

JUDICIARY COMMITTEE
57th NEVADA ASSEMBLY SESSION

MINUTES

February 27, 1973

Mr. Keith Hayes, Chairman called the meeting to order.

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

MEMBERS ABSENT: MR. FRY (EXCUSED)

GUESTS PRESENT: Charles Thompson, Clark County D.A.'s Office; Helen Foley, representing Assemblywoman Jean Ford; Jim Lambert, Bernard Dehl, and M. Stacey of the Nevada Highway Patrol; W.G. Hull from the Department of Motor Vehicles, and members of the press.

Mr. Hayes announced that since there were a number of people present to testify on A.B. 291 this would be the first item of business.

A.B. No. 291 SUMMARY-Provides for random selection of grand jurors.

Assemblyman Demers was the first speaker in behalf of this bill. Mr. Demers informed the Committee that there is a similar bill in the Senate introduced by Senator Bryan. The main difference is in the selection method. Mr. Demers said that if the Committee should act favorably on his bill, he would suggest one amendment. That being to insert that a questionnaire would be sent to those people who are chosen asking them if they would serve. Mr. Demers further stated that he was not trying to impune the present Grand Jury, but that in discussion with various offices concerned with the Grand Jury it is generally felt that a change is necessary. The change in selection methods is desirable in order to eliminate politics or the inuendo that political favor plays a part in who is selected.

Mr. Charles Thompson, Assistant District Attorney from Clark County, was next to testify. He stated that his office supported the spirit behind the bill, to remove politics from the selection method. The present method of selection gives rise to accusations of political motivation, however it is Mr. Thompson's feeling that the people on the present Grand Jury in Clark County have done a courageous and commendable service. He also noted that the method of selection causes obvious problems and could possibly cause discredit to the Jury which they do not deserve. The future of the Grand Jury system requires that changes be made. However, the people Mr. Thompson represents are basically against total random selection because of the demands of the Grand Jury. Certain members of the population because of economics and personal reasons cannot effectively serve. The possibility of problems of this nature becomes greater with a straight random selection. State law requires that the Grand Jury supervise, and look into the departmental workings of certain government

functions, also making reports on hospitals etc., it does require a certain amount of expertise. Particularly for quasi civil functions. In random selection you may wind up with nobody with that ability. The suggestion Mr. Thompson made is that the judges provide a certain amount of names and a lottery selection drawn from those names. This system is based on what is presently done in Los Angeles. The judges however, are able to use some discretion in the type of people and their ability to serve. "We encourage some type of pre-selection process". Mr. Thompson explained that local conditions have a bearing on the length of time a Grand Jury is impaneled. An open-end system is not good, and the Federal Government requires eighteen months. It is generally felt that after that period of time there is a loss of interest.

Mr. Torvinen inquired what Mr. Thompson thought of two Grand Jurys. One for indictment, and one for investigative procedure.

Mr. Thompson replied that he felt it might just delay the problem. since often an investigative jury would be in the realm of criminal action and therefore still open to accusation. He did feel, though, that this would be better than the present system.

Helen Foley, Legislative Intern for Assemblywoman Ford, presented the prepared remarks on behalf of Mrs. Ford. (See Attached)

Mr. Lowman directed a question concerning selection to a member of the audience who is currently on the Grand Jury. She too felt that random selection may present problems, but that a change should be instituted.

Discussion was called for on A.B. 112.

Mr. Torvinen said that he had submitted this bill at the suggestion of a lawyer colleague. The intent is to set a maximum bail in the instance of multiple traffic violations. Mr. Torvinen stated that he had an amendment which is in effect almost a new bill.

Mr. Dehl of the Nevada Highway Patrol testified that he would like to go on record in opposition to certain portions of the original bill since an overweight violation held a bail of \$500.00 and in this instance posting bond for \$300.00 and not appearing would save the violator \$200.00.

Mr. Hayes asked the witnesses how he felt about the basic thrust of the bill.

Mr. Dehl replied that the Highway Patrol does not believe in multiple bookings. If all of the offenses prove DUI for instance they are all lumped under the single offense. There was Committee discussion on this statement since several members had had the experience where multiple bookings were very much in evidence in certain areas.

Mr. Hayes called for witnesses on A.B. 150.

Mr. Torvinen explained that this was another area which should be corrected. The basic principle of implied consent is that you must take the test offered by the officer unless you wish to have your license taken for six months. It is impossible to impeach the gaschromatograph in court. "Perhaps the machine is always right, either that or my clients have lied to me." Mr. Torvinen said that in Reno if a person arrested on a DUI states that he wishes to have a blood test,

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the officer says O.K. but you will have to stay in jail three days until we get the results. This should not be done, but in Reno they are refusing people the right to have a test of their own choosing after taking the gaschromatograph. The intent of this bill is to correct the fact that now there is no sanctions for a police officer who fails to read a person their rights under implied consent, or refuses to that person the right to have another test after the gaschromatograph.

Mr. Lambert from the Highway Patrol spoke in opposition of this bill. He stated that although he cannot speak to the practices of another department alluded to by Mr. Torvinen he felt that the implied consent law covers these points. Only after an arrest is made can an officer inform the person concerning implied consent. Mr. Lambert said that the only value of blood alcohol test is in court prosecution. It is not a determining factor in holding a person. Mr. Lambert further stated that the law as it is written today further sets forth that the test obtained at the request of the individual is not admissible in a court of law as evidence and shall not be substituted for the legally ordered test of the police officer who is involved in the arrest procedure. "If it is not admissible then how is it of benefit?" "I cannot see that it serves any valuable purpose.

Mr. Huff said that he felt that if this bill were to become law it would create a real drain on manpower, taking men off the highway for the period of time it would take to administer the test.

Mr. Torvinen pointed out that the does state that the test may not be substituted, but it does not say that it is not admissible as evidence.

Mr. Hayes thanked the witnesses and excused them.

Mr. Barengo reviewed A.B. 225 for benefit of the Committee. He said that possibly the major crimes of murder and kidnapping should be included as conspiracy, but that realistically he does not feel that it is a good bill.

Mr. Barengo moved to recommend DO KILL, Ms. Foote seconded. Mr. Lowman and Mr. Huff voted against this motion.

MOTION CARRIED DO KILL

A.B. 112

Mr. Lowman moved DO KILL, Mr. Huff seconded.

Mr. Torvinen said that the only thing that defeat of this bill would do is to make money for the bail bondsman. Limited discussion followed.

Mr. Huff moved the previous question.

The motion before the Committee is to Indefinitely Postpone A.B. 112.

Mr. Hayes, and Mr. Torvinen voted against this motion.

MOTION CARRIED (A.B. 112 INDEFINITELY POSTPONED)

A.B. No. 150

Mr. Torvinen said that he felt that Col. Lambert's misconception of what the statutes say is the best argument in favor of this bill.

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

Mr. Hayes stated that he felt that it comes down to a question of veracity between the officer and the defendant. Let's give it a chance.

Voting against this motion: Mr. Glover, Mr. Huff, and Mr. Lowman

MOTION CARRIED (DO PASS A.B. 150)

Mr. Huff said that he would just like to say that he hoped that no one here needed a policeman when he was busy performing this test.

S.B. No. 100 (Discussed previously)

The proposed amendment was read by Mr. Hayes. "Amend Section 1, Page 1 by deleting lines 21 thru 23 and inserting any person incarcerated in the Nevada State Prison, or any city or county jail who violates any of the provisions of sub-section 1, shall be punished by imprisonment in the state prison for not less than one year and not more than six years. "incarceration" for the purpose of this section shall not be deemed to begin until the initial appearance before a magistrate.

Mr. Huff questioned what happened in the case of the prisoner who had been booked, but not yet appeared before the magistrate. He felt that this should take effect after the booking process and that there should be no differentiation made between the prisoner who had a weapon prior to appearance and one who obtained one after appearance. In general discussion the Committee talked back and forth regarding other ways to word this bill, but it was felt that basically it covered the intent fairly well as amended.

Mr. Barengo moved to recommend DO PASS AS AMENDED, Mr. Glover seconded.

Mr. Huff persisted that there must be some way to cover the person who had been booked only.

Mr. Hayes explained that this bill was intended for the prisoner who after being arrested armed himself. Booking is not a statutory procedure.

Mr. Hickey called for the previous question, -carried.

THE MOTION IS DO PASS AS AMENDED.

MOTION CARRIED UNANIMOUSLY- S.B. 100 DO PASS AS AMENDED

Mr. Hayes announced that future Committee meetings will be held at 1:00 PM
Mr. Barengo announced that there would be a meeting of the Senate Judiciary Committee Wednesday at 9:00 AM for the benefit of any members interested in the discussion pertaining to the Death Penalty Bills.

Mr. Huff moved the meeting adjourn. Mr. Barengo seconded.

MEETING ADJOURNED.

Comments of Assemblyman Jean Ford regarding AB 291:

I very much support a change in the selection process of grand jurors from the present system left up primarily to the boards of county commissioners. The people do not have the confidence, particularly in Clark County, that county commissioners can make the selection on an objective, non-political basis. Whether or not this fear is founded in fact, I feel the change in selection as proposed in AB 291 is desirable at this time.

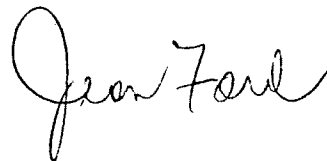
I would propose two additional amendments. The first would remove the wording on page 1, lines 13 to 15 which says "upon notice from the district judge as often as the public interest may require and at least once in four years." I prefer that there always be a grand jury empanelled and available for work if needed.

To provide for this, I propose that language be added on page 3 in Sec. 5 that the plan devised by each district court shall "provide that a grand jury be selected in December of each year to serve the following year or until other persons are selected and returned as jurors in a similar manner." This would allow each grand jury to complete its work in November or December of each year and a new one called which would begin work in January for a one-year period.

My second proposal would provide between Section 6 and Section 7 for the gathering of information by the jury commission or clerk about the 36 proposed grand jurors which have been randomly selected. The Kansas statutes provide the following wording which might serve as a guide: "Each jury commissioner may require any person summoned for jury duty to answer in writing such questions as he may address to such person, touching his name, age, residence, occupation and qualifications as a juror, (education, community activities, etc.) with a view to the due and faithful jury service of such person...Any person summoned for jury duty who shall fail or refuse to answer such questions in writing, signing his name thereto, shall be cited for contempt of court...Any person summoned for jury duty who shall willfully or corruptly make false answers to such questions put to him by the jury commissioner shall be deemed to be guilty of a misdemeanor..."

Such information would be useful to the judges as they make their selection of 17 out of the 36 to serve in that they would have some indication of their educational background, ability to serve without undue hardship being placed on the individual, etc

I also favor the concept of providing for the creation of two separate grand juries, one to be accusatory and the other to be investigatory. The process in AB 291 would be adequate for the selection of the accusatory while a more selective process might be followed for the investigatory body which would of necessity need some background in local government. Additional legislation is being introduced along this line and I would urge you to wait on your final action until all the alternatives have been introduced for consideration.



ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date FEBRUARY 27 Time 2:00 PM Room 240

Bills or Resolutions
to be considered

Subject

Counsel
requested*

A.B. 112

SUMMARY—Provides maximum bail in cases of arrest for misdemeanor traffic violation. Fiscal Note: No. (BDR 14-586)

A.B. 150

SUMMARY—Restricts introduction of evidence of chemical tests of person arrested for driving under influence of intoxicating liquor or of his refusal to submit to such a test. Fiscal Note: No. (BDR 43-585)

A.B. 291

SUMMARY—Provides for random selection of grand jurors. Fiscal Note: No. (BDR 1-884)

REPORT FROM SUB-COMMITTEE ON CRIMINAL
LAW REGARDING A.B. 225

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

Date _____ Time _____ Room _____
Subject _____