

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

30th DAY OF JANUARY, 1973

The meeting was called to order at 9:30 a.m. Senator Close in the Chair.

PRESENT:

- Senator Foley
- Senator Bryan
- Senator Dodge
- Senator Hecht
- Senator Swobe
- Senator Wilson
- Warden Carl Hocker, Nevada State Prison
- Lt. Wiley Peebles, Nevada State Prison
- Mr. A. A. Campos, Parole and Probation Dept.
- Mr. James Gerown, Parole and Probation Dept.

S.B. 64 - Increases the penalty for assault and battery when committed by prisoners in the State Prison.

Warden Hocker testified that nationally there has been an increase in violence and assaults in institutions, many which are committed with impunity. Prison officials feel that there should be a penalty provided which would serve as a deterrent, especially where deadly weapons are used. He stated that outside of administrative action, there is little they are able to do to punish offenders.

This bill would provide that when an assault against officers or prison employees is committed without a deadly weapon, it be punishable by imprisonment for not less than one year nor more than two years. Assault with a deadly weapon would be punishable by not less than one year nor more than five years. Battery with a deadly weapon, but no physical harm, would be punishable by imprisonment for not less than one year nor more than three years. Battery with a deadly weapon and serious physical harm would be punishable by imprisonment for not less than one year nor more than five years.

Senator Wilson asked Warden Hocker if he felt that this should be extended to cover assault and battery on other prison inmates. Warden Hocker agreed that other prisoners are entitled to the same protection as prison employees. Senator Dodge remarked that perhaps these provisions should also be extended to ordinary citizens on the streets.

Senator Wilson asked whether they had tried to get a conviction under the present law which makes this offense a misdemeanor. Mr. Campos replied that it would be fruitless to prosecute under a misdemeanor when the prisoner is serving time for a felony.

Senator Bryan remarked that he felt the felony penalty for assault without a deadly weapon is too harsh, since that could constitute a mere threat, which is now considered a misdemeanor. He remarked that he had no problem accepting the other provisions of assault with a deadly weapon or the battery provisions. Mr. Campos stated that he felt that assault without a deadly weapon which resulted in no bodily harm would never be prosecuted. Senator Bryan remarked that nevertheless, the law would authorize such punishment and that there should be some distinction. Warden Hocker agreed that he is not worried about the assault without a deadly weapon (constituting a threat). Senator Foley asked Warden Hocker if it would make any difference to the administration of the penal institution if the penalties under these provisions were expanded to include everybody as long as the prison situation were included. Warden Hocker stated that he would have no objection.

Senator Dodge suggested contacting Frank Daykin of the Legislative Counsel Bureau and ask him to testify about the equity of the general provisions of this bill and whether to make a felony out of a simple threat without a weapon.

S.B. 65 - Provides for additional certified copy of entry of judgment of imprisonment.

Lt. Peebles testified that the present law requires that the certified copy of judgment of imprisonment be returned to the commuting county upon completion of the sentence. That leaves the prison without a copy in their files. The prison receives approximately 150 requests per year for verified copies of judgment of convictions to be used as proof of prior felony convictions. Since they return their copy of the certified judgment to the commuting county, they cannot comply with these requests. This bill would provide them with an extra copy.

Senator Foley moved "DO PASS." Seconded by Senator Swobe. Motion carried.

S.B. 66 - Provides for parole eligibility for certain persons convicted of being habitual criminals.

Warden Hocker testified that the present law provides that habitual criminals should be imprisoned for not less than 10 years or more than 20 years, and if another crime is committed, shall be imprisoned for life. This bill would provide that convicted habitual criminals shall be eligible for parole when a minimum of 5 years is served. He stated that the rationale is not to be easy on habituals but to give them an element of hope. They would still be under the jurisdiction of the parole board. Prison officials feel that it is important to the atmosphere and morale of the institution to create a situation where hope remains alive.

Mr. Campos testified that in every other section where a life sentence was imposed, the legislature specified the parole eligibility, or would indicate life without possibility of parole. Because it was not specified in this section, the parole board had no jurisdiction.

Senator Close asked whether the conviction of habitual criminal, which would provide a minimum of 5 years before parole eligibility, would make the prisoner eligible for parole earlier than he would be on the convicted offense. Mr. Campos testified that the habitual criminal provision is only used to enhance or increase the punishment.

Senator Dodge stated that if the rationale of the legislature in providing for the habitual provision was that after the 5th conviction, the criminal was beyond the point of rehabilitation, there should be additional factors to support the provision of eligibility of parole beside the feeling that there be some element of hope left for the prisoner. He asked Mr. Campos if they have found prisoners capable of rehabilitation after 5 convictions. Warden Hocker stated that there have been cases of habituals being rehabilitated and that they do not give up hope on anybody. Mr. Campos also testified that for every man who qualifies for habitual, another 19 would be qualified if the charge was pursued. Senator Wilson asked why the other 19 would not qualify to be charged. Mr. Campos explained that it is a long drawn out process, where the D.A. has to provide proof of priors and the constitutional protections during the trial. Some of these are difficult to prove because of the time lapse and change in the laws. Senator Wilson felt there would be a constitutional problem if the habitual provision were not applied uniformly.

Senator Close questioned if the term of 5 years would be sufficient time for a habitual sentenced to life imprisonment to be eligible for parole. Both Warden Hocker and Mr. Campos felt that it would be sufficient time for eligibility. Senators Wilson and Bryan felt that five years would be hard to justify for someone who is convicted five times. Mr. Campos stated that the old statute from 1967 provided for 7 years and they would rather return to 7 years than see the bill die.

No final action.



S.B. 92 - Limits term of imprisonment which may be imposed to satisfy a fine.

Warden Hocker testified that this bill would bring this provision in line with a supreme court decision. Senator Bryan felt that this bill is contrary to the supreme court decision because his interpretation was that at the end of a prison term, a prison cannot be kept in prison if he is not able to pay his fine.

Senator Wilson felt that this would not pass a constitutionality test in that the bill refers to "the maximum term of imprisonment prescribed by law for the offense" and not the term imposed by the court.

Frank Daykin of the Legislative Counsel Bureau will be asked to testify further on this bill.

S.B. 93 - Provides State Board of Parole Commissioners with optional authority to forfeit good behavior credits for violation of parole and authorizes board to restore those credits.

Warden Hocker testified that more and more prisoners are refusing parole. They prefer to expire their time by virtue of the fact that they may get into some slight trouble while out on parole and they would forfeit all statutory good time earned prior to their release. He stated that in some instances it is a just and proper punishment for the offense committed while on parole, but thinks it is wrong to preclude the restoration of those credits if they earn them.

Mr. Campos testified that he agrees with the basic concept of the bill but does not agree with the wording on Page 2, lines 5 and 20. He would like to retain the original wording "shall forfeit" and keep this provision mandatory. He agrees with the wording on lines 8 and 9 saying the board may restore any good time credits. Mr. Campos feels that a parolee who violates his parole should lose his good time credit automatically, then it would be up to the Parole Board to restore, at any time, all or part of this good time according to the gravity of the violation and his subsequent conduct.

Warden Hocker again stated that he felt this should be a matter of individual judgment depending on the seriousness of the violation. He felt that the same provisions should not be applied to the serious violation as to the non-serious violation.

Senator Dodge felt that the prisoners subsequent behavior should weigh somewhat in the decision whether to restore those credits. He felt it would be a better procedure to automatically forfeit and then adopt a policy of recommendation by the prison authorities back to the Parole Board about reinstating the credits. Warden Hocker

stated that he felt nothing should be automatic and each case should be judged on individual merits.

Senator Foley questioned whether the legislature should define the situations where the parole board could restore good time credits under this provision. Senator Dodge felt that this would be difficult to do and would create more problems than it would solve.

No final action.

S.B. 100 - Increases penalty for certain offenses relating to dangerous weapons if committed by prisoners of Nevada State Prison.

Warden Hocker testified that the present law states that a person who manufactures or offers for sale a dangerous or concealed weapon is guilty of a felony punishable by imprisonment for more than 1 year but less than 6 years. This bill would make it a felony for the first offense if that person were an inmate of the prison. Warden Hocker remarked that in his experience, this provision would be a real deterrent.

Senator Wilson moved "DO PASS." Seconded by Senator Foley. Motion carried.

S.B. 101 - Increases penalty for prisoner escapes in certain cases.

Warden Hocker testified that this bill pertains to prisoners held on a charged conviction or sentence of felony. When a dangerous weapon is used or one or more hostages taken to facilitate escape, or bodily injury is sustained as a result of escape or attempted escape, the punishment would be imprisonment for not less than 5 years, nor more than 20 years. Warden Hocker stated that he feels this is a necessary deterrent to such actions.

Chairman Close suggested consulting with Frank Daykin to determine if the 5-20 sentence fits into the scheme of sentencing we now have.

Mr. Campos suggested inserting wording under sub-section 1a) to the effect that this imprisonment be without possibility of probation. Warden Hocker absolutely agreed.

S.B. 102 - Relaxes certain restrictions on good behavior credits for prisoners in State Prison and provides for earning credits during parole.

Lt. Peebles testified that the first part of this bill would give them a little more leeway in that the law as it now stands requires the prison to bring any prisoner who violates any rule before the Parole Board for possible loss of statutory time. This would include infractions as minor as not making their beds. The change requested would change the wording to "serious infraction."

The second part of the bill deals with allowing good time credit for only those inmates whose diligence in study and labor "surpasses the general average." The change requested would substitute the language "merits such credits." Lt. Peebles testified that there are many inmates who really work hard and cannot make the grade, but are deserving of the credit. There are others who are intelligent enough to make the grade, but don't deserve the credits.

The third part of the bill deals with credits for blood donors. The law limits the credits to convicts who donate their blood for charitable purposes. There is a blood program at the prison which is not for charitable purposes. The donors are receiving money for this, therefore, they would like to delete the term "charitable purposes."

The last part of the bill would let parolees receive statutory good time credit while on parole. Lt. Peebles remarked that not granting good time credits while on parole is deterring inmates from accepting parole, and parole is a very important part in the rehabilitation of prisoners.

Senator Wilson asked what the basis of parole jurisdiction is, and if it should be voluntary. He felt that if you have a program based on the use of parole, parole should be imposed and made to work and not subject to the prisoners consent. Lt. Peebles remarked that the courts have rule that parole has to be a voluntary act and the prisoner has to first accept the conditions of parole.

Mr. Campos testified that he is opposed to the provision of earning good time credits while on parole. He felt that being able to be on parole is in itself a reward for good behavior. He stated that there would be many problems handling these good time credits in that they would have to review the parolees every month to decide if they would earn the credits, and that would be very difficult since they have parolees spread out over the 50 states.

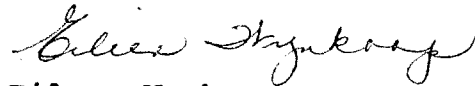
Lt. Peebles remarked that if it is right and reasonable to lose good time credits for misconduct while on parole, it is only right to earn good time credits while on parole.

No final action.

Chairman Close submitted the homestead bill which resulted from the amendment in S.B. 24 to the committee for committee introduction. There being no objections, it will be so introduced.

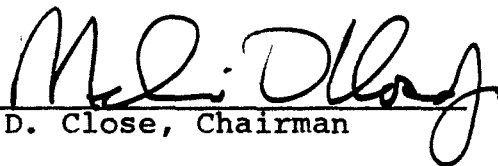
The meeting was adjourned at 11:00 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Mel D. Close, Chairman