

SENATE JUDICIARY COMMITTEE  
MINUTES OF MEETING HELD  
20th DAY OF MARCH, 1973

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The meeting was called to order at 9:00 a.m. Senator Close in the Chair.

PRESENT: Senator Foley  
Senator Wilson  
Senator Bryan  
Senator Swope  
Senator Dodge  
Senator Hecht

Mr. Dave Guinan, Legislative Counsel Bureau  
Judge Llewellyn Young, District Court Judge  
Mr. David Goff, Legislative Intern to Senator Close

The Committee set aside this time to discuss the framing of a bill to provide the death penalty in certain circumstances.

Chairman Close advised Mr. Guinan of the problem the Committee saw in A.B. 265 and several other bills since the prosecutor, when going for capital murder, would not have any lesser offense to plead to should he run into trouble in the middle of a trial. The way the bills are framed, the defendant would receive death or be acquitted. Mr. Guinan answered that the Supreme Court decision was aimed at eliminating discretion in sentencing and not at discretion when arriving at a verdict of whether the offense be murder first, or murder second.

Senator Bryan stated that by enacting capital punishment, the legislature would be adopting a new concept totally foreign to criminal law. He was not satisfied that it would automatically follow that common law degrees of murder would become lesser included offenses when creating a new breed of crime. Mr. Guinan argued that the legislature would not be creating a new breed of crime. Capital murder is similar to first degree murder, but specifies more particularly the means by which first degree murder is committed and the death penalty imposed, and other offenses are discretionary with sentencing of life with or without possibility of parole or lesser terms.

Senator Dodge was concerned that the language contained in A.B. 265 does not include premeditation. Several members of the Committee also questioned the rationale for inclusion of supreme court judges without the element of scienter, and the clarity of the term "in his official capacity or by reason of an act performed in his official capacity."

Senator Foley remarked that in his opinion, the framing of the bill which the Committee will ultimately act on should not be based on the victim, but should go to the classes of crimes involved and build them from the presently used concepts and definitions. Premeditation is already built into the definition presently in the law

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for murder in the first degree. He suggested that the first 2 lines of NRS 200.030 which state: "murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing"; and the crimes of murder committed on a peace officer, the warden or other prison officials, and contract killings shall be considered capital murders and be punishable by the death penalty.

The Committee members were in agreement with this concept. Senator Bryan felt that this would provide that lesser included offenses would be properly returnable as a jury verdict. The Committee agreed to define more explicitly the term "contract killing" and to provide a separate definition for "peace officer" as used in this context to mean; sheriffs and their deputies, city police officers and highway patrolmen. The Committee also agreed to include the killing of inmates by a person under life imprisonment.

The Committee requested the bill drafter to prepare a new bill incorporating the concept of capital murder as outlined above.

Chairman Close announced that Senator Dodge had acquired information relative to control of community property by both the husband and wife. Senator Dodge reported that he had been in touch with Professor Maryman of Stanford University who felt that if the community property law which is prevalent throughout the Western States had ever been challenged, it would be held unconstitutional under the 14th Amendment's Equal Protection Clause, or the Civil Rights Act.

Senator Dodge remarked that if the legislature was going to do anything in good faith to remove the discriminatory laws now on the books, now would be the time to do it. He is more firmly convinced that there are too many ramifications regarding court decisions, etc. to correct this discrimination by an amendment to the U.S. Constitution.

It would be a lot healthier from a State's standpoint to clean up these discrepancies in our own statutes.

Senator Dodge then read a draft of a bill which was introduced in the Idaho legislature. It provides that a husband and wife have equal powers of management and control of community property, but neither can encumber that community property unless the other joins in the execution of the conveyance. It also provides that if the husband or wife is to be the sole manager by agreement, the other spouse may give his or her power of attorney. Another provision states that either party may bind community property by contract. It also provides that a community obligation without express consent would be considered separate property.

Senator Swobe suggested the provision providing for community property disposition of a will be repealed because it is tied to management.

The Committee agreed with the concept of the Idaho bill and asked the bill drafter to frame a bill along those lines for introduction by the Committee.

A.B. 475 - Eliminates third judicial district.

Judge Llewellyn Young asked to speak on this bill, which as of this date has not yet been acted on by the Assembly.

The bill would incorporate the 6th district and the 3rd district into one district. Judge Young stated that no one man could cover those four counties. He said the workload in the rural areas has been increasing as much as the cities; and on a percentage basis, the rural areas increase would be greater. Judges are having a difficult time as it is getting other judges to sit for them when they take vacations or are sick. A better concept would be to go to two judge districts.

S.B. 244 - Provides for random selection of grand jurors by county clerk or jury commissioner.

Mr. David Gott prepared a presentation on the grand jury selection system. He stated that 7 Western States use a random selection system where 100 names are drawn from a list furnished by the county clerk, such as voter registration lists. From this list, the jurors are selected by a judge or the county commissioners. These people are supposed to represent a cross section of the community in accordance with geographic, social and economic aspects.

It is impossible for a randomly selected grand jury to be adequately educated in the investigatory functions. Therefore, he believes a biforcated system is the best system. The biforcated grand jury should have a hold-over provision. These people would serve for a year and when a new grand jury is appointed, 3 or 4 former members may be retained for several months to lend their expertise.

He indicated that the indicting panel of the biforcated grand jury should be left completely random with a representation of a cross section of the community.

Senator Bryan remarked that one of the most justifiable purposes for random selection is to retain the concept of objective and broad based representation on the grand jury. How would objectivity be attained if the people charged with investigation are appointed by the county managers.

Senator Dodge stated that out of all the testimony received thus far, the system of random selection in the first instance and the judge or judges having the final selection was the most workable. He felt that this would pass a constitutional test for both the indicting and investigatory functions. If the venire selected at random was large enough, those who were unable to serve could be excused and there would still be sufficient number to chose qualified grand jurors.

Senator Close suggested that in the larger counties of Clark, Washoe and Ormsby, the master calendar judge or court clerk would send questionnaires to 100 people selected at random to determine if those people would be willing to serve. When 50 people have agreed to serve, the judges would select the final 17 by allowing the judge with the longest tenure to select first, and continuing on a rotating basis. In the smaller counties, a venire of 50 could be selected at random and the 17 jurors picked from those who are able to serve by the judges using the same procedure as the larger counties.

Senator Bryan felt that the procedure for the judges to rotate in the final selection should be spelled out in the bill since some judges are opposed to the concept of a grand jury and could frustrate the whole system.

Senator Dodge stated that there was still a problem of the grand jury accusing wrong-doing without indicting. He felt that this was largely due to the fact that the grand jury feels committed to come up with some product of their investigation to prove to the community that they are doing their job. He felt that some language should be incorporated into the statutes to overcome this problem by indicating the fairly narrow areas of proper investigation and comment. Senator Swobe suggested indicating right in the statute that the grand jury would not have to come back with any comment. Senator Wilson felt that this problem could be overcome better by spelling out in the statutes the charge that the judge should give to the grand jury.

This discussion will continue at a later date.

S.B. 117 - Provides mandatory death penalty for certain crimes and eliminates death penalty for certain other crimes.

The Committee has framed and requested a new bill relating to the death penalty under certain circumstances.

Senator Swobe moved to ~~indefinitely~~ postpone action on this bill. Motion seconded by Senator Foley. Motion carried.

S.B. 132 - Provides procedure for imposition of death penalty for certain crimes.

The Committee has ~~framed~~ and requested a new bill relating to the death penalty under certain circumstances.

Senator Swobe moved to ~~indefinitely~~ postpone action on this bill. Motion seconded by Senator Foley. Motion carried.

S.B. 223 - Provides mandatory death penalty for certain murders committed by prisoners while in State Prison.

The Committee has framed and requested a new bill relating to the death penalty in certain circumstances.

Senator Swobe moved to indefinitely postpone action on this bill. Seconded by Senator Foley. Motion carried.


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

The Committee reviewed Judge Mendoza's testimony that the provision for judges to sign work permits was necessary, and especially so in Clark County.

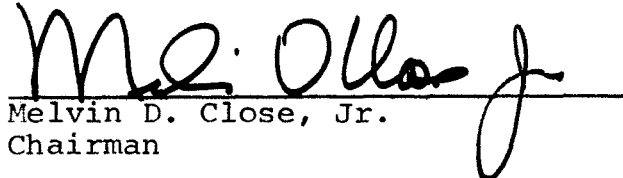
Senator Bryan moved to indefinitely postpone action on this bill. Motion seconded by Senator Swobe. Motion carried.

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

Respectfully submitted,

  
Eileen Wynkoop  
Secretary

APPROVED:

  
Melvin D. Close, Jr.  
Chairman