

JUDICIARY COMMITTEE
57th NEVADA ASSEMBLY SESSION

MINUTES

FEBRUARY 20, 1973

THE MEETING WAS CALLED TO ORDER BY MR. KEITH HAYES, CHAIRMAN.

MEMBERS PRESENT: MESSRS: HAYES, BARENGO, GLOVER, TORVINEN, HUFF, FRY, LOWMAN, HICKEY, AND Ms. FOOTE.

MEMBERS ABSENT: NONE

GUESTS PRESENT: FATHER PUMPHREYS, MINISTER OF THE EPISCOPAL DIOCESE OF CARSON CITY, MR. BUD CAMPOS AND MR. JAMES GEROW, FROM THE DEPARTMENT OF PAROLE AND PROBATION; Mr. JAMES LORIGAN, OF FARMERS INSURANCE; MR. JIM LAMBERT MR. RICHARD BORTOLIN, Mr. FREDDIE LITTLE, AND MR. LEONARD WINKLEMAN, ALL FROM THE DEPARTMENT OF MOTOR VEHICLES; MR. VIRGIL ANDERSON FROM A.A.A.; MR. GEORGE VARGAS OF A.I.A.; MR. VERN CALHOUN OF THE STATE NARCOTICS DIVISION; MR. BOB KERNS REPRESENTING THE FIRE FIGHTERS AND PEACE OFFICERS; AND MEMBERS OF THE PRESS

Father Pumphreys came before the Committee to speak on A.B. 114. Father Pumphreys said that he didn't know whether he was speaking in behalf of the bill or against it. He was present primarily to report incidents within the realm of his own experience. He stated that theoretically the parent is responsible. However, in the area of parental control there is less and less authority. This is a progressively increasing problem. In effect Father Pumphreys told the committee that he was asking them to solve politically a moral, psychological, and cultural problem.

Mr. James Lorigan said that he wished to clarify a point he had made in prior testimony before this Committee on A.B. 114 so as not to be misleading. Mr. Fry had pointed an existing precedent in the State of Nevada, and Mr. Vargis had also confirmed this. Previously, Mr. Lorigan had argued that this bill would not reach the parents of the child involved in the tortious act, but rather it would effect the general insurance buying public. Mr. Fry's point is that if a charge can be leveled and sustained, there is an imputation from the tortious child to the parent and then an insurance carrier could avoid coverage by reason of this imputation. So, there can be a declination of payment. Mr. Torvinen asked if this then might not be a test case for the Supreme Court, to which Mr. Lorigan replied, "you're the barrister".

Speaking in favor of A.B. 210, Mr. Kearns of the firefighters and peace officers, stated that his organization was behind any measure which would afford better protection under the law.

A.B. 225, classifying certain conspiracies as felonies, has generated quite a bit of interest. Speaking in behalf of this bill were Mr. Campos,

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and Mr. Gerow from Parole and Probation. Mr. Campos told the Committee that Mr. Gerow would do the talking since he had done most of the research on this proposition. Mr. Gerow stated that our current conspiracy laws do not provide for any felony convictions or punishment for felonies. The main argument in favor of this statute amendment is that our the conspiracy statutes in this state are used almost solely for the purpose of plea bargaining. The major portion of felonies in this state reduced to gross misdemeanor is unnecessary and a detriment in rehabilitation. There are no rehabilitative services in county jails and smaller county budgets will not afford long jail sentences. Mr. Gerow continued that the overall effects of this bill would be beneficial in attempts at rehabilitation especially from the control standpoint. Mr. Gerow presented to the Committee three cases which had originally been charged as felonies and reduced to conspiracy, therefore a charge of gross misdemeanor resulted. If these charges had resulted in felony sentences, even though suspended, in the state prison the parole department would hold increased authority.

Mr. Campos spoke next saying that they were not asking for a change because of abuse of current laws. "A felony should be a felony." "if there is conspiracy to commit a crime it should not be delineated along terms of what the felony is." A survey was done including all fifty states and replies were returned from approximately 80% of the states. "The majority of that 80% have laws that make conspiracy a felony." Mr. Campos stated that prior to use of the conspiracy law as a method of plea bargaining no particular problem existed. However with the advent of the Public Defender's office five years ago it has become an increasing area of difficulty. Mr. Campos stated that his point is that bargaining will go on regardless of what is given to bargain with, and we don't need to provide laws which in effect give a total escape hatch. The reason the three cases were presented was to show that in each case the District Attorney had a good case, the individual was caught in the act by policemen and citizens who were willing to testify. They were not reduced on the basis that if we do not except this plea we will not have a case at all. by and large this is the story of reduction. If the end result is not meaningful there is no purpose served. "let's have our convictions meaningful, not just a plus sign on the record of some District Attorney."

Mr. Barengo inquired if it is not true that the parole and probation report is usually taken from the police report and if this is true there are probably reasons which parole and probation is not aware, since these would be included in the District Attorneys records. Mr. Barengo asked if it is not a fair statement to say that the policy of the department of parole and probation is no revocation of felony until conviction obtained. He also queried whether the realization existed that under this present bill conspiracy to commit a misdemeanor is a gross misdemeanor. He took exception to the statement that no problem existed until the advent of the Public Defender. He said that it would be perhaps more accurate to say that use of conspiracy has come about with the increase of violations of the narcotic and drug laws. Mr. Campos stated that those two things had coincided.

Mr. Torvinen pointed out that in certain instances justice is not served, and that after all is the purpose of law.

Mr. Huff said that the thing that bothered him was what the big wrong is in calling a felony a felony.

Mr. Gerow summed up by saying that of all the 42 States from which he received replies we are the only state with this situation.

Mr. Dreyer appeared before the Committee to testify on A.B. 210. He stated that this bill is enlarging on legislation previously passed to cover telephone threats etc., dealing with explosives.

Mr. Barengo asked whether an avid hunter might be prevented from handloading his gun under this bill. This was in doubt.

Mr. Dreyer explained that the word firebomb had been deleted because of the nature of the problems it precipitated.

Mr. Lambert appeared before the Committee to testify on A.B. 218. This bill is an attempt to re-instate a statute omitted in the Uniform Vehicle Code of 1969. In general law enforcement agencies feel that it should be included. A person, driving under the influence, who causes the death of another should be charged with a felony.

Mr. Hayes inquired what the term "bodily injury" might comprehend.

Mr. Lambert explained that this was very loosely defined. In the Department of Transportation there is a classification of injuries sustained in accidents. This could be amended to define the level of injury.

Next, Mr. Vern Calhoun from the narcotics division appeared to re-assure the Committee that by approving S.B.81 they would not be restoring prohibition. Although this statute does cover "glue sniffing" and other areas the control of alcohol is exempted from this act.

Mr. Hayes thanked the witnesses and they were excused.

A.B. No. 114 SUMMARY-Removes limitation of parents' and guardians' liability for tortious acts of minors. (BDR 3-593)

Mr. Huff said that although he recognized the hesitancy to blame the parent of the child committing the act, it is a bigger crime to make the victim liable.

Following general discussion by the Committee concerning who is responsible, amount of liability, etc. Ms. Foote moved to amend the bill by increasing the existing amount of \$2,000 to \$5,000 and to recommend DO PASS- Mr. Huff seconded.

Mr. Torvinen, Mr. Fry, and Mr. Hickey voted against this motion.

AMEND AND DO PASS MOTION CARRIED.

Mr. F. Dakin arrived from the LCB and Mr. Hayes explained to him the problem that the Committee is having on A.B. 210 with reference to "incendiary device". Mr. Dakin replied, "there is no particular term of art for explosive or incendiary device of which I am aware Mr. Hayes, the whole phrase is defined in this bill, of course, for the purpose of this statute to mean any incendiary material possessed, manufactured or disposed of for the destruction of life or property, and of course that doesn't tell you too much about the use of the word incendiary."

Mr. Fry mentioned to Mr. Dakin that in the previous session there had been some discussion about the language used on page 2. It seems that there exists some household item which had to be covered and therefore "150° F." had been included in the bill at that time. Now however, it is being deleted.

Mr. Dakin went over this section of the bill and said that he did not remember the discussion to which Mr. Fry alluded, but it did seem that 150° F. would suffice both to include and exclude those items which the bill is intended to cover.

Mr. Fry asked Mr. Dakin if we would be safe in deleting this particular phrase. "I think probably the phrase "explosive or incendiary device" as defined, reaches everything which it is intended to prohibit, and certainly it would exclude such a device as an ordinary lighter, because even if you threw it you wouldn't do much damage," explained Mr. Dakin.

Mr. Dakin also told the Committee that this would not apply to the hunter who had a ashell reloader because of the wording of intent contained in the bill and also because it is neither placed or thrown.

Mr. Torvinen interjected that he felt that what is being done is the opposite of the bill drafters intent. "This bill is possibly making it harder to prosecute than it was before."

Mr. Huff said that the only thing they had to go on before was "infernal device and that this was impossible to prosecute.

Mr. Torvinen said that now you had to prove that the firebomb was manufactured to destruct property, and in order to do this you would have to go inside the manufacturers head.

Mr. Fry stated that he wasn't comfortable with this bill and that he would obtain more information. Mr. Hayes postponed further consideration of this bill pending this additional information.

S.B. No. 81 SUMMARY-Prohibits the use of drugs, chemicals, poisons or organic solvents as chemical stimulants of one's person unless under the direction of a physician.(BDR 40-30)

Mr. Lowman moved to recommend DO PASS, Mr. Huff seconded.
MOTION CARRIED UNANIMOUSLY.

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A.B. No. 218 SUMMARY-Increases the penalty for causing the death or bodily injury of another while driving under the influence of intoxicating liquor, controlled substance or other chemicals. (Bdr 43-482)

Mr. Glover moved to amend "bodily injury" in lines 10 and 11 to "substantial bodily harm" and recommend DO PASS, Mr. Hickey seconded.

MOTION CARRIED UNANIMOUSLY.

A.B. No. 225 SUMMARY-Classifies certain conspiracies as felonies. (BDR16-27)

Mr. Barengo explained for the benefit of the Committee areas for bargaining in charge and sentencing.

Mr. Barengo stated that in many instances there is more control capable of being exercised in the county jail.

Mr. Hayes asked Mr. Barengo to consider this matter in his sub-committee on criminal law and report back to the committee one week from today with some possible considerations on this bill.

Mr. Hayes asked if there was any further business to come before the Committee.

Mr. Barengo wished to address the Committee regarding A.B. 319. This is a measure to bring the abortion law into line with the Supreme Court's decision. "I would like to ask the Committee to hear this, but to postpone making any decisions on it". The Supreme Court has been petitioned for a re-hearing by the States of Georgia and Texas. They have taken the petition but they have not addressed it yet. If the decision is reversed there exists no need for this bill.

Mr. Hayes announced to the Committee that due to the increasing work load we would have to start meeting on Friday also.

Mr. Barengo moved to adjourn, Mr. Fry seconded. The meeting stands adjourned.