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MOTION FAILED

The three members who were not present on the first motion entered.

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

Mr. Barengo said that this measure would be like holding a club over the head of the public.

Mr. Huff replied, "you've heard of the Boy Scout Motto, "Be Prepared." "this seems to me to be sage advice".

Ms. Foote said that she felt that protective measures were in order.

Mr. Jacobsen appeared before the Committee to testify on this bill. He told the Committee that this bill originated out of the rules Committees' interim study of the last session. "The bill has a lot of merit". Throughout the United States there have been problems with riots, etc. He said that right now there is no real security in this building, anyone can walk through the door and pull a gun or whatever. We are somewhat in doubt as to whether the security man downstairs now has the authority to carry a gun. Mr. Jacobsen further commented that Mr. Paley has been talking to various members of the assembly to convey the opinion that this bill would stop people from coming here to testify. Mr. Jacobsen said that he felt that this bill is preliminary procedure for "our Own protection".

Mr. Huff said that he feels that this bill deals with the specifics of the legislative process "and what I consider to be a very important job".

Mr. Hayes reminded the Committee that the motion before them at present is a recommendation for DO PASS.

Voting against this motion were Mr. Barengo and Mr. Fry.

MOTION CARRIED (RECOMMEND DO PASS ON A.B. 19)

Mr. Bud Campos appeared before the Committee to testify on A.B. 234, 118, and A.B. 435. (SEE ATTACHED)

When Mr. Campos had finished his presentation, Mr. Torvinen informed those in attendance that four years ago he had requested the various agencies concerned get together and have drafted an indeterminate sentencing statute. This would be a major effort and would have to overhaul our whole criminal code, so far nothing has been done. It is a job of such large proportion that it is too late in this session to accomplish. "Perhaps an interim study".

Mr. Roy Woofter, District Attorney of Clark County, commented next. "The prime concern is the use of the deadly weapon and how to rectify it". Mr. Woofter stated that he, along with law enforcement agencies throughout the State has gone on record in favor of this legislation. The only concern is "Does this accomplish what we want to rectify?" "I don't know". The area of greatest concern seems to be grand robbery. In Clark County we have instituted the policy of no bargaining in cases where grand robbery has been charged. This has been an iron clad policy. We felt that this

might be a deterrent among those who usually commit these crimes in that word gets around. However more recently with the advent of higher use of narcotics, and finding that a great percentage of robberys are committed by adicts, this perhaps is not strong enough. "So I would hope at this time to impress on you the need to strengthen the laws concerning robbery. Two sessions ago probation was granted for an armed robbery conviction, and I don't know what the reasoning was, this should be a non-probatible offense.

When Mr. Hayes inquired what type of sentence Mr. Woofter would impose for armed robbery, he replied, "A minimum of ten years".

Mr. Fry said that he felt that the penalty for each crime should be reviewed.

Mr. Jim Thompson from the Attorney General's Office told the Committee that similar bills have been introduced in the past four sessions, and that each time the hang-up seems to be how effective it would be if passed. He felt that Mr. Fry's suggestion of studying the crimes which presented the most problem would be best. "There has to be an effective method to handle this problem." The general public is most concerned about the use of a weapon in street crimes, armed robbery and armed assault.

Mr. Fry suggested that some of the men most concerned with law enforcement should study the level of incidence in particular crime areas and make recommendations. "It seemd rather silly to put in a kicker penalty for murder".

Mr. Thompson pointed out a duel aspect of A.B. 118 where it states use of a firearm in commission of assault with a deadly weapon.

Mr. Hayes commented that he feels that the public in general does not actually comprehend the sentencing structure. To most people five years means five years, rarely do they realize that this same criminal may be out on the street again in a little over one year. Conversely the criminal element is aware of this.

Mr. Woofter did not agree with this.

Mr. Coughlin of the Nevada State Prison spoke next saying that he had arrived prepared to speak to A.B. 234 & A.B. 118 to recommend a one to ten additional penalty for a first offense with a weapon, and five to fifteen for a second offense. Some of the questions which have been raised lead to other solutions such as not only possession of a gun, but actual utilization as brandishing, waving, or actually firing it during commission of a felony. Mr. Coughlin informed the Committee that the prison's revision of A.B. 234 met with approval from the Governor's Office. This would be to eliminate the delineatio of offenses. Many offenses such as sex offenses involving children, assault with intent to commit grave bodily harm etc, have not been included. Any time a gun is utilized it should end up in a second consecutive sentence.

Mr. Hayes announced that we would proceed to discussion on A.B. 295.

Mr. Woofter said that this bill had been discussed at the law enforcement meeting in the A.M. Unanimous approval was registered for endorsement of this bill. "It is probably one of the most important pieces of legislation to be considered this session, with regard to criminal law from "our" side

"We find the same familiar names comprising 50% of the criminal lists." Then, there is the added problem of being out on bail on three or four felony offenses. Mr. Woofter told the Committee that formerly when he had been defense counsel in some of these cases defendants informed him that the reason they had committed an additional crime was to pay the bail man. "This measure is needed, I am sure that it would cut down on crime, at least as far as Clark County is concerned." Mr. Woofter also noted that two years ago he had testified on similar legislation, and there was some question as to the constitutionality by reason that bail is only for the purpose of insuring that the defendant appear. At that time the state of Arizona had passed similar legislation, although it had not been tested. Mr. Woofter said that now it has been tested and upheld. In answer to Mr. Hayes, he said that the Arizona statute and this bill were worded the same "almost exactly to a T".

Mr. Hayes stated that he felt that this should comprehend a finding by the Court that the person is in actuality a threat to the community. He cited an instance whereby the robber was picked up for a DUI charge; under the terms of this bill he must stay in jail, whereas this is not the revolving door type of criminal we are trying to reach.

Mr. Woofter remarked that he feared the discretion of the courts, but that this is a valid area of concern. He promised that he would send copies of the Arizona statutes and the case reference.

Mr. Huff interjected the thought that over the years in his realm of experience bail becomes the necessity for further crime.

Mr. Fry said that he is for the concept, but is not sure of the constitutionality. All persons should be bailable except for capitol case.

Mr. Hayes asked Mr. Woofter about the need for another Justice of the Peace for Clark County. Mr. Woofter felt that to add one at this time without increased physical facilities would not be economically sound since you would not be getting full use of a third man. He further stated that he felt the load could be handled at present, but realized that there would be a future need.

The Committee asked the gentlemen in the audience who had attended the law enforcement meeting whether there had been any discussion regarding the age of majority issue. Mr. Woofter and Mr. Thompson stated that of those present only three had areas of reservation about this bill and the rest were unanimous in support of the measure.

Mr. Hayes thanked the witnesses and excused them. He then announced that we had a few items to dispose of.

Mr. Fry commented that he is still concerned with whether or not this bill is constitutional (A.B. 295) He suggested that Committee action be withheld until Mr. Woofter sends the case reference on the Arizona Supreme Court Decision. Mr. Hayes concurred, SAYING that He and Mr. Arengo would check on this and report back to the Committee.

Mr. Hayes appointed the sub-committee on crime to study the three similar bills (A.B. 118, A.B. 234, & A.B. 435) and prepare specific suggestions pertaining to amendments etc.

Mr. Fry moved to adjourn, Mr. Glover seconded. Meeting Adjourned.

MEMO

TO: Assembly Judiciary Committee

RE: AB 118

This Department does agree with the basic intent of this bill, to increase liability and penalties when a firearm is used in the commission of a crime of violence. However, there are many practical aspects which should at least be brought to the attention of the Legislature before this bill is enacted.

1. This bill provides that all crimes in the listed categories be non-probatible. This department does not have, on hand, absolute statistics regarding most of these statements which will be made in this memo.

However, it has been the experience of this department, that when crimes are made non-probatible, that the conviction rate for those crimes is drastically reduced.

For example, prior to 1967 the crime of Robbery was non-probatible. Prior to 1967, it was common practice throughout Nevada to avoid the non-probatible issue by reducing crimes of Robbery to Larceny From A Person.

The most striking example of the results of making a crime non-probatible, can be accurately indicated and involves the crime of Sale of a Controlled Substance. The last year in which Sales was non-probatible, there were thirty-four (34) convictions throughout the state for Sales of Narcotics. Of the thirty-four, seventeen (17) were sent to prison. (Those granted probation were probatible in that they were under twenty-one (21) years of age).

In the first year that Sale of Narcotics was deemed probatible, there were one-hundred (100) convictions for Sale of Narcotics in Nevada and twenty-four (24) sentenced to the Nevada State Prison for that offense.

In 1971, when Sales was still non-probatible, this factor was avoided by the reduction of Sales to the crime of Possession of Narcotics . These persons were subsequently placed on probation for Possession of Narcotics. In 1972 however those persons receiving probation did receive probation for the greater crime of Sale of Narcotics.

It is this agency's contention that we would much rather have the greater conviction of Sales than that of Possession if a man is to be granted probation.

As indicated then, the non-probatible element of the crime does invite on a large scale, negotiations. We are of the opinion that AB 118 would have exactly the same effect. Furthermore, there is nothing contained in this bill, which would make it mandatory that the crime be prosecuted. In other words, the crime of possessing a firearm in the commission of a violent crime could itself be used as a bargaining tool for a plea in the original offense.

CONSECUTIVE SENTENCES:

Again, it has been our experience that when consecutive sentences are imposed, the Courts are inclined to sentence a person to a lesser penalty for the consecutive term.

In AB 118, we are not concerned with the penalty mandated by a second or subsequent conviction, that of ten (10) years to twenty-five (25) years. However, we are concerned with the proposed punishment for a first conviction, that being one (1) to ten (10) years.

MEMO to Assembly Judiciary Committee  
RE: AB 118

It is anticipated that the sentences imposed under this section, would be such, that a majority of persons would be eventually released from prison without benefit of parole. This means, that the varied types of persons which should be supervised in the community, persons who have a history of violence, would be released without benefit of parole.

In order to avoid that very serious problem, and remain within the intent of this bill, to increase the penalty for use of firearms, the following is proposed.

That any sentence imposed under this section, would be cumulative rather than either concurrent or consecutive.

In other words, if a man should receive a ten year term for Robbery and a five year term for Possession of a Firearm, that rather than have terms of ten years and five years consecutive, he would have a cumulative term of fifteen years. His parole eligibility would then be determined by the cumulative sentence and NRS 213.120 would apply to the cumulative term.

While the application of a cumulative sentence is new to Nevada law, it is utilized in other states.

Because of the increased use of firearms and other deadly weapons in crimes of all types, there is definitely a need to impose stricter penalties as a deterrent element.

However, in order to properly evaluate the effect any law might have, it is firmly suggested, that the effect of any legislation regarding this matter be subject to study and evaluation by the Nevada State Legislature. It is therefore recommended, that the Department of Parole and Probation be directed or requested to submit a follow-up report and study to the Legislature regarding the use and impact of any such legislation.