

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING MARCH 24, 1971

The meeting was called to order at 10:30 a.m. Present: Messrs. Fry, Olsen, Kean, Torvinen, Dreyer and May. Absent: Miss Foote, Messrs. Lowman and McKissick.

Mr. Torvinen moved "Do Pass" AB 745. Seconded by Mr. Kean. Discussion was held on the necessity of giving notice, and Mr. Fry and Mr. Torvinen felt that notice mailed to interested persons should be included. Assemblyman Keith Ashworth stated that notice posted in the court house was important. Mr. Torvinen withdrew his motion, and Mr. Kean withdrew his second.

Committee in recess at 11:00 a.m.

Committee in session at 3:40 p.m. Present: Miss Foote, Messrs. Fry, Kean, Olsen, Dreyer, Torvinen, Lowman and McKissick, Absent: Mr. May.

AB 743 - Increases number of crimes for which interception of communications or conversations relating to such crimes is permissible.

MR. ROBBINS CAHILL, Managing Director, Nevada Resort Association, stated he previously had been executive director of the Nevada Tax Commission when it regulated gaming, and had served with the Gaming Control Board and State Gaming Commission, so he has seen gaming from both sides. He stated his views presented to the committee were those of the Nevada Resort Association. The gaming industry considers the right to conduct its business a privilege, and has no quarrel with the present regulations on gaming. For all of the economic activity the gaming industry provides for the state, gaming is treated as less than a step child status under this bill. It would put Nevada's primary industry in the same company with murder, kidnapping and drug abuse. This is an unjustified act and is an unnecessary extension of investigative authority. Legal gaming has nothing to hide, and the association feels they are being scorned by this bill. This bill would deny the gaming industry the constitutional rights afforded to others. He opposes the bill.

Mr. Fry noted he did not think that regulated and licensed gaming would come under the provisions of the bill. Mr. Torvinen read the present provisions of Chapter 465 on illegal gaming which the bill would seek to amend. Mr. Fry further explained the bill

is not aimed at legalized gaming, only against people who conduct unlicensed games.

Mr. Fry asked if the words "any crimes concerning gaming as provided in Chapter 465" were deleted, would Mr. Cahill have objections to the bill. Mr. Cahill replied he would have no objections.

MR. LES KOFOED, Director, Gaming Industry Association, echoed the remarks of Mr. Cahill, and stated he also would have no objection to the bill if the words mentioned were stricken. His association would object to being drawn into the category of the criminal, since it gives the gaming industry a bad image. He stated the bill, as written, would result in harrassment to members of the gaming industry.

AB 301 - Codifies crimes of assault and aggravated assault; and AB 786 - Makes assault and battery upon public officials a felony.

KEITH HENRIKSON stated the peace officers and firemen had been in favor of SB 161. He suggested that AB 301 and AB 786 be combined to make a bill these groups would endorse.

He suggested that after line 6 of AB 301, the provisions in AB 786 after line 4 be added to AB 301, which would result in a bill which would fit the purposes and intent of SB 161.

BILL MC DONALD, ESQ., Humboldt County District Attorney, regarding AB 301, stated that the crime of assault appears in many bills presently before the legislature, and in several chapters of NRS. He is interested not so much in the form of the bills, but feels it is necessary to group them together and have them placed in the same chapter for the convenience of looking them up.

AB 302 - Restricts withdrawal of defense counsel.

MR. McDONALD stated a difficult situation is created, particularly in the small counties, when witnesses and jurors have travelled long distances to the court, have been seated, and are met with a continuance of the case because of withdrawal of defense counsel or discharge of counsel by the defendant. The bill should require advance notice of withdrawal, before trial, so that jurors and witnesses could be notified.

SB 7 - Prohibits possession or withholding of stolen goods.

MR. McDONALD stated there was a statute against possession of stolen property until the Supreme Court made a good part of it inoperative, and then the law was repealed. There is a way to write a possession of stolen property statute that will meet constitutional

requirements. The statutes we have now can be difficult to prove. The District Attorneys' Association urges passage of this bill, which closes the loophole in the statute.

SB 183 - Clarifies alibi witness law.

MR. McDONALD stated the District Attorneys' Association supports this bill.

SB 227 - Permits voluntary dismissals in criminal cases without barring new proceedings.

MR. McDONALD stated that in cases where a witness is not available, and the defendant is arrested, a bar against further proceedings is created. If the case goes through preliminary hearing it will be dismissed for lack of evidence. This would permit the district attorneys to dismiss without it being a bar to further proceedings. This wouldn't help if the defendant has already been arrested. The statute now provides that if the complaint is dismissed they cannot prosecute again for the crime.

AB 299 - Provides for accusatory and investigative grand juries.

MR. McDONALD stated this would make it possible to have two grand juries, one a blue ribbon jury to investigate community matters, and one for criminal indictment purposes. It would solve constitutional attacks that might be levelled against a blue ribbon grand jury which is bring indictments, that they are not a randomly-selected group. The bill would not make the two types of juries mandatory, but would allow for them.

Mr. Fry asked if there would be any constitutional question if there were two juries. Mr. McDonald replied he saw no constitutional problem.

Mr. Olsen asked if the district attorneys had ever considered a proposal to abolish preliminary hearings and substitute them with grand jury proceedings.

Mr. McDonald stated he had heard of no discussion at the association meetings, but that this proposal would speed up proceedings and save a great amount of money. In Humboldt County they hold one preliminary hearing a day, necessitating a court reporter having to travel there each time a preliminary hearing is held. If this could be handled in a grand jury proceeding, in one day they could process 8 cases, and the court reporter would have to come for just one day.

AB 572 - Prohibits throwing substances and missiles at vehicles and their occupants.

INSPECTOR WALT HALL, Motor Vehicle Division, stated the division recommends a "Do Pass", although there are questions in regard to the definition of "missiles", and he felt the word should be better defined to create a distinction between throwing of such things as marshmallows and snowballs, and rocks or other items during riot situations.

Mr. Fry asked if there are many complaints about this. Inspector Hall replied it is a large problem. He stated that to his knowledge there is nothing presently in the statutes to cover this situation.

AB 746 - Permits additional officers to make warrantless seizures of improperly registered vehicles.

INSPECTOR HALL stated the division is in agreement with the bill, but has some questions: It doesn't relieve the highway patrol of the responsibility of disposition of the vehicle seized. Disposition should be the responsibility of the agency impounding the vehicle, and not with the highway patrol. Also, the clearing and establishing ownership of the vehicle should be done by the agency seizing the car, rather than leaving that responsibility to the highway patrol. The seizing agency can discover ownership through the department of motor vehicles in Nevada or in the state licensing the automobile.

MR. JOHN DUARTE, Department of Motor Vehicles, stated that a problem arises when an agency takes in an automobile and does not attempt to notify the owner. He supported Mr. Hall's remarks that attempts should be made by the seizing authority to notify the owner.

Mr. Kean noted that the Transportation Committee had a bill under consideration regarding taking custody of an automobile, and he will check the provisions of that bill against AB 746.

AB 637 - Permits expert to testify by affidavit to presence of liquor or drug in blood or urine.

MR. DUARTE stated his department supports the bill but recommends the following amendment:

Place a comma in line 11 after the word "blood", brackets around the word "or", a comma after the word "urine", and inserting after that "or breath".

Mr. Duarte said most local officers use a breath analysis and this would provide for testimony regarding that test.

AB 335 - Permits police officers to use court orders to obtain certain evidence from suspects.

MR. EDDIE SCOTT, testifying about this bill and bills with similar provisions, stated these would not protect the constitutional rights of individuals. He stated this bill would allow for a motion to suppress evidence, but that many individuals would not be aware of this, or would require legal counsel to do so.

Mr. Fry explained that the bill would actually protect the rights of individuals and would allow for no record of arrest if the evidence is suppressed. Mr. Dreyer noted this law is now in effect in the State of Colorado.

Mr. Scott said the bill is an open door to any police officer. There are no restrictions in the bill, and it is contradictory to the rights of an individual. He is concerned that there are no provisions in the bill for appointment of counsel to suppress evidence.

Mr. McKissick noted the public defender is available for this service.

Mr. Kean submitted the amendments to AB 620 which had been prepared by Mr. Guinan and Mr. Wedge for the committee, and moved the committee recommend "Do Pass as Amended". Seconded by Mr. May. Carried.

Mr. Fry presented the amendments that had been prepared for AB 641, providing for formal hearings in committees of the Legislature. Mr. Torvinen noted there is a gap in the amendment, and that it should further state "after having been sworn" in paragraph 3.

Mr. Torvinen moved the committee further amend the bill as to his suggestion regarding paragraph 3, and the committee recommend "Do Pass as Amended." Seconded by Mr. McKissick. Carried.

The committee was in recess at 4:45 p.m.

Committee in session at 6:35 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Torvinen, Kean, Dreyer, May and McKissick. Absent: Mr. Olsen.

RUSSELL McDONALD, ESQ., LEGISLATIVE COUNSEL, explained the provisions of the following Senate Bills, and the committee agreed that all could be adopted with one motion if there was no objection to any bill.

SB 380, SB 400, SB 485, SB 486, SB 497, SB 499, SB 500, SB 501, SB 502, SB 503, SB 504, SB 505, SB 506, SB 507, SB 508, SB 511, SB 512, SB 513, SB 514, SB 515, SB 516, SB 542, SB 543, SB 544.

Mr. Kean moved the committee recommend "Do Pass" on all of the above listed bills. Seconded by Mr. Fry. Carried.

Mr. May moved that AB 299 be indefinitely postponed. Seconded by Mr. Dreyer. Carried.

Mr. Torvinen suggested amendments to AB 301, to provide for removing reference to NRS chapters not applicable, or in conflict with present penalty provisions. Mr. Fry will have amendments prepared and will present them to the committee.

Mr. Torvinen moved that AB 570 be indefinitely postponed. Seconded by Mr. Fry. Carried.

Mr. Kean moved that AB 302 be amended to reverse the order of the first and second sentences and the committee recommend "Do Pass as Amended". Seconded by Mr. Fry. Carried.

Mr. Torvinen noted that AB 352 will require an amendment making the provisions of appointing a judge clear, so that it will not be construed as requiring the appointment of an additional judge. Mr. Fry will request Mr. Olsen to prepare the amendment and present it to the committee.

Mr. Torvinen moved "Do Pass" AB 354. Seconded by Mr. Fry. Carried.

Mr. May moved "Do Pass" AB 466. Seconded by Mr. Dreyer. Carried.

Mr. McKissick moved that AB 231 be indefinitely postponed. Seconded by Mr. Kean. Carried.

Mr. May moved that AB 572 be indefinitely postponed. Seconded by Mr. Kean. Carried.

Mr. Fry moved that AB 562 be indefinitely postponed. Seconded by Mr. Kean. Carried.

Mr. Kean moved "Do Pass as Amended" AB 595. Seconded by Mr. Torvinen. Carried, with Mr. May voting "No."

Mr. Kean moved that AB 607 be indefinitely postponed. Seconded by Mr. Fry. Carried.

Mr. Torvinen moved that AB 680 be re-referred to the Committee on Ways and Means. Seconded by Mr. Dreyer. Carried.

Mr. Kean moved "Do Pass" AB 704. Seconded by Mr. May. Carried, with Mr. Dreyer voting "No."

Mr. Kean moved that AB 718 be indefinitely postponed. There was no second to the motion, and Mr. Torvinen stated he would like to work on possible amendments to the bill.

Mr. Dreyer moved "Do Pass" AB 729. Seconded by Miss Foote. Carried, with Mr. Torvinen and Mr. McKissick voting "no". They will file a minority report on the bill.

Miss Foote moved that AB 512 be indefinitely postponed. Seconded by Mr. May. Carried.

The meeting adjourned at 8:30 p.m.

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