

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING FEBRUARY 23, 1971

The meeting was called to order at 3:00 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Torvinen, May, Dreyer, Olsen, Kean and McKissick. None absent.

AB 203 - Establishes probation subsidy program for youthful offenders. Testimony from BILL LaBODIE, STATE WELFARE DEPARTMENT: He said the department is more concerned about what the bill doesn't say than what it says. They would like to hear from Mr. Carmony about it. It appears the department may be involved, but they are not certain.

Mr. Fry stated Mr. Carmony will testify with Judge Mendoza on the bill on Thursday. Mr. LaBodie stated he was concerned if the department would be involved financially, and Mr. Fry replied that the legal aspects of the bill would be heard in this committee, and the financial aspects of the bill in Ways and Means Committee.

AJR 46 of the 55th SESSION - Proposes Constitutional amendment to alter State Board of Pardons. Testimony of A.A. CAMPOS, SECRETARY TO THE BOARD OF PARDONS: He stated the present board is efficient and logical. The Board reviews over 40 cases per year. They view themselves as being a clemency board, and something of a "court of last resort". He feels the people best suited to review cases are those familiar with the total judicial system. A lay person would find this difficult, and would be dependent on the recommendations of the Board of Pardons department, and the Prison. There is no conflict with the Justices of the Supreme Court sitting on the board, because the board does not hear cases until all appeals have been exhausted. He said the Justices just "wear two different hats". He feels the present composition of the board is ideal, and stated if the board were composed of lay persons and the Governor, the members would be inclined to just go along with the Governor's views, and would be a "rubber stamp" to him.

Mr. Lowman: Did you want to see the bill killed, or did you have any amendments for it?

Mr. Campos: I have no amendments.

Mr. Lowman: Does the bill calling for a full time parole board affect this provision of law at all?

Mr. Campos: No.

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Mr. Dreyer: You are against any one or two laymen being on the board, and it should stay in the judicial branch because the layman could not give sound reasoning?

Mr. Campos: I don't think the board could have any better people than it now has. I'm not saying a layman wouldn't be good, but they wouldn't be as good.

Mr. McKissick: I think the Supreme Court wanted off it.

Mr. Campos: I don't know how they feel.

Mr. Fry: This doesn't exclude members of the Bar, just the judiciary.

Mr. Torvinen; When decisions are made, the Governor makes the decisions. It really falls on one set of shoulders.

Mr. Campos: This isn't the way the board is doing it.

Mr. McKissick: The Governor has to be prevailing under the old and the new laws.

Mr. Campos: The former Attorney General did not interpret it in this manner. He said it meant the Governor had to be one of the members present in the meeting. It doesn't seem to be a literal interpretation of what this says. We operate that the Governor doesn't have to be on the prevailing side.

JAMES GUINAN, BOARD OF GOVERNORS, STATE BAR OF NEVADA:
The Board of Governors initiated this at the last session and amendments aren't in order since it is a constitutional amendment. Executive clemency is a function of the executive, not the judiciary. It is not a healthy situation to have the judiciary in two functions. Historically, the Justices were part of the board because they were available in Carson City. We think the resolution is desirable in its present form. Otherwise, we are violating the theory of separation of powers in government. This would relieve an extra workload from the Justices. The Governor is the key figure on the board and we don't think there should be any members of the judiciary on the board. The Justices on the Court when this resolution was initiated were 100% behind it.

Mr. May observed that the main burden would be on the Governor, no matter what other people were members of the board.

Mr. Torvinen stated one of the rationales behind the resolution was that since the Governor had to make the decisions, the other members of the board gave him someone to counsel with and take some of the pressure off the Governor. He ought to select the people he wants to sit down and search his soul with.

Mr. Guinan: That is why you have to have the concurrence of the Governor. If the Governor is opposed, the other members can't do anything.

Mr. Fry: This would come up for a vote of the people in 1972. Has there been any legislation tacked on behind it to cover the lap-over period?

Mr. Guinan: There would be a gap of a few months. There should be a bill to establish the qualifications, etc. of members.

Mr. McKissick: Is the Supreme Court's objection based on wearing two hats, or on the time involved?

Mr. Guinan: They don't think it is a judicial function, but the time spent is essential.

Mr. McKissick: If we have SJR 23 on the same ballot, what would the chances be of its passing?

Mr. Guinan: This present resolution will pass easier than the other one.

AB 136 - Reduces jury to six except for capital offense, and verdict to less than unanimous. MR. GUINAN stated the Board of Governors of the State Bar opposes this bill. They are afraid of the unknown if this step is taken. The jury system now works and while it is not perfect, no one has devised a better system. I don't know of problems in other states with six-man juries, but members of the Bar are opposed to this bill.

Mr. McKissick has a substitute bill providing for 8-man juries instead of 6, with some other differences. Mr. Kean said if the jury were going to be reduced, he would prefer 8 to 6.

Mr. Fry stated there are related areas not brought into focus by the bill. Peremptory challenges are not discussed. Almost everything that works around the jury would have to be changed. He stated Justice Thompson wants to be heard on the bill before action is taken.

Mr. Torvinen said Neil Galatz had suggested 10-member juries. Mr. Torvinen felt if evolution in the jury system were to occur, a small step at a time might be in order.

AB 167 - Fortifies right of lawful resistance to crime. MR. GUINAN stated the Board of Governors opposes this bill because of the requirement that the state would be required to reimburse, and they don't understand the reasoning for making a defendant in this instance different from a defendant in any other crime.

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Mr. McKissick questioned if the reimbursement included attorneys' fees. Mr. Guinan stated he didn't know, and that the summary of the bill was misleading.

AB 182 - Permits court to separate jurors in civil and criminal cases. MR. GUINAN stated the State Bar objects to this on the grounds that any opportunity to tamper with a jury should be avoided, and the bill is dangerous.

Mr. McKissick said there is another bill which provides that the jury may go to a hotel for the night, with hotel charges deposited by the party demanding a jury. He stated District Judge Gezelin said at the conference of District Judges they had voted unanimously in favor of AB 182, which is the California act. They don't think the jurors would be tampered with. Mr. McKissick prefers the other bill to which he referred.

Mr. Fry stated he had doubts about out-of-state counsel who litigate in the halls of the courthouse, and felt they might take advantage of the separation of jurors.

Mr. McKissick said Judge Gezelin would like to be heard on the bill. Mr. Guinan agreed the judges should be heard. The attorneys don't like the bill, but the judges seem to be in favor of it.

Mr. Lowman asked about the difficulty of scheduling judges to appear on the bills. Mr. Fry said they are granted the same courtesy of being heard, but bills can't be held up if the judges aren't available. Mr. Fry stated if the judges inform the committee of their interest in a particular bill, they will receive ample notification of the time of hearing.

AB 186 - Provides court shall examine prospective trial jurors in criminal cases. Mr. Guinan stated the way the bill is written, the court would exclude examination by the attorneys entirely. The Board of Governors is opposed to putting the judges in the position of excluding the attorneys in the examination. They would want the bill to state "the judge shall allow them to examine jurors if they request it."

Mr. McKissick stated he would favor adding "in a reasonable manner to supplement the examination", and said the Federal rules provide for the questions for the jury to be submitted to the judge in writing before the hearing.

Mr. May said if the bill is changed to allow the attorneys to examine, it puts the law back the way it was before.

Mr. Guinan stated he doesn't care if the Court ~~conducts~~ the examinations, and it will speed things up, but they ~~want to~~

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preserve the right for the attorneys to examine after the judge is through.

AB 206 - Provides that negligent killing of person while hunting constitutes manslaughter. MR. GUINAN stated the Board of Governors is against the bill, because the state would be treating one type of offense differently than others in the same category. There is a manslaughter statute now and he sees no reason to create a new category of manslaughter for hunters.

Mr. Fry said the reason for the bill is that under a case in point recently in Reno, the prosecutor found he had no statute under which to prosecute. He said he would get the Deputy District Attorney of Washoe County to speak on the bill.

MR. BRIAN FIRTH stated neither negligent or grossly negligent or involuntary acts can be prosecuted as crimes because to convict anyone for a negligent act would be destroying the distinction between guilt and innocence so that anyone by mere chance can become a criminal.

AB 69 - Prohibits disruptive acts on college campuses; and AB 165 - Increases penalty for interfering with peaceful conduct of activities in public buildings. Mr. Lowman said he intended to include the University in AB 165. Mr. Kean asked if AB 69 is different from the present law. Mr. McKissick said AB 69 amends Chapter 207, and AB 165 amends Chapter 203. Mr. Fry said Chapter 207 covers miscellaneous crimes and 203 covers crimes against public property. He stated AB 165 includes the University of Nevada system.

Mr. Fry has a letter from the State Parks System requesting adding to AB 165 the words "public parks, recreation areas and historic monuments."

ASSEMBLYMAN NORMAN GLASER said AB 69 was recommended by W.I.C.H.E. as a model piece of legislation. It is California law and they have had a great deal of experience in disruption on college campuses. Section 7 is a change from California law, and provides that non-students are subject to penalties. Mr. Lowman assumed that non-students would be covered in AB 165 by the wording "no person". Mr. Glaser favored a bill dealing with disruptions on college campuses would be advantageous in deterring campus riots.

Mr. Lowman moved that AB 167 be indefinitely postponed. Seconded by Mr. Fry. Carried.

AB 203 - Testimony from CARROLL NEVIN, NEVADA CRIME COMMISSION: He stated there are funds set aside in their plan in 1971, in Federal funds and matching state funds, for community treatment centers in Clark County to treat children before they are sent to Elko, for

for guidance classes, juvenile parole staff, juvenile parole tutoring, a corrections program, and community centers program. They have money to be-allocated at the discretion of the commission that could go to the probation subsidy program.

Mr. McKissick asked Mr. Nevin if he is in favor of the policy of AB 203. Mr. Nevin said he is not in a position to make a recommendation.

Mr. McKissick proposed a bill regarding allowing claims against special administrators of estates of deceased persons. He stated there is no way to bring suit against a deceased person's estate for negligent acts. Mr. McKissick moved the committee introduce the bill. Seconded by Mr. Kean. Carried.

Mr. McKissick proposed a bill allowing district courts to file cases by number only. Mr. Fry moved the committee introduce the bill. Seconded by Mr. McKissick. Carried. Mr. Dreyer voted "No."

Mr. Torvinen moved that the committee introduce his county court study bill. Seconded by Mr. Fry. Carried.

Mr. Kean moved the committee introduce his bill on the county court systems study. Seconded by Mr. Fry. Carried.

Re. AB 186, Mr. Lowman moved the committee amend the bill to change "may" to "shall" on line 8 and recommend "Do Pass as Amended". Seconded by Mr. McKissick. Carried.

Re. AJR 46 of the 55th Session, Mr. Torvinen moved "Do Pass". Seconded by Mr. Fry. Carried.

Mr. McKissick suggested if Mr. Glaser wants the provisions in AB 69 added to AB 165, he could proposed the amendments in the Assembly.

Mr. Kean moved that AB 165 be amended to include the parks system, and the bill be brought back to committee to see about including portions of AB 69. Seconded by Mr. Lowman. Carried.

Mr. McKissick moved AB 182 be amended by striking out the Sections 2 and 3 and adding a new section providing that jurors may be sent to a hotel for the night with fees paid by the party demanding the jury. Mr. Fry will have the amendment prepared.

There being no further business, the meeting adjourned at 4:48 p.m.

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ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

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Date February 23 Time adjournment Room 240
p.m.

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
<u>AB 203</u>	<u>Establishes probation subsidy program for youthful offenders</u>	<u></u>
<u>AJR 46 of 55th Session</u>	<u>Proposes constitutional amendment to alter composition of State Board of Pardons.</u>	<u></u>
<u>AB 69</u>	<u>Prohibits disruptive acts on college campuses.</u>	<u></u>
<u>AB 165</u>	<u>Increases penalty for interfering with peaceful conduct of activities in public building.</u>	<u></u>
<u>AB 136</u>	<u>Reduces jury to six except for capital offense, and verdict to less than unanimous.</u>	<u></u>
<u>AB 167</u>	<u>Fortifies right of lawful resistance to crime.</u>	<u></u>
<u>AB 182</u>	<u>Permits court to separate jurors in civil and criminal cases.</u>	<u></u>
<u>AB 186</u>	<u>Provides court shall examine prospective trial jurors in criminal cases.</u>	<u></u>
<u>AB 206</u>	<u>Provides that negligent killing of person while hunting constitutes manslaughter.</u>	<u></u>
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*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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