

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

13th DAY OF FEBRUARY, 1973

The meeting was called to order at 9:05 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
 Senator Bryan
 Senator Dodge
 Senator Hecht
 Senator Swobe
 Senator Wilson
 Senator Bill Raggio

Subsequent to the hearing on S.B. 28 concerning wiretaps, the Las Vegas Sun carried a headline on the front page which said that the attorney for Central Telephone had testified that wiretaps were taking place. The text of the article correctly reported the testimony given during the hearing, but the headline was blown out of proportion and taken out of context. Chairman Close suggested writing a letter from the committee to the Las Vegas Sun advising them that the headline was misleading and had no basis, and that this kind of abuse by the press only discourages other people from testifying freely and voluntarily without reservations. The committee agreed.

S.B. 118 - Allows former members to fill temporary vacancies on state contractor's board.

The Chairman had a request from the bill introducer, Senator Young, to kill the bill since it is no longer needed or important.

Senator Swobe moved that no action be taken on this bill. Motion seconded by Senator Wilson. Motion carried.

S.B. 146 - Clarifies provisions for preconviction time credits in criminal sentences.

The committee reviewed the amendments requested on this bill in light of previous testimony.

Senator Swobe moved amend and "DO PASS." Motion seconded by Senator Wilson. Motion carried.

S.B. 147 - Enlarges class of persons who may be sentenced to concurrent terms of imprisonment.

The committee reviewed the amendments requested on this bill. There was a question as to whether the term "imprisonment" was defined elsewhere to mean serving time in the state prison, or whether that point should be clarified in this bill.

Senator Swobe read several other sections of the statutes which differentiate between a term of imprisonment in a county jail and the state prison. Chairman Close will ask the bill drafter to amend this bill further to specifically state a term a imprisonment in the State Prison.

Senator Wilson moved to amend and "DO PASS." Seconded by Senator Bryan. Motion carried.

S.B. 148 - Redefines peace officer powers of state prison personnel.

In light of Frank Daykin's testimony that this bill would not extend the benefits of early retirement to the non-uniformed personnel at the State Prison, Senator Dodge moved "DO PASS." Motion seconded by Senator Swobe. Motion carried.

S.B. 149 - Requires report to be submitted to warden of state prison of certain facts concerning prisoners transferred to state prison.

Senator Bryan suggested that the sheriffs be questioned on this bill. Senator Dodge remarked that he couldn't conceive of any reason why the sheriffs shouldn't inform the penitentiary of any problems a transfer prisoner might have.

Senator Swobe moved "DO PASS." Motion seconded by Senator Wilson. Motion carried.

S.B. 150 - Provides flexibility in forfeiture of good behavior credits of prisoners in state prison.

Senator Dodge felt that the flexibility requested by this bill is already built into the statute. Senator Wilson agreed and remarked that it is an anomaly to relax the forfeiture of credits when they can be reinstated.

The committee felt that the mandatory forfeiture should be retained in subsections 1a, b, and c, but could be discretionaly in the case of violation of the rules and regulations of the prison in subsection 1d of 209.290. Subsection 1c should be further amended to include gross misdemeanor and the word "evil" removed from subsection 2.

The committee also discussed changing subsection 1c from "commit any misdemeanor, etc." to "convicted of any misdemeanor, etc." It was decided that the prison should be able to act upon a forfeiture administratively rather than wait for a court conviction to forfeit.

Senator Swobe moved to amend and "DO PASS." Seconded by Senator Wilson. Motion carried.

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

Chairman Close again reviewed the amendment he requested which would provide parole eligibility after 7 years, and after conviction for 4 felonies it be mandatory that the district attorney charge with habitual criminal.

In reference to the 7 year provision, Senator Dodge remarked that he did not intend to oppose the bill, but felt the committee is guilty of an inconsistency since the criminal code was revised in an effort to conform the terms of parole and sentencing in 1967, and now the committee is including a term which is not used elsewhere in the sentencing or parole provisions.

Senator Bryan stated that he does not support the amendment making the charge of habitual mandatory after 4 felony convictions because he doesn't like the idea of taking the discretion away from the prosecutor. He has no problem in requiring the habitual to do additional time, but felt that it would be forcing an automatic trial where the prosecutor could never prove habitual since he would first have to prove there was counsel at all stages of the criminal proceedings.

Senator Foley requested that Senator Raggio testify. Senator Raggio entered the meeting and testified that he had always felt that to get uniformity in applying this provision, there should be some measure required to form application. Although he had not always used the provision, it was to his advantage to have some flexibility in it. By the same token, there are many cases in other jurisdictions where it should have been used and wasn't. He felt that giving three chances on a felony conviction is pretty much consideration, and on the fourth conviction, it is time to take away some discretion.

To Senator Bryan's objection of not being able to prove habitual, Senator Raggio remarked that in the past a prosecutor would have to prove a lot of priors where constitutional processes were not complied with. He felt that enough time has passed where the courts have been complying and the prior proofs would not be so difficult to establish.

Senator Raggio mentioned in his testimony that besides the charge of habitual being discretionary with the district attorney, the court also had the right to dismiss the charge of habitual, and that right had been upheld by the supreme court. Chairman Close read the provision in this bill under Section 207.010, subsection 4, which retains that discretion for the court. Senator Raggio suggested amending the bill to remove that discretion and make it mandatory that the court sentence in accordance with the law.

A.B. 14 - Provides procedures for issuance and enforcement of legislative subpoenas.

Senator Dodge explained that there is a section in the law which authorizes the legislature to subpoena witnesses and administer oaths, but it does not prescribe any type of procedures. This bill would spell out who can issue subpoenas, what the sufficiency of the subpoena is, and permits contempt procedures if a person refuses to comply with the subpoena.

Senator Wilson suggested replacing the word "and" with "or" in lines 7 and 10 to more clearly define the authority be with the senate, assembly, or the committees thereof.

Senator Wilson also noted that in the old statute, state elected officials were exempt and asked if the federal policy of exempting only the executive branch and legislature should apply. After some discussion the committee agreed to exempt the legislature; the governor, his immediate staff, and the lieutenant governor; the supreme court judges and district court judges.

The committee then discussed the provision for contempt hearings before either house. Several members felt this would be burdensome and time consuming. Senator Dodge felt there was nothing wrong with the procedure in the bill. Each house should have constitutional latitude to enforce the attendance of witnesses.

Frank Daykin will be asked to check the federal procedure for contempt hearings in the legislature.

S.B. 24 - Removes conflicts in various provisions relating to homesteads declared during life and set apart after death.

This bill was replaced by S.B. 133.

Senator Bryan moved that no action be taken on this bill. Motion seconded by Senator Hecht. Motion carried.

S.B. 58 - Eliminates requirement for county recorders to index name of trustee in deed of trust or reconveyance.

Chairman Close read a letter received from Ed Fike of Title Insurance Company asking the bill be amended to eliminate "original trustor" on Page 2, line 25, and insert "trustee". The reason he gave is that the original trustor owner may have changed 5 times by the time of foreclosure, and the index would be confusing and redundant.

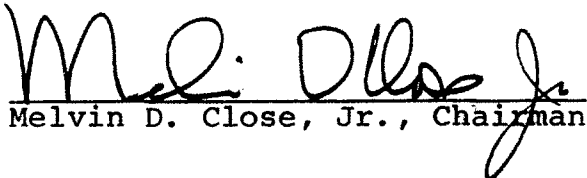
The committee discussed the effect this change would have on the chain of title. Since there was some difficulty in resolving the concern of several members, additional testimony will be requested from knowledgeable parties.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,


Eileen Wynkoop
Secretary

APPROVED:


Melvin D. Close, Jr., Chairman

CLIFF YOUNG
SENATOR
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Nevada Legislature

FIFTY-SEVENTH SESSION

MEMORANDUM

DATE: February 1, 1973
TO: ~~SENATOR JAMES GIBSON~~
FROM: SENATOR CLIFTON YOUNG
SUBJECT: SB #118

*Cliff: This bill went to
Judiciary
[Signature]*

I have been advised by the persons interested in the passage of SB 118 that they feel that this legislation is not necessary or feasible at this time.

It need not come out of committee for vote on the Senate floor.

END OF MEMO

CCY/VC:mt

*SB 121
SB 125*

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