

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

390

10th DAY OF APRIL, 1973

The meeting was called to order at 8:00 a.m. Senator Close in the Chair.

PRESENT:

Senator Foley  
Senator Bryan  
Senator Dodge  
Senator Hecht  
Senator Swobe

Assemblyman Zel Lowman  
Howard Hill, Department of Motor Vehicles  
Col. James Lambert, Highway Patrol  
Assemblyman Roy Torvinen  
Assemblyman Virgil Getto  
Carroll Nevin, Crime Commission  
Dave Thomlinson, Virginia City Volunteer Ambulance Drivers  
Tom Wilson, State Comprehensive Health Planner  
Jim Brooke, Nevada Bar Association  
Vern Calhoun, State Narcotics Division  
Bill Labadie, Deputy Administrator, Welfare Division  
Robert Holland, Deputy Attorney General representing the Welfare Division  
Carolyn Martines, Adoption Specialist, Welfare Division  
John Crossley, Fiscal and Audit Division, LCB  
Clinton Wooster, Legislative Counsel Bureau

EXCUSED:

Senator Wilson

A.B. 34 - Increases the penalty for battery upon a peace officer.

Mr. Lowman testified that the original intent of the bill was as a deterrent to the problem of law enforcement officers being victims of ambush and guerilla warfare. The Assembly Judiciary Committee preferred the second reprint of this bill over a similar Senate Bill (S.B. 64). Senator Close informed Mr. Lowman that the committee had amended S.B. 64 to expand the assault and battery provisions to a felony in any situation.

A.B. 218 - Increases the penalty for causing the death or bodily injury of another while driving under the influence of intoxicating liquor, controlled substances, or other chemicals.

Mr. Lambert testified that prior to the Uniform Motor Vehicle Code

being adopted in 1969, this provision was in the law and the Department of Motor Vehicles would like to see it reinstated.

Presently a drunk driver involved in a serious or fatal accident is charged with manslaughter and after plea bargaining, is usually given 1 year's suspension of his driving license. That is the sum total of his penalties. There is no jail time given. Persons who drive while intoxicated do so with as much intent as any other criminal.

This bill would provide a penalty for a felony of one to six years.

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

A.B. 421 - Permits police officers to request a breath test of a driver believed to be driving under the influence of alcohol.

Colonel Lambert testified that this bill is intended to allow the officer to make a preliminary test for drunk driving on the highway or road where the person was stopped prior to an arrest. It is time saving to the law enforcement people and saves embarrassment to the public. If the preliminary test turned out negative, the person could proceed on his way.

Senator Foley asked Col. Lambert if the "ring test" which would be used is reliable. Col. Lambert replied that it is not reliable to the point that it could be used in court.

Senator Swobe then objected that the accused person would have to submit to two different tests. Senator Dodge objected that this same proposition was discussed two years ago and it was determined that the officer should have to make a judgment of whether the person was drunk or not prior to requiring him to take the test. Senator Close felt the bill had merit since it would save the person from being arrested if he were innocent.

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

Yeas - 6  
Nays - Close (1)

Motion carried.

A.B. 802 - Provides for hearing prior to suspension of driving privileges for violation of Implied Consent Law.

Mr. Howard Hill testified that this bill would allow the Department to provide a hearing prior to suspension of a license on implied consent. They presently have the authority to provide a pre-suspension hearing in all other aspects, but not in the implied consent law. This provision would be in line with a supreme court decision against suspending licenses without a hearing.

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

A.B. 234 - Imposes additional criminal penalties if certain crimes are committed while perpetrator is in possession of firearm.

Mr. Torvinen testified in favor of amending the present laws dealing with crimes when committed with a firearm, but was not in favor of the bill in its present form.

He stated that the bill has nothing to do with discretion of the judge in adding penalties concerning firearms. The bill provides that if a person is convicted of the crimes listed in the bill (murder; voluntary and involuntary manslaughter; kidnaping in the first and second degree; forcible rape, assault with intent to kill, commit rape or robbery; mayhem; prisoner escape or attempt to escape; robbery; burglary; and grand larceny) and has a firearm in his possession, he is to be punished by: 1) imposing an additional concurrent 1 to 3 year sentence for the first offense, and 2 to 5 years for the second offense; and 2) none of the prison terms are probationable.

Mr. Torvinen stated that this bill is ineffective and discriminatory for the following reasons: In Nevada when a judge wants to put a man in prison for the minimum sentence he uniformly gives him 4 years. He never gives a one year term although most crimes carry sentences such as 1 to 10, or 10 to 5. With a four year sentence the prisoner would be eligible for parole in 1 year and 3 months. That way the probation department has 2-1/2 years of supervision over this person. Under determinate sentencing, the provisions for additional sentencing would be ineffective because a judge can give a sentence of 2 years (except in cases of murder, rape and kidnaping where substantial bodily harm results); one year on the initial charge and one year for possession of a firearm.

The bill is discriminatory because there are cases, and especially

in cases of involuntary manslaughter, where a firearm was in the possession of the accused, but was not used intentionally to carry out a crime. He stated that "possession" in these cases does not mean on your person but means under your immediate control. Mr. Torvinen gave the example of a fatal automobile accident where the person is charged with manslaughter but happens to have an unloaded shotgun in his pick-up truck. Under the provisions in this bill, that crime would not be probationable.

Mr. Torvinen suggested that the only way to effectively accomplish the goal of discouraging the use of firearms by criminals is to amend the statutes pertaining to individual crimes, particularly armed robbery, escape and attempt to escape, and possibly forcible rape; provide higher minimum sentences of 4 or 5 years and make those particular crimes non-probationable when committed with the use of a firearm.

Senator Bryan agreed and mentioned that there is no relationship between the use of a firearm and the penalty imposed.

Assemblyman Virgil Getto agreed with Mr. Torvinen's testimony that this bill is discriminatory. He remarked that rape with a knife is just as serious as rape with a gun, yet it is not included in the bill. The legislature is getting into a very serious area when considering voluntary and involuntary manslaughter in the same light.

Mr. Getto recommended that the committee either amend the bill extensively or kill it.

Mr. Carroll Nevin testified that he could see the defects in the bill brought out by Mr. Torvinen, but felt that the thrust of the bill should not be dropped. Some attempt should be made to draw a bill which would discourage the use of firearms by a criminal, especially in cases of armed burglary.

Chairman Close appointed Senators Bryan, Foley and Wilson as a sub-committee to discuss possible amendments on armed robbery and the use of weapons as an aggravating situation to a crime.

A.B. 127 - Extends immunity from tort liability for emergency care to ambulance drivers and attendants.

Mr. Getto testified that this bill was drafted because of an Attorney General's opinion that the "good samaritan" act did not cover volunteer firemen, it only applied to passers-by and not to someone doing volunteer work. This creates a problem in the small counties where all they have are volunteer drivers and attendants.

Nothing should be done to jeopardize the recruitment of those volunteers.

If the state had to provide paid volunteer ambulance services, it would put quite a tax burden on the citizens. These volunteer groups are doing an equitable job.

Mr. Getto remarked that they had quite a time drafting the bill. With the help of the Attorney General and the bill drafter, they finally came up with this bill which they felt would cover everyone from the driver and attendant to anyone connected with the service such as a dispatcher. Search and rescue is also covered.

Mr. Thomlinson, Vice President of the Virginia City Volunteer Ambulance Drivers, testified that after the Attorney General's opinion that these volunteer people would be liable for civil damages, it was difficult to recruit people to serve as well as getting the volunteer members to go out on call. The bill would protect attendants, drivers, dispatchers and search and rescue people in the smaller communities where they are totally dependent on volunteer medical services. He urged the committee to give this bill a favorable recommendation.

Mr. Jim Brooke testified that the Bar Association is opposed to this bill. He said that out of the 3 "good samaritan" bills, this one received the weakest opposition.

He stated that if this bill is assumed to relieve the driver of an ambulance from exercising ordinary care, it is a bad bill. He agreed that persons contributing gratuitous services should be relieved unless they demonstrated gross negligence, but to relieve the driver of a vehicle from exercising ordinary care should be given serious consideration. Ambulance drivers should be considered better drivers than ordinary drivers. This bill creates a "guest statute" situation with respect to ambulance drivers.

Mr. Tom Wilson testified that this bill had 13 public hearings throughout the state and it received unanimous support up and down the state. He knew of no cases where there was neglect on the part of ambulance drivers. The function of ambulances is no longer to get the patient to the hospital at 90 miles an hour, but to stabilize the condition of the patient until he reaches the hospital. Ambulance drivers and attendants are receiving 16 hours of training beyond first aid.

There was a bill approved by both houses and signed by the Governor which provides \$75,000 for the training of ambulance drivers and attendants, and an "omnibus" bill in the Assembly which seems to have no opposition. So, for the first time state dollars are going into this field.

The county is presently paying large amounts of money to cover mal-practice suits since the Attorney General's opinion was rendered.

Senator Foley made the observation that police officers must use ordinary care under emergency circumstances. Mr. Wilson responded to that by stating that police officers are not "good samaritans." They are paid to carry out emergency functions. If the state wanted to fund 3 shifts a day in 40 locations for 365 days a year and get a paid ambulance staff, they could demand the same liability as they do from police officers.

Mr. Thomlinson remarked again on the aspect of ordinary care. He sees nothing in the bill which would do away with any persons having to exercise ordinary care. The drivers of the volunteer service in Virginia City are only allowed to drive 10 miles an hour over the speed limit, and must stop at all stop signs and red lights to make sure the cross traffic has stopped before they can proceed through an intersection. These people are trained in ordinary care which is why the exclusion of gross negligence was left in the bill.

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

A.B. 109 - Exempts the Investigation and Narcotics Division from the requirements of the Administrative Procedure Act.

Mr. Vern Calhoun testified that this bill was suggested by the Audit Division of the Legislative Counsel Bureau to prevent their manual from becoming public record, as is required under the Administrative Procedures Act.

Senator Foley argued that since their manual would not have the force of a regulation, it would not need to be published.

A.B. 111 - Permits an expert in the identification of controlled substances to appear at trials, preliminary examinations, and grand jury hearing by affidavit.

Mr. Calhoun felt that as more chemists are added to the staff of the Narcotics Division, the requirement that they qualify to testify in all 8 counties would be burdensome.

Senator Close pointed out that as a matter of course, the public defenders in Clark County have been refusing to accept affidavits and insist on the chemists appearing. Senator Bryan added that there might be a constitutional problem because of the defendant's right to confrontation and cross examination.

A.B. 196 - Improves administrative and  
judicial procedure in adop-  
tion proceedings.

Mrs. Martines testified that this bill would help the Welfare Division get a handle on adoptions and adoption laws. There has been a decrease in the number of children available for adoption yet the demand for adoptions has increased. Because agencies have fewer available children, they are adopting more stringent requirements. People wishing to adopt are seeking ways to circumvent the requirements of agencies and therefore the Welfare Division needs more effective ways of dealing with specific adoptions. Specific adoptions are handled in two ways: private placement with consent to a specific adoption or through an agency. Either way the Welfare Division is notified ~~when the decree of adoption is entered.~~ The problem that the Welfare Department has been encountering is that by that time it is too late for them to act if the placement is bad. The private placement adoptions are usually made to persons who could not qualify through the Welfare Division. When the Welfare Division is informed of these the child is usually in the home and the judges are reluctant to remove those children.

Mr. Holland remarked that 10 or 12 years ago the legislature tightened up the baby black market by giving the Welfare Department the responsibility for placement of adoptions, including the private placement for specific adoption or relinquishment. The Welfare Division is to investigate the adoptive parents and express an opinion on the suitability of the placement and home. Mechanisms have been devised, sometimes by doctors and lawyers, whereby a person might know a third party looking to adopt a baby and a private placement would be arranged. However, the consenting party does not really know the home or people. This is especially true for unmarried mothers. These placements should actually be handled through an agency for investigative purposes.

In the first reprint language has been added which says that one of the witnesses to a private placement should be an authorized representative of the Division or other agency in the State. That language would get the Welfare Division in at the beginning of the proceedings.

Mr. Holland informed the committee of the question raised by Mr. Jim Brooke of the Board of Governor's regarding the exclusion of a step-parent adoption within a 3rd degree of consanguinity and infinity. In a specific adoption the consenting parent needs to know who he is giving that consent to. In a case of a step parent, the maternal father may not know the step-father although he is aware of him. Mr. Brooke suggested an amendment such as "and except in the case of a prospective adoptive parent within the third degree of consanguinity and infinity."

A.B. 43 - Increases penalty upon conviction  
of driving while driver's license  
is canceled, revoked, or suspended.

Senator Bryan remarked that he felt the bill has merit. There should be something done to impose additional sanctions for a person driving after his license has been revoked. There is flexibility in the sentencing so that this person may serve his jail time on the week-ends to protect his job. Senator Swobe objected that it would apply to persons who have lost their license because of points or not stopping at a stop sign. He felt that it should be directed only to a license revoked or suspended because of drunk driving, driving under the influence of a controlled substance, or because of cancellation.

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

S.B. 151 - Provides penalty for violation of  
State Park System regulations.

Senator Swobe read the amendments which were made to clarify and condense this bill. "Any person whose conduct violates any regulation in Sub-section 1 and refuses to comply with the regulation is guilty of a misdemeanor."

Senator Foley moved to amend and "DO PASS." Senator Dodge seconded the motion. Motion carried.

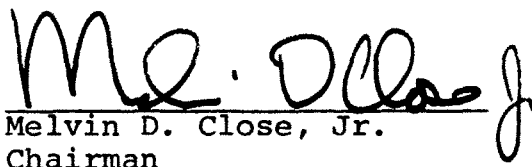
The meeting was adjourned at 10:20 a.m.

Respectfully submitted,



Eileen Wynkoop  
Secretary

APPROVED:



Melvin D. Close, Jr.  
Chairman