

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 14, 1967

Meeting was called to order at 2:05 P.M.

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

Absent: Schouweiler

AB 439: Deletes provisions allowing a state prisoner time off for passive good behavior.

Jack Fogliani, recent warden at the State Prison, was present by invitation to give his views on this bill and its effect on the state prisoners.

MR. FOGLIANI: Apparently, what you are trying to do is to eliminate statutory time, which is called good time and so forth. A few years ago, when we were having parole difficulties, this was turned over to the Prison Commissioners. These are the Governor, Secretary of State and the Attorney General.

This bill takes away statutory time but still leaves a credit for work. We had this different arrangement set up for the simple reason that as long as a fellow was in and behaved, he got good time. The fellow who did a lot of work would get only the same thing. So we set up what we called good time credits. This was for any key man who worked. The top ones would get 10 days a month credit for their responsibility. We had six categories in this. From 10 days to 2½ days. In addition to this, of course, they also got statutory time.

Apparently, what you are trying to do is eliminate statutory time. The purpose of this time was to give these people some incentive to behave. If AB 439 is passed, the Prison Board would set up regulations and what they would do is anybody's guess.

At the prison you cannot hire enough staff to do all this work and we have to have some incentive for the prisoners so they can be used. You can't take away their incentive, which gives them a reason to want to do the work. We give 10 days for a pint of blood. Texas gives 30 days.

MR. WOOSTER: The board is the Board of Prison Commissioners as set up by statute.

This bill takes out good time credits for passive behavior. It still gives credits for work and study and blood, etc. Would this bill, in your opinion, affect the good conduct of the prison? Are good time credits essential to the good operation of the prison?

MR. WHITE: Under determinate sentencing, he automatically has one-fourth of his sentence only. Under the old law the prisoner that was willing to work hard did not, in effect, earn as much as the guy sitting in his cell. If he does absolutely nothing, he gets 10 days.

MISS DUNGAN: How much help is the statutory time to the discipline problem?

MR. FOGLIANI: When it comes right down to it, they are going to keep these guys until they are ready to go, no matter what his credits are.

MR. WOOSTER: Based on that, do you feel the statutory credits are essential in the prison?

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MR. FOGLIANI: It would be a big help. The prison is tight as can be right now. The prisoners are more aware of what is going on in the legislature than 90% of the people.

MR. TORVINEN: Do you feel that the work credits as set by the Prison Commissioners are not enough incentive for the inmates? That they need both work and statutory time?

MR. FOGLIANI: If we could work all the inmates it would be fine, but there are not enough jobs to go around. So, what are we going to do with the fellow that can't get a work job?

MR. KEAN: Would this bill result in a need for more help at the prison?

MR. FOGLIANI: There is no question it would create more problems. It is hard to go out and pull a rug out from under these people immediately. If we can get enough activities started to keep everyone busy it would be easier. The more idleness there is, the more difficulties there are. No question about it.

MR. KEAN: How much is removing the gambling from the prison going to add to the tight situation?

MR. FOGLIANI: This gambling thing has been an outlet that was above board. Every prison has gambling. All the other wardens wish they could have it like we do. If you can find something for these people to do, gambling will die out on its own.

MISS DUNGAN: There is a request in for an additional \$200,000 for more guards. With the removal of gambling and this bill they will need more guards, won't they?

MR. FOGLIANI: These things will create problems.

MR. WHITE: What about the guy that is really working hard and gets 10 days and the guy that sits in his cell and gets five?

MR. FOGLIANI: We did try to raise this about a year ago. We asked for 15 days for the person with a real responsibility but they wouldn't buy it.

MR. KEAN: A question on page 2: Would this diligence in labor include study and donating blood? In some prisons the prisoners enter into medical experiments. Would you enlarge it to include that?

MR. FOGLIANI: Outstanding performance would include what you are talking about. We have had prisoners that have saved lives and they have got up to 25 days off for this. Right off I can think of several instances of this. When prisoners were doing some work on a cemetery an officer's clothing caught on fire from an explosion or something. He was saved by two inmates who put out the fire and got him to a hospital at once.

Another time a VW ran into the back of a truck, a cement truck. The car was really mashed up, also the driver, and gasoline was running out and sparks were shooting out. One of our inmates volunteered to go in there and hold his finger on there until they got the man out.

Another time, two boys were saved from drowning in the Truckee River by inmates. All these men were rewarded with time off for their heroic acts.

MR. WHITE: What, in your opinion, is the reason for such a lack of programs?

MR. FOGLIANI: Money, which is darn hard to find.

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MR. TORVINEN: Do you have any suggestions as to work programs? I know licenses take only about two months.

MR. FOGLIANI: We do have one honor camp. I did want to start a furniture factory but they wouldn't let me. We could tear down old buildings but you have to have a staff to supervise, also equipment. It all gets down to a matter of money.

AB 221: Prohibits intentional concealment, destruction, or alteration of certain medical records.

Mr. Wooster read Mr. Hilbrecht's proposed amendments to this bill. Under 1 A it would read "physicians records and reports". B "hospital charts, records, and reports" C "all writings and reports of any committee or physicians who" D delete lines 19 through 21 and insert gross misdemeanor.

Mr. Hilbrecht moved Do Pass as amended  
Mr. Torvinen seconded

MR. KEAN: Does this imply that you have to keep the original?

MR. HILBRECHT: We have a measure that allows you to substitute copies.

MR. TORVINEN: I can't imagine any problem there. The records are to be available whether they are the originals or microfilm.

MR. LOWMAN: Is there any concern that these are records that should not be made available?

MR. HILBRECHT: There is a statute that makes these privileged. This just makes sure that they are there if the judge rules they are necessary.

MR. TORVINEN: There are certain cases where the judge couldn't set the privilege aside.

MR. LOWMAN: The bill itself gives no serious leverage to either side of a case?

MR. HILBRECHT: No, it does not.

On Mr. Hilbrecht's motion to pass AB 221 as amended, the vote was unanimously in favor.

AB 222: Creates presumption of negligence of operator of motor vehicle who dies in accident not involving another vehicle.

MR. WOOSTER: The amendment requested by Mr. Hilbrecht deletes the whole bill and makes an exception to the Dead Man's Rule. It would not apply in personal injury or property damage cases.

MR. HILBRECHT: They wanted a presumption of blame for the dead fellow in a one car accident. It is unfair to put a presumption on anyone in these circumstances. The idea is that all you want to do is put things back in the middle.

MR. WHITE: You are not doing this. Who can dispute the testimony?

MR. HILBRECHT: The Dead Man's Rule came into being because there was no way to dispute

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someone's word.

MR. WOOSTER: Under the Dead Man's Rule you could show physical facts that indicated negligence.

MR. HILBRECHT: These help, but what the jury wants to hear is what people say. They want to hear the testimony of live witnesses.

MR. LOWMAN: There is another side to the story. Witnesses have come up with exactly opposite versions. People come up with versions favorable to themselves.

MR. HILBRECHT: The jury is instructed to take into consideration the outcome of the litigation and the advantage it would be to the witness. You let the evidence in and the Trier weighs it. You don't just throw it all out because the man might be lying.

MR. TORVINEN: The Dead Man's Statute says "transaction". This means something between two people. The Supreme Court says "transaction" includes any occurrence. A one-car accident is a transaction. This has been extended by the Courts beyond what the legislature intended. In an ordinary transaction a person can protect himself. In the case of an accident you cannot protect yourself ahead of time.

MR. SWACKHAMER: I would suggest that you get these things mimeographed and discuss them then.

AB 223: Bases allowance of attorney's fees by plaintiff in civil action upon amount recovered.

MR. WOOSTER: I have an amendment which Mr. Hilbrecht requested. It would amend line 18 to insert "recover more than \$10,000" and line 20 to insert "\$10,000".

MR. WHITE: What did Mr. Jamison say about this?

MR. HILBRECHT: He said it should work both ways and this is what this amendment makes it do.

Mr. Kean moved Do pass as amended

Mr. Dungan seconded

Motion passed unanimously

MR. SWACKHAMER: Can an attorney use this to collect a higher fee than had been agreed upon?

MR. HILBRECHT: If the judge grants attorneys' fees, they are presumed to be reasonable. The attorney would have to take what the judge had ordered unless he had entered into an agreement with the client for a higher fee. Right now the judge cannot even award attorneys' fees. You would have to pay it yourself. We are bringing it up so the judge can award attorneys' fees up to \$10,000. If you sue for more than the statutory amount, the judge has no power to give it to you.

MR. WOOSTER: You have to sue for what the claim is worth. You can't put attorneys' fees on top of it.

MR. SWACKHAMER: "Not restrained by law": What does that mean?

AB 224: Provides for admission of evidence of prior accidents to show existence or notice of dangerous conditions.,

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Miss Dungan moved to postpone indefinitely AB 224  
Mr. White seconded

Motion passed unanimously

AB 220: Allows certain tort actions between husband and wife.

Mr. Wooster explained that a vote was taken on the bill once before but it ended in a four to four tie, due to Mr. Lowman's absence.

MR. SWACKHAMER: I can see nothing good about this bill.

MR. HILBRECHT: If I take out a policy, anybody can sue except my wife and kids.

MR. WHITE: You are not paying a premium to protect them. That is spelled out in the policy.

MR. HILBRECHT: The only beneficiary is the insurance company.

MISS DUNGAN: You mean you don't want a wife to be able to sue if her husband beats the hell out of her?

MR. HILBRECHT: This law has been changed in California and many other states and there has been no change in premiums.

MISS DUNGAN: I don't see why insurance should come into this at all.

MISS HILBRECHT: You are saying that where there is a wrong done there cannot be a judgment.

MR. TORVINEN: We are still four to four. Let's wait until the full committee is here.

Mr. Torvinen moved to hold the bill  
Mr. Hilbrecht seconded  
Motion passed unanimously

Mr. Wooster asked Miss Dungan if she had checked on AB 356 and SB 258. Miss Dungan said Mrs. Tyson doesn't know and she has had no chance to check with Snowy.

AB 356: Provides that bonds of public officers run only for benefit of State or political subdivision damaged by acts of such officers.

Miss Dungan moved to postpone indefinitely AB 356  
Mr. Torvinen seconded  
Motion passed unanimously

AB 275: Mr. Hilbrecht asked if the bill could be held until he hears from Helen Herr's husband on it.

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.

MR. WOOSTER: This is Mr. Hilbrecht's bill and he has some amendments with new language.

MR. TORVINEN: Savings and Loans include in their trust deeds "if you sell without getting

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our approval first, we have the option to accelerate your note". If you sell and the buyer assumes the trust deed and you haven't got permission from the Building and Loan, they can make the whole thing due at once. It is merely a ruse for getting more money.

MR. SWACKHAMER: If you sold to a less than desirable person, would that hurt the Building and Loan?

MR. TORVINEN: If you sell the house and somebody else assumes the note, you are still on it. Now they have you as collateral, plus the second buyer, plus their trust deed.

SB 257: Gives the defendant burden of proof of any exception or exemption under dangerous drug and poison laws.

Senator Dodge was invited to come in and discuss this and other bills with the committee.

SENATOR DODGE: This bill has identical language and the same concept as the Narcotics Act. It conforms and extends the concept to dangerous drugs and poisons.

MR. WOOSTER: In the case of a pharmacist, the burden would be on him to prove that he is a pharmacist.

SENATOR DODGE: Our purpose in this bill was to conform.

MISS DUNGAN: Doesn't this nullify the "innocent until proved guilty" concept?

SENATOR DODGE: It may do. We did not go into this too much.

SB 258: Provides that bonds of public officers run only for benefit of State or political subdivision damaged by acts of such officers.

SENATOR DODGE: There were many inconsistencies in the amount of bond coverage. Some were real low and some were high, without regard to the amount of money being handled. Then we expanded to be liable to tortious misconduct, as well as defalcation about the time we waived sovereign immunity and made it \$25,000. We now provide for blanket coverage.

The protection we intended in 258 was for the state, so that if someone runs off with \$28,000 the state will get it back. This takes it away from a third party. We were told that there are many actions where people think they will get recovery from this bond, filing negligence suits. Now "not the person" is bracketed out.

MR. TORVINEN: I heartily agree with the section that has to do with defalcation, but this worries me that it might affect the sheriff's bond on regular attachments. If this has the effect it says "all official bonds", I want to know it applies to fidelity bonds and not to sheriff's bonds.

SENATOR DODGE: Maybe this wasn't properly worded by the bill drafter. I thought it was in here that it was a defalcation type thing. We intended for all this to apply to fidelity bonds. The theory now is that the protection runs to the state. If a person has an action, he can still file suit against the state or subdivision.

MISS DUNGAN: If we are talking about fidelity bonds, why can't we just say fidelity bonds.

MR. SWACKHAMER: The State Treasurer has to have 110 percent of the bank's deposits in bonds. Suppose he steals them, cashes the bonds, and goes to Brazil. Under this, the bank could not recover their money.

SENATOR DODGE: This is not the same type of bond.

MR. SWACKHAMER: Why couldn't we recover now, without the bill?

SENATOR DODGE: They can, but a lot of people are filing actions against this bond on negligence type suits and this is not what these bonds are for. The protection is limited to the employer. The third party is not prejudiced. He can still file his suit.

MR. WOOSTER: If we insert the word "fidelity" bond would it hurt the bill?

SENATOR DODGE: It might help. The language is a carry-over from the time when we had it in our law deliberately that it would be protection for the third party.

MR. WOOSTER: How about adding the word "fidelity"?

MR. TORVINEN: Let's instruct the bill drafter to add the word wherever it applies.

Mr. Torvinen moved to amend and Do Pass

Miss Dungan seconded

Motion passed unanimously

SB 257: Gives defendant burden of proof of any exception or exemption under dangerous drug and poison laws.

MR. SWACKHAMER: This is the guy that wants to get out of the provisions of the act. So he proves his right to be an exception.

MR. WOOSTER: How about "not in criminal act"? Would there be in the proceedings under this act other than criminal?

MR. HILBRECHT: You could bring an injunction, possibly, to stop someone from keeping poison, if he isn't an exception.

MR. Kean moved to postpone indefinitely AB 257

Mr. Lowman seconded

Motion passed unanimously

SCR 18: Directs Legislative Commission to make study of Nevada Court structure, including juvenile section and report to the 55th session.

MISS DUNGAN: Didn't the Bar Association say they were doing a study on this?

MR. WOOSTER: No, they asked the legislature to do so.

Mr. Swackhamer moved to postpone both of them indefinitely. (ACR 9, also)

MR. KEAN: No, I don't think so. They should be considered.

MISS DUNGAN: How about commemorating the Bar Association to make the study?

MR. HILBRECHT: I think they will do it if the legislature doesn't. This study is well motivated and needed but we have too many studies suggested this time.

MR. TORVINEN: Too many people think the courts run for lawyers. They are for people.



The problem that we have is that the jurisdiction of the Justice Court has been \$300 for one hundred years. On the filing fee we found in many cases you would be paying \$50 for a suit to recover \$300.

Courts are maintained and paid for by the State so people can have a place to take their grievances. Our system does need revision. We are operating under an old system. Where would the Bar Association get the wherewithall to pay for a court study which is for the general benefit of the entire state, except by raising my annual fee, which is already \$75 to the state alone. Miss Dungan, your suggestion to have the Bar Association do this study is ill-taken.

MR. LOWMAN: How about borrowing Colorado's study?

MR. TORVINEN: How about borrowing Idaho's study? They have come a long way with theirs.

MISS DUNGAN: We have had 65 studies and reports made and we have disregarded them. I don't know what good it is going to do to have another study made. All the lawyers will disagree with one another on what the report is.

MR. TORVINEN: Mr. Close would be somewhat unhappy if we were to tell him he wasted his time when he drafted the Criminal Code and I would not blame him. We have here a study which does need to be made.

MR. SWACKHAMER: We do need it, but the legislative commission has not got the time and money to do it. If this were the only study asked it would be something, but there are many more. Nobody reads them anyway.

MISS DUNGAN: Would the Bar Association do it if we could come up with \$5,000 and have them get matching funds from the Fleischman Foundation?

MR. KEAN: I think the Bar Association would do most of the study if we bog down on it. If Idaho's revision is generally accepted as good, couldn't we use it and let the Bar contribute most of the work? But then if we had them do it we would lose our legislative contact. I agree with Roy. We ought to pass SCR 18.

MR. WHITE: How much did AB 71 and 81 cost?

MR. WOOSTER: Very little. Only Mr. Close and Mr. Daykin received per diem.

MR. HILBRECHT: What we are really talking about is many studies that need to be made. In my mind metropolitan studies need to be made ahead of this.

I think the Bar Association would help on this. The Board of Governors has balked on some of the things, such as the Missouri thing.

MR. LOWMAN: Do we know how many studies are before the Commission and who sets the priority?

MR. WOOSTER: The Commission sets its own priority.

MR. KEAN: I had lunch with a judge today and he had with him a whole revision study. Other people already have theirs. The work has already been done. It seems to me at this point that the problem resolves itself down to which plan is the best.



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MR. SWACKHAMER: Who is going to make this decision, the legislature?

MR. TORVINEN: There were thousands of decisions made on the Criminal Code that we did not make.

MR. KEAN: If the Senate resolution covers everything and the Assembly does not, let's pass the Senate bill and kill the Assembly Resolution.

Mr. Swackhamer withdrew his motion to indefinitely postpone both resolutions.

ACR 9: Directs Legislative Commission to study juvenile court law.

Mr. Swackhamer moved to postpone indefinitely  
Mr. Hilbrecht seconded  
Motion passed unanimously

SCR 18: Directs Legislative Commission to make study of Nevada court structure, including juvenile section and report to the 55th session.

Mr. Swackhamer moved to postpone indefinitely  
Mr. Hilbrecht seconded  
Motion failed with only Swackhamer, Hilbrecht and Dungan voting Aye. Lowman, Torvinen, Kean, White, and Wooster voted No.

MR. KEAN: Most of the work is done. We are not imposing a study like some studies would be. It is just a matter of deciding which plan is best for the courts.

Mr. Lowman moved Do Pass SCR 18  
Mr. Kean seconded  
Motion carried with Torvinen, Kean, White, Lowman and Wooster voting Aye, and Swackhamer, Hilbrecht and Dungan voting No.

AB 393: Extends jurisdiction for probate of resident decedents' wills.

MR. WOOSTER: This was recommended by the Probate Committee of the Bar Association. It would allow a will to be probated in another county than the one in which the man died. However, all legal notices must be given in both counties.

Mr. Kean moved Do Pass  
Miss Dungan seconded  
Motion passed unanimously

AB 394: Exempts parents from guardianship requirements when child's estate is \$2,500 or less.

MR. WOOSTER: This is another request by the same committee. It is taken from the California statute. If a minor receives a portion from an estate, it can be given to the parent.

Mr. White moved Do Pass  
Mr. Torvinen seconded  
Motion passed unanimously

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SB 285: Repeals prohibition of liquor sales on election days.

Mr. Hilbrecht moved to postpone indefinitely  
Mr. White seconded

MISS DUNGAN: There are many tourists in Las Vegas at this time and they should be able to buy a drink.

MR. KEAN: The history of this thing started out in mining camps. You could take a person in and buy him a drink and buy his vote. Nobody would be influenced by a drink now.

MR. SWACKHAMER: It is a different situation now and different people. It should be repealed.

MR. HILBRECHT: Human nature has not changed and this could still have an effect.

MISS DUNGAN: If this bill had gone into the Election Committee like it should have done we would have amended it so that anyone could not vote who was not sober.

Mr. Kean moved Do Pass  
Miss Dungan seconded

On the vote the motion carried with Swackhamer, Torvinen, Dungan, Kean and Wooster voting Aye. Hilbrecht and White voted No.

SCR 19: Condemns sale of narcotics to children and encourages law enforcement and prosecuting officers to further diligence in the apprehension and confinement of narcotic peddlers.

Mr. Kean moved to postpone indefinitely SCR 19  
Miss Dungan seconded  
Motion carried with White, Wooster and Torvinen voting No.

Meeting was adjourned at 4:10 P.M.