

SENATE JUDICIARY COMMITTEE

259

MINUTES OF MEETING HELD

15th DAY OF MARCH, 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

Judge Richard Waters, First Judicial District
Senator Cliff Young
Frank McGee, First Nat'l Bank Trust Department
Senator Gene Echols
Joe Pritchard, Division of Alcoholism
Larry Best, Deputy Attorney General representing
Dept. of Welfare

S.B. 23 - Repeals obsolete or unnecessary provisions pertaining to voting machines.

Senator Close informed the committee that the Assembly had added Section 293A.180 to this bill so that it too would be repealed. The committee agreed to concur in Amendment No. 279.

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

Senator Close informed the committee that the Assembly has amended this bill to define "incarceration" as beginning after initial assignment to a cell following booking procedures. The committee agreed to concur in Amendment No. 356.

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S.B. 253 - Provides extensive changes in juvenile court procedure and avoids unnecessary use of criminal labels for delinquent children.

Senator Close read a letter from Mike Fondi, District Attorney in Carson City, who objected to Sections 5 and 12 providing that the D.A. would have to prepare and counter-sign neglect orders for juveniles.

The committee reviewed the other amendments suggested for this bill. Senator Close informed the committee that the county commissioners object to the Juvenile Court judge setting the salary for his staff and requested to testify before the committee.

Judge Waters appeared to request a bill to divide the First Judicial District into two separate districts. One district would be comprised of Carson City and Storey Counties, the other district would be comprised of Churchill, Lyon and Douglas Counties. At the present time Judge Waters and Judge Gregory have departmentalized the district in this way and it is working well for both. However, both judges have to run for election in all 5 counties even though they do not sit in all five counties. Judge Waters stated that he had talked to the district attorneys and counties offices involved and they have no objections to separating the counties in two districts.

Senator Dodge remarked that the people in Douglas, Churchill and Lyon counties are extremely satisfied with Judge Waters performance. He said the only reservation that might arise is that there is more flexibility in having 2 judges in a district. Judge Waters stated that there were only a half-dozen instances where this flexibility has been used.

The committee will speak to Judge Gregory at a later date.

S.B. 414 - Provides that irrevocable trust is irrevocable even though settlor and beneficiary is same person.

Senator Young stated that this bill was introduced because the IRS is following a 1930 decision in New York which held that when the settlor is also the beneficiary, it is not an irrevocable trust but a revocable trust and certain tax circumstances are affected. Senator Young introduced Frank McGee and Harry Swanson of the First National Bank and asked them to explain further.

Mr. Swanson stated that there seems to be a division of authority in American law when a settlor creates a trust and is beneficiary of that trust if there is a merger. Of course, the living trust law has only come into being in the last 20 or 25 years. Living trusts were relatively rare, but today a lot of trusts are being created where the settlor is the beneficiary.

The problem has been that quite often there is income accumulated over a period of 10 years where it is not dispersed to anybody. Under those instances, the income is taxable to the trust not the beneficiary. This provides a nice tax benefit because the trust is usually in a better position than the beneficiary. However, the IRS has taken the position that even though the settlor says the money is in irrevocable trust, the trust is revocable and all income accumulated will be taxed to the settlor. Mr. Swanson felt that regardless of the taxes involved, a person should have the right to create a trust and say it is irrevocable.

Senator Close asked Mr. Swanson if creditors can get to irrevocable trusts. Mr. Swanson replied that it is his understanding that they can.

Mr. McGee echoed what Mr. Swanson said and added that there is a strong California case which holds that creditors are not barred from irrevocable trusts.

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

S.B. 359 - Provides for civil protective custody
in lieu of criminal sanctions for
certain alcohol abusers.

Senator Echols stated that since he has been working with the Division on this bill, he has been highly impressed with the competency and programs in the area of alcohol and illness. He stated that there has been a great deal of money wasted by incarcerating persons who are drunk and treating drunkenness as a crime.

Senator Echols stated that Maryland and New Orleans have experienced amazing rehabilitation with laws such as this. He stated that 12 states have enacted the Uniform Act in total, and approximately 6 have adopted versions of the Uniform Act as in this bill.

Mr. Joe Pritchard testified that experience has shown that when the Alcoholism Div. sits down and talks with city and county managers, they are usually in agreement with the program. Experiences in other jurisdictions around the country have shown the program to be very successful. A report from Minneapolis-St. Paul indicates that police officers' time has been cut down drastically because they don't have

to spend time sitting around the station and coming back to testify in public drunkenness cases. Portland, Oregon released figures which indicate that the jail population is down 35%, and they attribute that largely to the fact that they are not keeping public drunkenness cases in jail.

Senator Wilson asked Mr. Pritchard how many treatment centers are in operation in Nevada. Mr. Pritchard replied that Reno, Las Vegas and Churchill County have programs in operation and treatment facilities to refer people to.

Mr. Pritchard explained that this bill provides that where a facility exists, the person be taken there. Where there is no facility, the person would be taken to jail, but instead of being booked on a criminal charge, he would be taken into civil protective custody for up to 72 hours. The time of 72 hours was used because that is the amount of time it would take to eliminate all the alcohol from the system in a heavy drinker.

Senator Close asked if there will be large enough facilities to take care of all persons who would be sent there. Mr. Pritchard stated that using the presently available facilities; existing hospitals, three half-way houses in Reno and three in Las Vegas, he felt they could handle whatever load would be coming to them.

Senator Wilson asked if Line 7 on Page 4 should be changed from "shall" to "may" since the licensed facility may be full. Mr. Best suggested changing the wording to "delivered if such space is available."

The committee had several other questions dealing with who would make the determination of taking the person to jail or the facility; who would determine in the case of custody in jail when that person could get out if he sobered up before the 72 hours; is there a mechanical procedure for screening out individuals who properly belong in the program as opposed to an isolated incident of drunkenness.

Senator Dodge stated, and Senator Bryan agreed, that he is in great support of the concept of the bill, although it needs further clarification, for several reasons. One of these reasons is the recent supreme court decision which held that misdemeanants getting jail sentences would be entitled to counsel.

Mr. Pritchard stated further that federal legislation recently passed to continue the federal funding in this area also contained a provision that states which do not enact the Uniform Act or adopt legislation which carries out the intent of the Uniform Act will be penalized. They have provided that states which do enact this type of legislation shall receive \$100,000 annually in addition to the regular formula grant, and an additional 10% of the original formula grant amount. Nevada would be penalized \$120,000 if they failed to pass this bill.

Chairman Close excused the witnesses.

S.B. 441 - Requires court order to open sealed documents relating to adoption.

Senator Bryan explained that this is a policy decision the legislature would have to make. Presently, when a child reaches the legal age he or she can find out about their family background. Senator Dodge commented that if the adoptive parents are deprived of this information, it doesn't make too much sense to allow the child to develop this information.

Senator Bryan mentioned that the persons who requested this bill had check with the Welfare Dept. and Juvenile Court and they were in support of this concept.

S.B. 316 - Grants privilege against disclosure for certain communications between students, counselors and teachers.

Senator Close read the amendments which would limit the bill to be applicable only to counselors being exempted from testifying in court.

Senator Dodge objected to the bill on the grounds that the legislature would be setting a precedent and would have then to honor all requests from other such groups.

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

Yeas - 4

Nays - Dodge, Hecht, Wilson (3)

Motion carried.

S.C.R. 11 - Directs legislative commission to conduct study of probate and related provisions in statutes of State of Nevada and other states.

Senator Bryan remarked the legislature has an obligation to perform such a study. Senator Dodge made the remark that two years ago the legislature tried to concentrate all bills having to do with study recommendations into one committee.

The committee agreed and felt this bill should be re-referred to the Committee on Legislative Functions.

S.B. 351 - Transfers responsibility of
signing work permits for certain
minors to county clerk.

Senator Close informed the committee that he had discussed this bill with the county clerk in Las Vegas who indicated that this would cause no problems since it is a ministerial function. The committee felt that if it was handled as a ministerial function, it should not be part of the statute.

Senator Dodge moved to amend the bill to repeal that section and "DO PASS." Motion seconded by Senator Swobe. Motion carried.

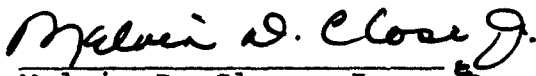
The meeting was adjourned at 11:10 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Melvin D. Close, Jr.
Chairman

First Judicial District Court

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Lyon, Churchill, Storey

Ormsby and Douglas Counties

State of Nevada

Minden, Nevada 89423

IN CHAMBERS
RICHARD L. WATERS, JR.
DISTRICT JUDGE
PHONE 782-2096

March 6, 1973

Senator Carl Dodge
Nevada State Legislature
Carson City, Nevada 89701

Dear Senator Dodge:

I want to apologize, to start with, for the length of this letter. It contains some matters concerning the First Judicial District that I urgently desire to bring to your attention, and ask for your support.

I noticed in the paper Sunday, March 4th, on the back page of the Nevada State Journal, quite an extensive write up on the necessity in Washoe County for additional judicial help.

In pointing to the following statistics, I am not asking for help in the First District. First off, Washoe County, or the Second Judicial District, has a population of 121,068 people according to the 1970 census. Clark County, by the same census, has a population of 273,288 people. Carson City has a population of 15,468 people. Storey County has a population of 695 people. Churchill County has 10,513 people. Douglas County has a population of 6,882 people. Lyon County has a population of 8,221 people. Clark County, the Eighth Judicial District, thus has a population of 27,329 people for each of its ten judges. Washoe County has a population of 20,178 people for each of its six judges. Department One of the First District, composed of Carson City and Storey County, has a population of 16,163 people for its one judge. Department Two of the First District, composed of Churchill, Douglas and Lyon Counties, has a population of 25,616 for its one judge.

Clark County has, of course, by far the largest number of tourists of any district in the state. Washoe County is second, and probably, Douglas County is third. I make this statement based largely on the reports of the Tax Commission on revenue received from gaming taxes. Clark County has about three-quarters of the collections in the state, Washoe County is next, and Douglas County is third, and suprisingly, Douglas County has more than two-thirds of the revenue that is generated in Washoe County from this source. I only quote this as an indicator of tourist travel within the state. Tourist travel, of course, increases the population of the state on a transient basis, and just the fact that tourists are in the state creates more work, not only for police, but for the courts. Another factor affecting this District, and in particular Department One of this District, is the fact that so many

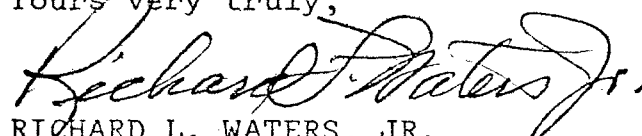
cases wherein the State is a party have to be heard in Carson City. In the above statistics I have not used anything but the census figure for the reason that others are based on Chamber of Commerce Department of Commerce, or power company estimates, which are just that, and in the case of the Chamber of Commerce estimates, of course, they are generally puffed somewhat. I've used only the official figures, since they are the only ones that we know of that are true. Douglas County has grown tremendously, as has Carson City. Churchill County is in the process of doing the same thing now, and Clark County and Washoe County, of course, have tremendous increases, but we don't know what those increases actually amount to. It is my understanding that Clark County at this time is not asking the Legislature to increase the number of Judges. It is my understanding that Washoe County is asking for two more District Judges. I don't know what Judge Gregory is doing in Department One in this District. I have heard that he is asking that another Judge be assigned for the whole District. I want to assure each of you gentlemen to whom this letter is going that another Judge is not necessary in Department Two of the First Judicial District. The only settings on my calendar in Department Two that go beyond May 15th, are settings that are in the fall and are scheduled that far off at the request of counsel representing both of the parties. I have available, and Assemblyman Jacobsen has seen them, the calendar records for the past year and one half in this Department, and my current calendar for scheduled trial work.

My principle point in writing this letter to you is to request that you consider sponsoring and supporting a bill to divide this District into two separate Districts. The present First Judicial District to be composed of Carson City only, the remaining four counties in the District to be a separate District with a separate numerical denomination, and to be composed of Douglas, Storey, Lyon and Churchill Counties. This differs from the present line up in that I've added Storey County to Douglas, Lyon and Churchill. There apparently is some question of excessive work in the present Department One of Carson City and Storey County. I am sure that in combination with the three counties that I now have, Storey County can be well taken care of.

There is one more factor that should be spoken of, and that is the factor of travel within this District. In the past year I have traveled something in excess of 16,500 miles on official duty. The addition of Storey County to Lyon, Churchill and Douglas Counties would not add more than 500 miles to that travel.

Again, and in closing, I will very much appreciate any effort you may make to sponsor and support legislation to make this District into two Districts as set forth above.

Yours very truly,


RICHARD L. WATERS, JR.
District Judge