

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING MARCH 29, 1971

The meeting was called to order at 3:20 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Dreyer, May, Olsen, Torvinen and Kean.

AB 765 - Requires doctor's statement before embalming a body.

ASSEMBLYMAN VIRGIL GETTO explained that the reason for the bill was to try to save lives and try to insure that a person who is injured will be taken to a doctor as soon as possible.

DR. McCUSKEY spoke in favor of the bill, relating that his son had been injured in an automobile accident and that the officer investigating had pronounced him dead and left him at the accident scene for five hours. Evidence showed he had been alive for a substantial portion of that time.

V. A. SALVADORINI, M.D., urged passage of the bill, saying the situation should be avoided of a lay person making a decision that an accident victim should not be transported. Accident victims should be taken for medical treatment as soon as possible.

AB 720 - Establishes procedure relating to rights of needy defendants in criminal cases and the office of Defender General of the State of Nevada.

WILLIAM BEKO, ESQ., Nye County District Attorney, spoke in favor of the bill, saying he had been dismayed with the legal representation afforded some indigent defendants. Defense courts are used as a training ground for young lawyers. Many cases are reversed because counsel was inadequate. The system proposed in the bill would speed up criminal justice.

JUSTICE JOHN MOWBRAY, Nevada Supreme Court, speaking in favor of the bill, said that former Chief Justice Jon Collins had started the study of the defender general system, and Justice Mowbray had carried it on. Public defender systems have been successful in Clark and Washoe Counties, and the costs have been reduced by about 40% in Washoe County and 50% in Clark County to date. This is not a "soft on crime" approach. The program will give the rural counties the justice to which they are entitled.

Mr. Nevin has stated the State Crime Commission will give the program \$60,000 as of the first of July.

Mr. May asked about the panel on page 5 of the bill. Justice Mowbray explained that is a tentative appointment.

Justice Mowbray introduced General Charles Decker, U.S. Army (Ret.), who read and referred to prepared statements and a pamphlet which contained material used in drafting the bill.

He spoke of the backlog of criminal cases throughout the country and the necessity of speeding up trials of the accused. In Nevada, with its present backlog, the obvious remedy would be a program such as outlined in the bill and especially one where appeals are cut down. In the program being used in Phoenix, Arizona, appeals were running 50 to 60 per year and are now running about two per year.

An organized system, as covered in the proposed legislation, would be the best system. If the load becomes heavy in one area, people in the organization can step in and help out. Where the defense counsel is well versed in criminal law, the cases go to trial more quickly than where an attorney tries only an occasional case of criminal nature. Studies also show that a public defender may advise his client to plead guilty more often, thus reducing the number of jury trials. In many of these cases, a defendant is more often found "not guilty". He cited figures compiled in Massachusetts where four years of documentation showed considerable savings throughout the state on a per-case basis.

In Nevada, where the average cost of a felony case may run from \$182 to \$596, under the proposed program the cost would be a little less than \$100 and the clients would be equally served and justice awarded equally. Effective February 1, 1971, the Federal Government approved this type of system in the Federal Courts. The best thing that has arisen from the program is the speedy trial which benefits the innocent and brings about earlier conviction of the guilty. This also has proven a deterrent in the overall crime problems. Many of the simple cases can be tried within a period of two weeks.

The bill, as outlined by General Decker, is similar to the present law in Minnesota, Vermont and other states. It was drafted in accordance with suggestions from the Attorney General's Office, District and Supreme Court Judges and other legal organizations.

Among the people that would be helped most by the program would be the Peace Officers and they like the idea. The Public Defender can assist in going through the legal procedures, even in case of line-ups. He recommended that a peace officer be included in the makeup of the board, which should include at least five members. The real success of the program depends greatly on the

high quality of the man at the top. The Governor should be given a choice of at least three top men in the field from which to make his decision. In the implementation of a similar program in New Jersey, it was not too successful, since the Governor wanted to appoint a defender in each circuit.

Mr. Torvinen questioned General Decker on several points. He felt there would be a denial of equal protection of laws to certain people, since it departs from the present system. He also referred to the right of counsel in extradition proceedings and the inclusion of misdemeanors in the program. The two big counties in Nevada could not afford the public defender system for taking care of these misdemeanor cases.

General Decker responded that through a special study made by present Chief Justice Berger and others, the Supreme Court is now urging the states to adopt standards that will allow counsel in extradition cases. He said that in many cases of extradition, those who were about to be extradited would have fared poorly without counsel. Mr. Fry remarked that it was a policy decision now and not a matter of right.

Mr. McKissick asked to hear from the Attorney General's Office. ATTORNEY GENERAL ROBERT LIST informed the committee that he had not reviewed the proposed bill in detail in its final draft. He felt there was practically unanimous support for the Public Defender System, and that it would definitely enhance the system of criminal justice. He acknowledged Mr. Torvinen's remarks and felt amendments should be made to further define rights of the "needy" and also that the word "misdemeanors" should be changed to "gross misdemeanors".

General Decker said the new rules have provided that there should be counsel provided for everyone who is likely to get six months in jail or \$500 in fine. Mr. Fry said there would be no problem in this area since NRS provides for six months and over.

DENNIS E. EVANS, ESQ., President of the District Attorneys' Association, said their group would not be adverse to a public defender system in principle, but they were concerned about how the program would work from the small county standpoint. They were worried about how quickly they could get the public defender representative to the small counties and if they would be paying more than their proportionate share for the benefits received. He stated that the small county had more problems involved in their communities with various conflicts between individuals and their representatives.

Justice Mowbray said the only way to find out how it would work was to try it and if it was found later that the job was not being done, the law could be repealed. He felt it was such a great opportunity for the small counties and they would get good deputies

to help them. It would be a shame to turn down the \$60,000 given them for the program.

ASSEMBLYMAN RICHARD BRYAN, co-sponsor of the bill, spoke, stating he was the first Public Defender of Clark County. He said none of the backers of the bill were married to any precise language in the bill but felt that it would provide a worthwhile service to the rural counties and save them money. In Clark County, they were able to return substantial amounts of money to the treasury when this program was put into effect. Those involved in the program developed expertise and also provided an opportunity to build some real rapport with the prosecuting attorney. The program tends to lead to exchange of information and ideas about a particular case, leading to disposition of cases prior to trial. Many other matters are agreed upon prior to trial and thus avoids problems of personal conflicts between attorneys.

ASSEMBLYMAN WILLIAM SWACKHAMER presented a short statement supporting the legislation. Those involved became more proficient and the program eliminated a lot of difficulty in regard to pre-trial procedure.

Mr. McKissick felt the bill was too involved and when it got to the Assembly floor, some parts of it would be objectionable, paving the way for defeat of the entire bill. He felt the bill should be based on the original concept and an expansion of the program presently being used in Washoe and Clark Counties to the rural counties.

In further questioning by the committee and others present, Justice Mowbray indicated there would be no difficulty in handling appellate cases under the new bill. He also stated that an attorney appointed as a deputy under the act could still maintain a private practice, with the exception of criminal cases. Further discussion followed, regarding reasonable compensation allowed, especially in cases where private attorneys are put on some particular case.

Mr. Torvinen said it came right down to the point that the committee had a lot of work to do with AB 720 and also with the bill drafter. Mr. Bryan offered to work with any special subcommittee that might be appointed and Mr. McKissick recommended that a subcommittee be so appointed for this purpose.

Mr. Torvinen and Mr. Lowman were appointed by Chairman Fry to work on AB 720, along with Mr. Bryan. Mr. Torvinen also stated he felt the State should not let the Federal money go by and the subcommittee will also check with the Assembly Ways and Means Committee. It had \$20,000 -- 75/25 in matching funds.

AB 602 - Permits publication of names of juveniles and names of his parents upon his second appearance in court.

Mr. Lowman explained the intent of the bill was to try to provide a situation in which the parents and the juvenile would not wish to be caught in a crime the second time which would allow publication of their names; and therefore, it was hoped it would be a deterrent to crime.

Mr. May moved "Do Pass" AB 602, seconded by Mr. Lowman. Carried, with Mr. Olsen voting "No."

AB 541 - Prohibits advocacy, encouragement, incitation or solicitation of destruction of public property or private property; broadens disturbing the peace to include intimidation and libel.

Mr. Lowman explained the bill was to make punishable the type of harrassment to which State Welfare employees had been subjected in Las Vegas during the marches and demonstrations. This was the bill Russ McDonald had drafted.

AB 773 - Reduces age of majority from 21 to 18 years of age.

Mr. Lowman stated Nevada had been a no-man's land too long in our determination of whether to treat a person as a juvenile or an adult in courts, barrooms, everywhere. Many young people are mature enough to vote and it seemed they should be old enough for contracting, drinking, taking responsibility in courts, etc.

After committee objections to certain portions of the bill, Mr. Lowman agreed to work over the bill and return his recommendations.

AB 587 - Provides procedure for pretrial compromise offers in settlement of civil actions.

Mr. McKissick read the amendment he had prepared to Section 1, page 1. He stated he is positive it would speed up cases in the courts. Mr. McKissick moved "Do Pass as amended" AB 587, seconded by Mr. Lowman. Carried.

AB 622 - Provides for contribution between joint tortfeasors. Mr. McKissick moved "Do Pass" AB 622, seconded by Mr. Lowman. Carried.

AB 761 - Requires parents and guardians offering children for adoption to cooperate with Welfare Division.

It was agreed that adoption does not take place at the present time without thorough investigation; therefore, the vote was to indefinitely postpone AB 761, with five voting Aye and Mr. Lowman and Miss Foote voting "No."

Mr, Fry moved that AB 762 be re-referred to the Committee on Ways and Means. Seconded by Mr. Lowman. Carried.

AB 763 - Limits responsibility for child care of Welfare Division to dependent or neglected children.

Mr. Torvinen pointed out that the whole field of responsibility for county and state welfare offices as competing agencies is subject to a lot of serious consideration. Piecemeal whacking away does not solve anything. Judge Barrett had said the county was completely liable.

Mr. Lowman moved that AB 763 be re-referred to the Committee on Ways and Means. Seconded by Miss Foote. Carried, with Mr. Torvinen voting "No."

Mr. Lowman moved that AB 764 be re-referred to the Committee on Ways and Means. Seconded by Miss Foote. Carried, with Mr. Torvinen voting "No."

There being no further business, the meeting was adjourned at 5:43 p.m.

ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date March 29 Time adjournment Room 240

Bills or Resolutions
to be considered

Counsel
requested*

Subject

AB 541

Prohibits advocacy, encouragement, incitation, or solicitation of destruction of public or private property; broadens disturbing the peace to include intimidation and libel.

AB 602

Permits publication of name of juvenile and names of parents upon his second appearance in court.

AB 654

Enacts Nonprofit Chiropractic Services Corporation Law.

AB 686

Gives additional powers concerning county officials to boards of county commissioners.

AB 720

Establishes procedures relating to rights of needy defendants in criminal cases and the office of Defender General of the State of Nevada.

AB 735

Revises provisions pertaining to conversion of rented or leased personal property.

AB 744

Changes membership of Board of Pardons Commissioners if Constitution is amended in 1972.

AB 758

Authorizes Attorney General to bring action to revoke charters, permits, enjoin unlawful practices of domestic, foreign corporations and unincorporated businesses controlled by organized crime.

AB 765

Requires a doctor's statement before embalming a body.

AB 773

Reduces age of majority from 21 to 18 years of age.

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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