.

MR. DAYKIN: The Uniform Act leaves the amount of penalties open to the individual states. The varieties of penalties is so great it defies tabulation.

MR. WOOSTER: It looks to me like you tried to make the sentences here conform with those throughout the whole act.

MR. DAYKIN: That is correct. A parole minimum was put in the act.

MR. HILBRECHT: Mr. Brian's first point is well taken but I don't follow his second. Why should a man get a lesser sentence because he is addicted himself?

MISS DUNGAN: There is medical proof that marijuana is not as harmful as drinking.

MR. DAYKIN: The two were bracketed together because using marijuana is usually an entering wedge. This was the feeling of the committee.

MISS DUNGAN: They none of them know anything about using it.

MR. DAYKIN: It is true that they don't know anything about it from personal addiction.

MISS DUNGAN: I think both of Brian's points are well taken. A certain distinction has to be made between a user and one who has no aim but selling the stuff.

MR. LOWMAN: Because of the close association of the two drugs, I would disagree violently with both of your points.

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MR. WOOSTER: Can't a distinction be made in the sentencing itself by the judge rather than to try to make it into law?

MISS DUNGAN: We should draft two separate laws. It is that simple.

MR. HILBRECHT: I am afraid that any move you would make to correct these things goes in the wrong direction. Why should you get different treatment because you can prove that you are an addict? This would encourage people to be addicts. I think distinction should be meted out by the judge.

MISS DUNGAN: You could still make separate provisions for one who is an addict and one who is just selling.

MR. WHITE: I agree with the comments about making the judge do the sentencing. I think this would be the best safeguard.

MR. HILBRECHT: Why should we make a non-narcotic drug, marijuana, punishable the same as a habit forming drug?

MR. WOOSTER: What is your solution?

MR. HILBRECHT: Make the marijuana a gross misdemeanor then instead of a felony.

MR. WHITE: In your experience and study, Mr. Wooster, with dope and so on, does a person usually start on marijuana or do many of them just start on heroin?

MISS DUNGAN: The percentage of kids who try marijuana is pretty high. The percentage on heroin is under 1%.

MR. LOWMAN: Maybe we should hear from someone who knows something about narcotics.

MR. SWACKHAMER: We are just belaboring the point. The judge will have enough sense to adjust the sentences.

MR. HILBRECHT: Except for the gross misdemeanor.

I move to treat marijuana separately and make the first offense a gross misdemeanor.

MR. SWACKHAMER: If we are going to treat it differently, how are we going to treat it?

MR. HILBRECHT: The first offense is what I am talking about.

Miss Dungan seconded Mr. Hilbrichts motion.

MR. LOWMAN: This is a dangerous direction and we should not go this way. A qualified committee has spent much time drawing this up. We ought to do as they advise.

MR. HILBRECHT: The second offense you would treat as a narcotic drug violation. I would like to ask Mr. Daykin, did the committee call in anybody to talk to them on this?

MR. DAYKIN: No. A Synanon man came in one time. We did have a meeting in Reno which was attended by Richard Corn, a criminal professor at the University and we met once with a U.S. Attorney at Las Vegas, Joe Ward.

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MR. WOOSTER: Did they make recommendations?

MR. DAYKIN: Mr. Ward did. I can't remember whether Professor Corn did or not.

MISS DUNGAN: I will volunteer to reproduce the section on narcotics from this book sent to me by the government. Also, I can bring in some people who were drug addicts for many years. We should all certainly read about these drugs in this book sent by the government.

MR. SWACKHAMER: Is anybody expecting this bill to be perfect right off the bat?

Mr. Hilbrecht made a motion to make marijuana a gross misdemeanor on the first offense, 1 to 6 years on the second offense and 1 to 10 years on the third.

Miss Dungan seconded

Motion was carried with Swackhamer, Hilbrecht, Kean, Dungan and Schouweiler voting Aye and Lowman, White, Torvinen and Wooster voting No

MR. WOOSTER: Let's go on to consider if there should be a difference between the seller who is an addict and the seller who is not an addict.

Mr. Lowman moved to reject the suggestion there should be a distinction in penalty.

Mr. Torvinen seconded

Motion was carried with 6 Ayes and Miss Dungan voting No

MR. LOWMAN: I have a question on procedure. You are going to report these out with amendments as decided on here to the Assembly floor. I feel very strongly about this amendment. Must I file a minority report?

MR. WOOSTER: No, just stand up and talk on it.

SECTION 470:

MR. WOOSTER: Mr. Brian has an objection to this. Under Nevada law a second conviction for driving under the influence of liquor or any drug makes an automatic felony, no matter how far apart the two convictions might be. He suggests that this be changed to a period of ten years, two offenses in any ten year period. Was this proposal ever made to the committee?

MR. DAYKIN: It was never raised to the committee during the deliberations so we have no expression from the full committee on this point. As for myself, I think his point may be well taken, on this statute of limitations. Most state statutes have limitations of from five to ten years.

MR. SWACKHAMER: If a man were picked up in two different locations 25 years apart would they actually research this and find out about the first offense?

MR. DAYKIN: They probably would not, but if there were anything to indicate in any way that there had been a previous offense the statutory remedy would have to be followed.

MR. HILBRECHT: I think the ten years that Dick Brian suggested is reasonable.

Mr. Swackhamer moved to put a ten year limitation on section 470

Mr. Schouweiler seconded

Motion passed unanimously

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MR. WOOSTER: We have now gone through all the sections on which we have written objections.

MR. HILBRECHT: Mr. Brian had a section that ties in with drunk driving and suggested a substantive law change.

MR. WOOSTER: We took this up and decided against it.

MR. SWACKHAMER: I would like to ask Mr. Daykin about omitting the common law penalty. Are the statutes broad enough to charge a fellow who hindered two people from coming to the aid of an attacked person? We have a case like this in our county right now.

MR. DAYKIN: Yes, I think they could be prosecuted as aiders and abettors and they would be the same as the one who committed the offense.

MR. SWACKHAMER: The principal was not successful in his attack so they could not sue them under that provision.

MR. TORVINEN: They would be principals.

MR. DAYKIN: Rather than doing away with "no common laws" maybe we should enact a statute relating to misprision. No person ought to be convicted of a crime unless there is a statute against it.

MR. SWACKHAMER: Why should anyone who has committed a crime not be punished because there is no law against it?

MR. DAYKIN: I will draw an amendment making misprision an offense.

MR. WOOSTER: We have tried to steer away from substantive changes in the law with this bill unless it is absolutely necessary.

MR. DAYKIN: I would recommend a separate bill for committee introduction adding another offense to the penal code.

MR. WOOSTER: There has been a lot of conversation dealing with section 237 and what we did about the "good time credits". Since we had only six members of the committee here when we did this, we might as well discuss this now so we can give Mr. Daykin some definite direction on this.

What we were discussing was eligibility for parole. The discussion was centered on whether there should be eligibility for parole under one year. This is subsection 2 of section 237.

MR. WHITE: I have done some studying on this over the week-end. There seem to be two things involved: 1. There may be no incentive for the prisoner if we take away the good time credits. 2. If we are going to allow good time credits the law should be amended to where the prisoner actually has to do something constructive to get the good time credits.

MR. WOOSTER: That is what we wanted--not to give good time credits for anything.



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MR. WHITE: I talked with the warden of the prison. He told me that California did away with good time credits in 1940 and it did not seem to make any appreciable difference. If it is put back in, he is really hoping we will do something so that the prisoner has to earn his good time and doesn't receive it for just doing nothing, good or bad. He also feels that the one year minimum should be served before any consideration is given.

MR. KEAN: Will not having good time credits cause more problems in the prison?

MR. LOWMAN: You have an incentive with the parole situation.

MR. WOOSTER: The warden has worked in a system where good time credits were eliminated and he felt it made no difference in the prison.

MR. SWACKHAMER: I have tried to get to talk to Fogliani but have not been able to get him. I will keep trying and will talk to him about this.

MR. DAYKIN: Good time credits are available for every convict who is not guilty of any infraction of the prison rules and has no loss of the states agreement and performs his duties as he should. In addition to the credits for good behavior provided for in section 1, the board may accept prisoners who are diligent in study or donate blood, etc. For this they may get additional credit toward parole. Both types of credit are allowed to be taken off the term in prison.

MR. HILBRECHT: We have already taken a great deal of credit away from probation and parole and this is another step down that same road. Policing the prison and building the authority would be arguments for keeping the good time credits. If the committee is simply interested in keeping the minimum sentence to one year why don't we just say that and leave the good time credits in there?

MR. LOWMAN: If the Parole Board is doing its job, they are going to consider the very things that we are calling good time credits. It doesn't make any difference. We are confusing the issue, by giving good time credits and time off towards parole.

MR. DAYKIN: Jurisdiction over good time credits is not the function of the Parole Board. Whatever we do on this issue neither adds to nor diminishes from the authority of the Parole Board.

MR. LOWMAN: By calling them by two different names we confuse the issue.

MISS DUNGAN: We are forgetting what we are supposed to be doing with prisoners. We are supposed to give them incentive for changing to better behavior patterns. We put them in prison for two reasons: 1. To keep them away from society; and 2. To change their behavior patterns.

MR. WHITE: I am not against incentive programs, but why give good points for doing nothing?

MR. DAYKIN: We could limit good time credits to things of a positive action.

MR. WOOSTER: The expression from the committee was that we talk about having a minimum of one year instead of 10 months.

MR. TORVINEN: If the judge says one year in jail, he should serve one year in jail. I move that on line 31, section 237, the words "good time credits" be stricken.

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Mr. White seconded Mr. Torvinen's motion

MR. LOWMAN: How many times are we going to consider this problem? It has not yet even been brought back for reconsideration, according to the committee rules.

MISS DUNGAN: I move that we reconsider the action we took previously on section 237.

Mr. Hilbrecht seconded

The motion carried with Dungan, Kean, White, Schouweiler and Swackhamer voting Aye and Lowman and Wooster voting No

MR. WHITE: I move to strike out "good time credits" in subsection 2.

Mr. Torvinen seconded

MR. LOWMAN: I would like to amend by striking out "good time credits" in section 1, also.

MR. SCHOUWEILER: Didn't we take this up on Thursday and determine that a person could get out in the same amount of time?

The vote was taken on Mr. White's motion and carried, with Torvinen, Kean, Schouweiler Hilbrecht, Swackhamer, White and Wooster voting Aye and Miss Dungan voting No.

SECTION 440:

MR. DAYKIN: Section 440 has 3 subsections. 1 relates to possession and drops penalties one grade; 2 relates to sale, exchange or barter; 3 is wholesale provisions. Do you understand Mr. Hilbrecht's motion to apply to these last two sections?

MR. LOWMAN: The Chair has ruled that this applies only to section 1. If you want it to extend to the other two sections, you will have to make a motion to that effect.

Mr. Lowman moved that the last two sections remain as they are

Mr. White seconded

The motion was defeated with Wooster, Lowman and White voting Aye and Hilbrecht, Dungan, Kean and Schouweiler voting No.

MR. WOOSTER: All right. Now make your motion.

MR. HILBRECHT: We should put "giving away" in with possession.

Miss Dungan moved that section 2, where it involves marijuana, be a gross misdemeanor for the first offense, 1 to 6 years for the second offense, and 1 to 10 years for the third offense.

Mr. Hilbrecht seconded the motion

The motion carried with Hilbrecht, Dungan, Kean and Schouweiler voting Aye and White, Lowman and Wooster voting No.

MR. LOWMAN: By Miss Dungan's concept, we have lumped a child giving away a marijuana cigarette with possession.

MR. HILBRECHT: I have determined in my own mind that marijuana is not a narcotic.

MR. LOWMAN: It doesn't make any difference in your mind that a kid is going on to heroin 90% of the time?

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MR. HILBRECHT: The thing we are dealing with is a different type of drug.

MR. LOWMAN: Are you saying that marijuana is not a forerunner to heroin?

MR. WOOSTER: Do you want to go to section three, Miss Dungan?

Miss Dungan: I don't think punishment should be the same for both drugs.

MR. HILBRECHT: I move a new section for Marijuana, 1 to 6, 1 to 10, and 1 to 20.

Miss Dungan seconded.

The motion carried, with Hilbrecht, Dungan, Kean and Schouweiler voting Aye and Wooster, Lowman and White voting no.

Mr. Wooster announced that on Tuesday the committee will consider SB 155, SB 68 and AB 173.

Meeting adjourned at 5:00 P.M.