

JUDICIARY COMMITTEE
57th Nevada Assembly Session

105

MINUTES

February 26, 1973

Mr. Hayes, Chairman, called the meeting to order following adjournment of the general Assembly.

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

MEMBERS ABSENT: NONE

GUESTS PRESENT: PRESS

The first bill scheduled for discussion today is A.B. 109.

A.B. No. 109 SUMMARY-Exempts the investigation and narcotics division
from the requirements of the Administrative Procedure Act.

This bill had been previously discussed on January 30, it had been sent out with a DO PASS recommendation and was re-referred to enable representatives from Clark County to be heard. Since we have had no correspondence from that sector it is taken up again today.

Mr. Glover moved to recommend DO PASS, Mr. Lowman seconded.

Mr. Fry said that the narcotics division had failed to provide a copy of their manual as had been promised.

Mr. Fry voted against this recommendation.

MOTION CARRIED (DO PASS RECOMMENDATION) Mr. Lowman to speak on floor.

A.B. No. 254 SUMMARY-Increases fees for certification of copies of public records submitted to custodian of public records.

Mr. Hayes explained that this bill provides a time and expense saving for the office of custodian of records in discouraging public abuse of this office in obtaining multiple copies from "homemade" copies.

Mr. Torvinen moved to recommend DO PASS, Mr. Glover seconded.

MOTION CARRIED (DO PASS RECOMMENDATION)

Mr. Hayes asked Mr. Barengo to report on his sub-committee action regarding the death penalty bills.

Mr. Barengo reported that at a meeting of the sub-committee it was decided that all of these bills have some merit, but that they also presented some questions concerning constitutionality. He wished a formal report deferred until after the Senate Judiciary meeting on Wednesday, February 28, at 9:00 AM IN Room 213 regarding these bills. Mr. Barengo stated that the same feeling exists in the Senate Judiciary, that all of these bills have some merit, and they are thinking of bringing out a bill which will encompass the best parts of all. Mr. Hayes requested a report of this meeting on Thursday's regularly scheduled meeting.

Mr. Hayes had received some requested amendments from the bill drafting office and offered these for Committee consideration.

A.B. No. 111 SUMMARY-Permits an expert in the identification of controlled substances to appear at trials, preliminary examinations and grand jury hearings by affidavit.

Mr. Lowman read the proposed amendments. Mr. Hayes asked if this bill laid sufficient foundation for testimony by affidavit without challenge.

Mr. Barengo said that he had never seen this done at a trial, only in preliminary hearings to show probable cause.

Mr. Torvinen questioned whether the courts will uphold this. It will be a matter for the Supreme Court to decide. The intent is to expedite the criminal process, and the merits are self-evident the question is if it is denying any rights.

Mr. Fry moved to amend this bill by deleting Section 4, Lines 6 thru 26, and recommend DO PASS, Mr. Lowman seconded.

MOTION CARRIED UNANIMOUSLY (AMEND AND DO PASS) (WITH AMENDMENT#138 inc.)

A.B. No. 170 SUMMARY-Makes assault on member of Nevada National Guard a felony.

This bill was amended to conform to A.B. 34 in reviewing the amendments, Mr. Torvinen took exception to the wording "present ability", stating that if a gun was even in the home, that would be "present ability".

Mr. Barengo stated that "present ability" comprehends that the gun must be loaded and operable.

Mr. Fry felt that the problem is in identifying "deadly weapon".

Mr. Lowman reported that he had appeared before the Senate Judiciary on A.B. 34 which is running into problems and there are similar problems in our Committee with S.B. 64.

Mr. Torvinen suggested that a sub-committee get together with the Senate Judiciary on these three bills and try to work out a compromise.

Mr. Hayes appointed Mr. Fry Chairman, and Mr. Lowman and Mr. Huff to assist him in this endeavor. He requested a report on this Thursday.

A.B. No. 168 SUMMARY-Grants immunity from suit to certain persons while conducting military courts.

Mr. Hayes read the amendment deleting the words "or Maintained" from the bill, and asked if this would accomplish the intent.

Mr. Barengo said that he didn't think that the question of whether a person is arrested for a criminal matter. "does this mean he cannot be prosecuted.

Mr. Fry stated that what we are attempting to do is keep a person out of a civil court so that he can attend military tribunal, and that this bill should conform to NRS 1.310.

Mr. Torvinen moved to amend this bill by deleting lines 3 thru 9 and make it conform to NRS 1.310 and recommend DO PASS, Mr. Fry seconded.

MOTION CARRIED UNANIMOUSLY. (AMEND TO 1.310 AND DO PASS)

A.B. No. 43 SUMMARY-Increases penalty upon conviction of driving while driver's license is canceled, revoked or suspended.

Mr. Hayes read the amendment deleting the words "of this act" from Section 1, Paragraph 2, Line 13 and also from Section 2, Paragraph 6, Line 43, and deleting the entirety of Section 3. We had received communication from Mr. Bortolin to the effect that this section was really not necessary and that the bill would accomplish it's intent without this section.

Mr. Barengo said that he had talked with two Justices of the Peace over the weekend and they had asked that any bill incorporating a ~~mandatory~~ jail sentence not be made. The facts involved in a particular case often change the picture.

Mr. Glover said that the Department of Motor Vehicles had pulled the trick of taking out sections when their bills had run into trouble before, and that when this bill was introduced it was exactly what they wanted it to do.

Mr. Glover moved to indefinitely postpone, Mr. Fry seconded.

Mr. Hayes admonished that our concern for the State should over ride discouragment.

Mr. Glover withdrew his motion with the consent of Mr. Fry.

MR. Lowman moved to recommend DO PASS with amendment #139, Mr. Hickey seconded.

Mr. Fry brought out the point that in the case of a non-resident driving with a revoked out-of-state license, committing a minor traffic violation, what we would have is a ten day visitor in the jail. This is not taking into consideration any personal demands of this person, and "how would that person have any knowledge that in this state he would be subject to jail sentence".

Mr. Huff replied that after the first offense of this nature everyone would be aware.

Mr. Hayes said that this is a problem we come to, "I personally feel that it is time we grew up in this state, and in this country with regard to what people are doing to us on the highways." "let the man know that if he is driving on a suspended license, which always arises out of some serious traffic infraction, that he can expect to spend some time in the bucket."

Mr. Huff moved to the previous question.

The motion before the Committee is to recommend DO PASS AS AMENDED.

VOTING AGAINST THIS MOTION WERE Messrs; Torvinen, Fry, and Barengo and Ms. Foote.

VOTING FOR THE MOTION: Mr. Hayes, Mr. Glover, Mr. Huff, Mr. Lowman, and Mr. Hickey.

MOTION CARRIED. DO PASS AS AMENDED (AMENDMENT #139)

S.B. No. 100 SUMMARY-Increases penalty for certain offenses relating to dangerous weapons if committed by prisoners in Nevada state prison.

Mr. Hayes read the proposed amendment which would amend Section 1, Page 1 by inserting between lines 14 and 15, "has in his possession any weapon or instrument referred to in this sub-section while incarcerated in the Nevada State Prison or any county or city jail. (amendment #213)

It was established by the Committee that what we are trying to do is conform the wording to comprehend a person who obtains a weapon after he is actually in jail.

After general discussion as to how this would best be worded, Mr. Fry said that he would like to get counsel from Mr. Dakin on this and report back to the Committee next Monday on S.B. 100.

Mr. Hayes presented the Committee with an idea for a possible bill introduction concerning the selection of jurors. It is felt that there is a necessity to do something to keep the alternate jurors interested throughout the trial. Possibly impaneling a certain number of jurors and then after the trial is heard select the names of those to try the case by lot, in this way none of the jurors would know whether they would be selected to decide the case until the arguments were presented thereby maintaining an interest factor.

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Mr. Tom Winter a local citizen who has done research on jury selection gave the Committee background on various States' methods of selection, and the psychology of jury selection. He completed his presentation by saying that if some legislators have their wish the death penalty will again be a consideration and if you have your life or several thousand dollars on the line even small points should be regarded.

Another topic which Mr. Winters had posed for consideration is that occasionally attorneys argue the case in the light of the jury instructions which have been given and sometimes take liberties with the intent of these instructions. The proposal is that we consider giving the instructions to the jury after the closing arguments.

Mr. Hayes thanked Mr. Winters for his time and effort in researching these subjects and told him that these would be considered.

Mr. Barengo questioned the agreeability of the Committee in introducing a bill concerning a controlled substance.

Summary of the bill is: Deletes applicability of certain punishment for unlawful possession of marihuana to persons under 21 years of age and provides such punishment for any person.

Limited discussion and for the sake of expediency Mr. Glover moved that the Committee accept this bill for introduction, Ms. Foote seconded with the idea that we would further discuss this bill after introduction.

Mr. Huff, Mr. Lowman and Mr. Torvinen voted against Committee introduction of this bill.

MOTION CARRIED (BILL ACCEPTED FOR COMMITTEE INTRODUCTION)

Mr. Hayes declared the meeting adjourned.

ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date FEBRUARY 26 Time 2:00 PM Room 240

Bills or Resolutions
to be considered

Subject

Counsel
requested*

A.B. 109 Do Pass SUMMARY—Exempts the investigation and narcotics division from the require-
ments of the Administrative Procedure Act. Fiscal Note: No. (BDR 18-27)

A.B. 254 Do Pass SUMMARY—Increases fees for certification of copies of public records submitted
to custodian of public records. Fiscal Note: No. (BDR 19-913)

REPORT FROM SUB-COMMITTEE ON CRIMINAL

LAW CONCERNING DEATH PENALTY BILLS

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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