

JUDICIARY COMMITTEE
57th ASSEMBLY SESSION

MINUTES

MARCH 26, 1973

The meeting was called to order by Mr. Barengo, Acting Chairman.

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

MEMBERS ABSENT : Mr. CRADDOCK

GUESTS PRESENT : Mr. Bob Rose, Washoe County District Attorney; Mr. Robert Groves, representing the Attorney General; Mr. James Gerow, Deputy Chief of the Department of Parole and Probations; W.W. Richards, Chief Motor Carrier; and Kathy Wall from the Washoe Co. District Attorneys Office.

Mr. Gerow addressed the Committee on S.B. 204. He said that he would call to attention that in 1971 when the sale of a controlled substance was non-probatable there were 34 convictions in the state 17 of which went to the Nevada State Prison. 17 were under the age of 21. In 1972 when the sale of controlled substances became probatable there were 100 convictions and 24 were sent to prison. We have found that there are many instances where the sale of a controlled substance should be a probatable offense. "We are in favor of S.B. 204."

Mr. Huff stated that he is opposed to any measure that gets softer on the pusher.

Mr. Gerow explained that in 1972 several judges decided that this was a probatable offense. Mr. Lowman questioned how this could be done.

Mr. Bob Rose informed the Committee that there was a conflict in several statutes within the Controlled Substances Act, and in this instance the law governing the situation is that the conflict is decided in favor of the defendant. That is established criminal procedure and a rule of long standing. All six judges in Washoe agreed that there was a possibility of parole being given on a first offense sale case. Legislation such as this would resolve the conflict. The sale of some drugs should be non probatable, but with regard to some of the diet pills which can be obtained by prescription and sometimes fall in Schedule II, and sale in this state is very broadly defined, do you want to make it a mandatory prison sentence for the woman who gives a co-worker a couple of diet pills. If you redefine the definition of sale to "sale for profit" then it would make sense to say on a sale that it is non-probatable for a first offense.

Mr. Rose also wished to testify in behalf of A.B. 487. He told the Committee that the past two years his primary concern has been to speed up the criminal process and this bill is the third of package to accomplish this end. This bill would limit the availability of post

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conviction petitions that could be filed delineate the grounds on which they could be based. Mr. Rose introduced his assistant Kathy Wall who had prepared this bill. Miss Wall explained that the post conviction remedy act was enacted in 1967 pursuant to a U.S. Supreme Court decision which directed the states to enact this type of procedure to take some of the burden off of the federal court for prisoners who had been convicted and who were raising constitutional issues. The proposed amendments in this bill are the result of the problems we have encountered. "Some very significant changes have been made." Over the years we have found that petitioners who are filing post conviction writs were raising any and all issues and this was not the intent of the Supreme Court directive. What this bill attempts to do is provide specific issues which can and cannot be raised and include some waiver provisions. The major changes are first that the petitioner has to be incarcerated. Many other states say this, and this was taken from the Illinois statutes. second, we put a time limit, they have one year from final judgement of conviction in the trial court or if they appeal, one year from the determination of their appeal. Third, we have included certain minor time limits for appointment of attorney, filing of supplemental petitions etc. We have provided that it should be before the same judge who convicted the petitioner if possible. We have made it discretionary whether to order a court hearing if the only question involved is a question of law. We have provided that a short order form of judgement would be sufficient for a ruling of the petition if it's on a state motion to dismiss. With regard to the waiver; if a defendant has plead guilty we have provided that all claims or attacks on his conviction are waived except on the voluntariness of his plea. This is something that even the U.S. Supreme Court has set by case law. We have also provided that if a petitioner's conviction was the result of a trial all claims for relief are waived which were or could have been 1) presented in any to the trial court or 2) presented in any other action that has been taken to secure relief from his conviction unless he has good reason why it was not presented.

Mr. Barenco stated that when he attended the National Conference on Criminal Justice these were the proposals made.

Mr. Fry questioned whether we would have a constitutional problem with a waiver of constitutional rights. Miss Wall said that this could be done if you had the opportunity and counsel all the way.

Mr. Rose added that many judges are tired of post conviction petitions where the defendant tries to re-try the entire case. "I feel that a majority of judges will adhere to this bill. The prior act was too broad and the judges felt that they had to hear all these things.

Mr. Rose interjected that the constitution does not permit us to knock out habeas corpus. We are attempting to limit this to a certain number of people on limited grounds. We are not going to end post conviction appeals, but we can try to eliminate them where it is possible.

Mr. Rose said that he also wished to comment on A.B. 551 having to do with the Attorney General. He stated that he is in favor of this bill and felt that by an oversight the Attorney General was not permitted the one power he should have been given, that of filing an information.

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Mr. Rose further stated that logically there is no reason that the Attorney General should not have this power.

Mr. Groves from the Attorney General's Office said that the feeling of his office is that this is housekeeping legislation. He cited the two ways of criminal proceedings previously noted by Mr. List and said that it is extremely important that this power be included among those things which the Attorney General is able to do.

Mr. Richards appeared on A.B. 556 and said that as Chief of the Motor Carrier Division of the Department of Motor Vehicles there is no objection to this bill.

Mr. Barengo read a telegram from the Las Vegas Chamber of Commerce in favor of A.B. 556.

Mr. Huff explained A.B. 554 to the Committee saying that when the law was changed making assault and battery two separate offenses the words serious physical injury were added to the battery section. Now when there is a complaint of battery the police must make a determination as to what constitutes "serious physical injury".

Mr. Barengo asked Mr. Huff is there would be any objection to deleting lines 8 thru 13, and Mr. Huff said that there would not.

Miss Foote moved to amend and recommend DO PASS, Mr. Hickey seconded MOTION CARRIED.

A.B. No. 535 SUMMARY-Permits arrested person to make telephone call immediately after booking.

Mr. Torvinen explained that he isn't really satisfied with the way this bill is drafted, but the intent is to get legislation on the book to enable an arrested person to make a phone call. Perhaps this should state at least one completed phone call. The Committee felt that this bill should be worked on and brought back. Mr. Torvinen agreed to do this.

Mr. Lowman explained that A.B. 115 is intended to get at near riot situations, to help get the situation under control before it becomes a riot.

S.B. No. 199 SUMMARY-Expands definition of "public officer" to include employees and other staff of public boards for purposes of penal statutes.

Mr. Fry said this is the "Ernie Thompson" amendment. Mr. Torvinen was aware of this reference and told the Committee that because of a specific instance of corruption whereby the officer of a public board was prosecuted and found that under the statutes he was not considered an appointed official, merely a public employee and therefore not covered. This bill would cover that and any similar situation.

A.B. No. 556 SUMMARY-Permits local law enforcement agencies to enforce taxicab authority law and regulations.

Miss Foote moved to recommend DO PASS, Mr. Lowman seconded.
MOTION CARRIED DO PASS A.B. 556

A.B. No. 551 SUMMARY-Expands powers of attorney general.

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

Mr. Barenco said that he would mention with regard to this bill that there were certain persons in the Attorney General's Office running around the state willy nilly filing criminal informations.

Voting against the motion were Mr. Barenco and Mr. Hickey.
Miss Foote abstained from voting.

Voting For the motion: Messrs: Glover, Huff, Torvinen, Fry, and Lowman.
MOTION CARRIED DO PASS A.B. 551

A.B. No. 487 SUMMARY-Limits availability and scope of post conviction relief.

Mr. Torvinen said that since a death penalty bill would probably be re-enacted this session the brackets on line 3, Page 1, should be removed.

Mr. Huff moved to amend and recommend DO PASS, Mr. Lowman seconded.

MOTION CARRIED UNANIMOUSLY. AMEND AND DO PASS A.B. 487

A.B. No. 115 SUMMARY-Prohibits advocacy, encouragement, incitation or solicitation of destruction of public or private property; broadens disturbing the peace to include intimidation and liabel.

Mr. Fry said that he feels that there are enough laws covering these situations already.

Mr. Barenco stated that liabel is a term of art.

Mr. Fry moved Indefinite Postponment, Mr. Torvinen seconded.

Voting Against the motion were Mr. Lowman and Mr. Huff.

MOTION CARRIED INDEFINITE POSTPONMENT

A.B. No. 567 SUMMARY-Removed possibility of probation following conviction of certain offenses under Uniform Controlled Substances Act.

S.B. No. 204 SUMMARY-Provides more explicit definition of offenses for which no probation is possible under Uniform Controlled Substances Act.

Mr. Barenco announced that because of the nature of these bills we would consider them together.

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Mr. Huff moved Indefinite Postponment of S.B. 204. Mr. Barengo commented that there is a Supreme Court Decision that sale means sale for commercial profit.

Mr. Huff's motion died for lack of a second.

Mr. Huff moved to recommend a DO PASS ON A.B. 567, Mr. Glover seconded. The housewife or etc who gives a friend a diet pill would not be included under the term "sale".

Mr. Fry and Miss Foote abstained from voting.

FINALLY VOTING FOR THE MOTION WERE MESSRS: Barengo, Glover, Torvinen,
Huff, Lowman, & Hickey.

Mr. Craddock was absent for the vote.

MOTION CARRIED DO PASS A.B. 567

A.B. No. 33 SUMMARY-Permits district attorneys to obtain commitment of certain drug addicts.

Mr. Lowman explained that the amendments on this bill would make the commitment a judicial decision rather than having the district attorneys do this.

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

MOTION CARRIED UNANIMOUSLY DO PASS A.B. 33 WITH AMENDMENTS

Mr. Barengo announced that in order to keep up with the work load we would have to meet in the evening. Thursday evening at 5:30 PM was agreed upon.

MEETING ADJOURNED.

ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

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Date MARCH 26, 1973 Time 1:30 PM Room 240

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
S.B. 199	SUMMARY-Expands definition of "public officer" to include employees and other staff of public boards for purposes of penal statutes.	
S.B. 204	SUMMARY-Provides more explicit definition of offenses for which no probation is possible under Uniform controlled Substances Act.	
A.B. 115	SUMMARY-Prohibits advocacy, encouragement, incitation or solicitation of destruction of public or private property; broadens disturbing the peace to include intimidation and libel.	
A.B. 487	SUMMARY-Limits availability and scope of post-conviction relief.	
A.B. 535	SUMMARY-Permits arrested person to make telephone call immediately after booking.	
A.B. 551	SUMMARY-expands powers of attorney general.	
A.B. 554	SUMMARY-Clarifies certain terms relating to crime of battery.	
A.B. 556	SUMMARY-Permits local law enforcement agencies to enforce taxicab authority law and regulations.	

Please do not ask for counsel unless necessary.