

## SENATE JUDICIARY COMMITTEE

April 17, 1975

COMMITTEE MEMBERS PRESENT: Chairman Mel Close  
 Senator Wilson  
 Senator Bryan  
 Senator Foote  
 Senator Hilbrecht  
 Senator Sheerin  
 Senator Dodge

S.B. 450 - Alters judicial districts.

Judge Noel Manoukian - S.B. 450 now relates to a three county district; Douglas, Churchill and Lyon, with a total estimated population of 37,000, rapidly approaching 40,000. There was a superficial redistricting in 1973, taking Douglas, Churchill and Lyon that had formerly been part of the first judicial district, including Carson City now forming Ormsby County and Storey County. That was a step that was perfunctory in nature, meaning no offense. It was a matter that, for all practical purposes, had been accomplished in 1971 by the Nevada Supreme Court by virtue of an interim order approving an agreement between the now deceased Honorable Richard L. Waters, Jr., who was for all practical purposes, presiding in Douglas, Churchill and Lyon anyway in Dept. 2 of the first district and, of course, Frank B. Gregory who presided right across the street here as well as in Virginia City, Storey County. When I say there was in effect no practical effect in the redistricting, I am sincere in that regard. There was a substantial case load that I believe was being approached and handled somewhat differently by my predecessor than by myself. There are many new cases that have been filed; there is evidence by the so-called statistical report attached to several letters from attorneys within the district, particularly Churchill and Lyon County. But to justify a redistricting, I am not suggesting this is going to happen every 2 years, but this redistricting program which is generally, reasonably palatable from the Bar's point of view and from a recipient judges point of view without getting into personalities, although I know this creates a problem in this matter would be a long range workable program. That is, putting Churchill in with Lander and Eureka could also consider what Senator Dodge would prefer, if we're still talking about a 6 single judge district, a realignment with Churchill, Pershing and Humboldt. I want to keep my fellow members of the bench happy too. The Honorable Judge Young is not too receptive to a redistricting that would require him to be committed to any particular court at any given time. I am presently required to be in Fallon every Monday. We have had a couple of light loads in the past couple of Mondays but typically we are rolling out of there at 5:00-5:30, 6:00-6:30, etc. I must be in Yerington every other Wednesday which is not enough any longer. I must be in Minden every Friday. I related to you the populations which I will repeat for the benefit of Senator Bryan -- approximately 37,000 people, 13,000 in Douglas County, with 73% of my cases relating to out-of-state defendants, the casinos up there, union matters, the Lake Tahoe Water's cases, the

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TRPA matters provide a great deal in the way of work to the civil as well as criminal justices there. I am setting cases much earlier than they had been set, setting everything within 6 months on a heavy alternate basis. I am suggesting that I am going 2 deep and often times 5 deep. In Washoe County and in Clark County if they set that deep and one or two don't settle, they generally have the option to delegate out to other departments - I don't have that option. I have been as sophisticated as I can be in calling in other judges from less busy districts. Obviously Judge Sexton is right next door and has a great deal of time to accommodate other districts and has helped me. Being an elected official, I am reluctant to bring in visiting judges too often. They may confuse them with me or a prospective opponent some day. I have commented on the days and hours. My certified court reporter, John Davis, for the 3 counties and he describes it as being a 2 reporter district. We're starting court earlier than used to be the case. I am willing to put up with it as long as I can physically and mentally. I also have to attend to my administrative duties such as letter writing, answering telephone calls. I feel I have a duty to my constituents. I have 3 JV departments to, in a sense, supervise. Even if Churchill were put somewhere else, I would still be left with 24 and 26,000 people. The third district has presently on the outside 5,500 people. Combining that with Churchill, we are talking about 18 to 19,000 people. My understanding is the ideal situation would be to have one judge and courthouse with 19-20,000 people. I have twice that in approximately three courthouses. I know redistricting is not something you turn off and on arbitrarily, but I do feel the so-called redistricting in 1973 on a formal basis and on a practical basis in 1971 by the Supreme Courts ratification of the agreement between Judge Waters and Judge Gregory was ill-advised. Again, a 2-judge district would be ideal. Would not be offended if you killed the bill. Any proposal to help alleviate the present situation would be acceptable.

Senator Dodge - I talked to several attorneys in Fallon and the Judge is correct; they feel that they are not being served adequately. What it points up to is that we have been gerrymandering these districts. They feel that there could be a better review of the alignment of these multi-county judicial districts. I have also checked with the County Commissioners in Churchill and they are more or less neutral and have no real objection.

Judge Manoukian - In response to the question by Senator Sheerin as to the effective date of this bill, the Judge replied that he felt July 1 was too soon. Would not want to drop cases in the middle. Feels he should follow through on a responsible basis. He feels July 1, 1975 is premature.

Senator Bryan - Assuming we make this decision now, what does the situation look like two years down the road? Are we going to be redistricting every two years?

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Senator Dodge - One possibility that we looked at last session was making a two-judge district out of Elko, Lander and Eureka counties on the theory that one judge would be free to occasionally take other assignments in other counties. He suggested that this might be a possible solution to the increasing population problem.

Judge Manoukian - Restated that whatever the Committee wished to do would be alright with him.

Howard McKibben, District Attorney's Association - In looking at the statistical analysis of Douglas County, it is evident that the county growth has been substantial. He recommended that some revisions be made and suggested Judge Manoukian's recommendations in particular.

Senator Bryan moved to "amend and do pass", to extend the time period to July 1, 1975; seconded by Senator Wilson; motion carried unanimously.

S.B. 446 - Amends certain provisions relating to contractors.

Mr. Tom Cook - This is a contractor's Board bill and briefly, does several things: 1) limit the eligibility to take examinations for people who have been convicted of contracting without a license for a period of 6 months. At the present time, the only penalty is a fine and if they apply and are qualified, the Board would be required to give them a license and then they could go ahead and complete the job they may have obtained by violating the law; 2) remove the automatic disqualification by removing the word "shall" and substituting the word "may" on page 3, line 12, reason being that I doubt if we could enforce a mandatory penalty, would have to be discretionary. In addition to that, Section 2 pertains to advertising by non-licensed contractors and up to now, the District Attorney has not felt that the law is sufficient to justify prosecution. The Board felt that by changing the statutes as suggested here, the DA will see fit to prosecute. Section 3 provides that the contractor will include his license number when advertising.

Senator Dodge - I think the language on line 9 is a little too stringent - you find in newspapers all the time "work done by the hour". The man is not representing himself as a contractor but he does perform that type of service. Don't think you ought to preclude some general maintenance man who works by the hour.

Senator Close suggested amendatory language. What do you mean by "carving" on line 12?

Mr. Cook - Do not know. Wouldn't object if you took it out.

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Senator Close - Section 4 permits you to obtain an injunction against someone who is about to engage in what would be considered an unlawful practice. That seems awfully broad.

Mr. Cook - If someone takes out a building permit, orders material and begins setting up equipment on the site, we have good reason to believe that he is intending on breaking the law (if he does not have a contractor's license.) In response to a question by Senator Bryan, Mr. Cook informed the Committee that the language for this bill came from a California statute similar to this. You could delete "about" if the Committee felt it to be too broad.

Senator Sheerin - Would an unlicensed contractor be able to finish a job once it is started.

Mr. Cook - We have to use our discretion on a matter like that.

Senator Sheerin - This bill goes a little further and allows an individual or even another contractor to file an injunction and they do not have the discretion to let that person continue with the job. The courts would have the inherent power to do that but the person who will suffer is the one who hired the contractor in the first place.

Mr. Cook - You have to weigh it one way or the other. Whether to stop the person who is illegally engaged in the contracting business or cause some hardship for the owner of the building. The bonding requirements are also being increased to \$50,000 from \$20,000 maximum now, which would provide some protection. The bonding requirement also serves as a restrictive aid to licensing because in order to be licensed you must be able to be bonded.

During discussion of the bill, it was the decision of the Committee to amend the bill by deleting the term "carving", delete the bond requirement, and delete the provision that another contractor or individual could bring the action. Action should only be brought by the Board in that they have the discretion to let the contractor finish the job.

Senator Dodge moved to "amend and do pass," seconded by Senator Hilbrecht; motion carried unanimously.

S.B. 444 - Establishes crime of solicitation.

Howard McKibben, President State District Attorney's Association.- I want to appear on behalf of the Association on S.B. 444 and S.B. 445. Those are the two bills - there is one other major bill, A.B.456, which redefines the penalty for conspiracy. What we have done is come in here without solicitation bill and brought our conspiracy bill on the assembly side. We did modify the conspiracy bill a

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little bit. Originally we proposed in the major crimes of conspiracy, where conspiracy to commit murder or robbery or some crime against the person had a penalty of 1-20 years. We modified that because it became apparent to us in some instances robbery, where the penalty for the crime itself is one to 15 but with conspiracy to commit robbery at 1-20 would be an anomaly in the law. So we proposed to them with respect to conspiracy it be 1-6 years. I bring that up as background because: 1) I understand they are going to be reporting that out so you will be getting it; 2) and it is somewhat tied in with solicitation because they are similar crimes. We do not have a crime of solicitation in the state of Nevada at the present time and the DA's association felt it important to have the crime of solicitation. It is not a crime that happens very frequently in the small counties. In the larger counties it does happen apparently rather frequently. Larry Hicks had a strong feeling that this bill should be passed or at least introduced and hopefully have some modified form passed. What we are proposing to do is that with respect with the major crimes, which are crimes that affect the person be punished for 1-10 years. I would suggest that if you do pass this, that this be fairly consistent with what A.B. 456 is, if they modify that to 1-6 years, I would recommend that the penalty for solicitation be the same. So you might check with them to see what they are going to do.

Senator Bryan - It seems to me in categories of culpability there is clearly more danger in a conspiracy because a conspiracy by definition goes farther than solicitation.

Mr. McKibben - I can't argue that. If you go through the criminal process, solicitation is the first step. If I were putting them on a graduated scale, I would say that solicitation is not as serious a type of crime if they do not go beyond that point. If they do, of course, we can charge them with conspiracy. So I would have no quarrel with that. We would like a solicitation bill passed this year. If you want to reduce it even to a gross misdemeanor, you will not have any problems with the DA's association. In response to a question from Senator Wilson, Mr. McKibben stated that at the present time, conspiracy to commit a crime is a gross misdemeanor for all types of crimes. Even if you conspire to commit murder. However, if you conspire to possess a dangerous drug it is now a felony, which causes the DA's all kinds of problems. I would rather have conspiracy to commit murder be a felony and conspire to possess drugs be a gross misdemeanor so we can deal cases. We talked to the Assembly about 456 and the general feeling was that they did not want to tamper with the dangerous drug law because it was just put in a couple of years ago. Our recommendation to them was that we wanted a gross misdemeanor in the drug area so that we could deal with these cases a little more equitably. In response to a question from Senator Dodge, Mr. McKibben stated that in order to get someone on an accessory charge they would have already had to commit the crime.

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S.B. 445 - Modifies child abuse law.

Mr. McKibben - We have pretty strong feelings about this. Under the existing law in Nevada with respect to child abuse the penalty is a gross misdemeanor and there have been a number of serious cases where we would like to be able to deal with this kind of crime. In my opinion, it is one of the most inexcusable types of crime committed. The prosecutor should have the ability to prosecute on a felony. This bill does 2 things: 1) it increases the penalty from gross to felony; 2) expands the child abuse law to include other than those responsible for their care. The law presently reads "any adult person having the care or custody or control of a minor child under the age of 18 would be guilty of a crime. What we are proposing is that any person who, under circumstances or conditions likely to produce great bodily harm, causes or permits any child under the age of 18 to suffer or inflicts thereon unjustifiable physical pain or suffering would be guilty of a crime.

Senator Hilbrecht - In regard to "mental suffering" he stated that all kinds of things could be conjured up in that respect. Do not really understand what the phrase means.

Mr. McKibben - From a prosecutors standpoint, it would be difficult if not impossible to prove a case like that. I know the language is in there, but I have never prosecuted one like that. What you have to do is rely on the testimony of the child as to the condition, the mental state of the child. That is the present law. In order to get a conviction, you would have to have some tangible evidence.

Senator Bryan - I agree with the reclassification of the penalty status but I think we should try to be consistent with our penalty structure and I am just wondering about the 20 years.

Mr. McKibben - Again, that is not of critical importance to the DA's association. We just want to have it reclassified. If you decide to put a 1-6 year penalty on that it would be alright.

Senator Bryan - We have reviewed several bills dealing with aggravated circumstances on substantial bodily harm, etc. I think we should try to be consistent in the criminal code in terms of what we are talking about when we are talking about aggravated. Is this the same language that is used in the other aggravated provisions of the law?

Mr. McKibben - No, I don't think so.

Senator Bryan - I think you should make it consistent.

Mr. McKibben - I would agree.

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Senator Close - Why are you taking out the Christian Scientist exemption? We always have to have an amendment to re-insert it.

Mr. McKibben - We did not intend to delete that.

Senator Wilson - In the 1973 session, we dealt with an amendment on the duty to report. The abuse problem is mainly one of getting a handle on it. Not just so you can treat the child, the child can go to the hospital, but to get emotional or psychiatric help for the parent or person who commits the abuse. My question is, are we really getting at this by making it a felony?

Mr. McKibben - My personal feeling on this, and it isn't shared by everyone in the Association, is that we should have a bifurcated bill where we also had an out with a gross misdemeanor because I could see a situation in cases where it is not such of an aggravated degree that a prosecutor would not necessarily want to proceed with a felony.

Senator Wilson - Had question as to whether the custody of the child remains with the parent after such an abuse.

Senator Foote - Stated that the present law (NRS 200.502) read that the child remained with the parent unless a showing of unsuitability was made. It was her feeling that it should be the other way around. The child should remain in protective custody until the parents made a showing of suitability. It was the consensus of the Committee to make the necessary amendments to change this around.

Senator Dodge - Stated that he agreed with the concept but that we must be careful in taking a child away from the parents.

Senator Foote - Asked whether or not the situation in Washoe County where the mother watched the child be killed but did nothing about it would be covered.

Senator Bryan - Senator Bryan stated that there is a common law duty to report that type of thing.

Senator Dodge - In fairness to the wife, a lot of the men that do these things have a very domineering attitude and she may have been fearful of her own life.

Senator Bryan - Additionally, there is always the question in that type of situation whether or not the interspousal privilege still applies.

During discussion of the bill, it was the consensus of the committee to make the following amendments: Retain the reference to Christian Scientist; develop the same aggravated standard as applied to the substantial bodily harm, rape, etc. statutes; delete reference to mental anguish. No action was taken at this time.

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S.B. 447 - Revises schedule of maximum fees for court-appointed counsel for indigent criminal defendants.

Senator Dodge - Informed the committee that George Ogelvie, Clark County District Attorney has a bill that is somewhat similar to this and he requested that we withhold any action on this until we can take testimony on it.

Senator Bryan - Suggested that whatever we do with this we ought to be consistent in compensation to special prosecutors. At the present time, there is no limit as to what they can be paid.

No action was taken at this time.

S.B. 490 - Expands class of law enforcement agencies allowed to seize controlled substances under certain circumstances without process issued by magistrate.

Mr. Howard McKibben - Stated that they had no objections to the bill.

Senator Dodge - Stated that he was not adverse to the bill but that he would like to have some testimony presented on the matter.

No action was taken at this time.

Medical Malpractice Package - S.B. 400, 401, 402, 403, 405, 406, 408, 409, and S.B. 432.

Senator Hilbrecht read the amendments to S.B. 402, 405, 406, 408, 409, and 432.

Senator Bryan moved to "amend and re-refer"; seconded by Senator Sheerin; motion carried unanimously. Senator Wilson was absent from the vote.

Senator Close read the amendments to S.B. 400.

Senator Foote moved to "amend and re-refer"; seconded by Senator Hilbrecht; motion carried unanimously. Senator Wilson was absent from the vote.

Senator Close read the amendment to SB-401

Senator Bryan moved to "Amend and Rerefer", seconded by Senator Wilson. Motion carried unanimously. Senator Dodge was absent from the vote.

Senator Dodge moved that SB-400, 401, 402, 403, 405, 406, 408, 409, 432 be made effective upon approval.

The motion was seconded and carried unanimously.



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SB-459 - Provides indemnity for public officers and employees in certain cases.

Senator Wilson informed the committee that the general problem arose out of the Supreme Court decision on the School Board case. It is becoming apparent that we have to do something about the general category of people serving on boards as to their liability while acting within the scope of their duties.

Senator Dodge stated that you have to bear in mind that you cannot extend the immunity of the state of Nevada.

Senator Wilson noted that this is why the language is cast in the language of indemnity.

Senator Dodge indicated that he didn't think the solution was indemnity. He felt it couldn't be sustained in the legislature although if it was feasible then the \$25,000 might be reasonable.

Senator Sheerin stated that when they found that they could not bring the state employee's under the state's immunity, they provided that the Attorney General would defend the case. Mr. Sheerin felt that the local District Attorneys office should defend the local boards.

At this point, the committee requested that Mr. Frank Daykin of the Legislative Counsel Bureau come and discuss the bill with the committee.

Mr. Daykin, Statute Reviser stated that this case was against the school board trustee. They had expelled 3 girls for having spiked the punch. The court held that this was a sueable tort under the civil rights act. So we have in effect no protection anymore except against a suit which by name is against the state itself under the federal constitution. He also pointed out the they have enabled insurance on the part of both the school board members and the state against this liability in section 3.

Senator Hilbrecht thought that on line 14 and 15 of page 1 it should read "unless the discretion is abused" instead of "whether or not the discretion involved was abused".

After further discussion from committee members Mr. Howard Barrett was directed to provide the groundwork for such an insurance program.

There was discussion from the committee on SB-447 and Mr. George Ogilvey presented the committee with the proposed draft of this bill. In the proposal he was requesting \$35.00 per hour for time in court and \$25.00 for time out of court provided that this does not exceed \$2,500 for each attorney if a felony has been charged and the maximum sentence is 15 years. \$1,000 maximum for gross misdemeanor or the felony charged is less than 15 year sentence.

Senator Bryan felt that the sentence was not relevant and shouldn't have a bearing on the cost.

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Senator Close felt that the bill did not appear to differentiate between multi and single court cases. Also provides for payment on appeals. Senator Close stated that he much preferred SB-447 and would rather incorporate some of Mr. Ogilvey's suggestions into that bill.

There was no action taken on SB-447 during this meeting.

Senator Bryan spoke to the committee on SB-444 stating that he was against the bill in its present form.

After discussion by the committee it was decided to amend the bill and agreed to reduce solicitation from a felony to a gross misdemeanor.

Motion to "Amend and Do Pass" by Senator Hilbrecht, seconded by Senator Wilson. Motion carried unanimously.

Upon further discussion of SB-445 it was the decision of the committee to make the following amendments:

Retain the reference to Christian Scientist. - Develop the same aggravated standard as applied to the substantial bodily harm, rape, etc. statutes. - Delete reference to "mental anguish"

Action was not taken on SB-445 during this meeting.

During discussion of SB-446 it was the decision of the committee to amend the bill by deleting the term "carving", delete the bond requirement and also to delete the provision that another contractor or individual could bring the action. Action should only be brought by the Board in that they have the discretion to let the contractor finish the job.

Senator motioned to "Amend and Do Pass", seconded by Senator Hilbrecht. Motion carried unanimously.

The following action was taken on SB-450 - Amend the bill to extend time period to July 1, 1976.

Motion to "Amend and Do Pass" by Senator Bryan, seconded by Senator Wilson. Motion carried unanimously.

On SB-375 the committee decided to go with the amendments proposed at an earlier meeting. Motion to "Amend and Do Pass" by Senator Wilson, seconded by Senator Hilbrecht. Motion carried unanimously. Senators Bryan and Dodge were absent from the vote.

BDR-16-498 enacts Interstate Corrections Compact; provides furloughs and community based programs for certain prisoners.

The committee concurred to introduce this bill.

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Senator Close read the amendments to AB-293 as proposed by the committee at an earlier meeting. Senator Bryan disagreed with the language stating that the bill was to provide that a civil action for perjury would apply if the individual was accused and then in fact convicted.

Motion to "disregard the amendments and use the language as provided by Senator Bryan and Do Pass", seconded by Senator Wilson. Motion carried unanimously.

The committee felt that in view of the fact that the Nevada Supreme Court has already ruled on the matters noted in SJR-20 it was decided by the committee to hold this bill.

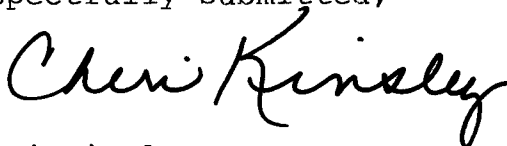
Motion to "Indefinitely Postpone SJR-20" by Senator Dodge, seconded by Senator Bryan. Motion carried unanimously.

Senator Hilbrecht stated that the problem with SJR-19 was that the Washoe county clerk, who is also the ex officio clerk of court, is not cooperating in the judicial area and that they are asking the duties of the ex officio clerk of court be removed from the duties of county clerk.

Due to a conflict<sup>de</sup> it was the decision to hold action on this bill until further discussion could be obtained from the Government Affairs committee.

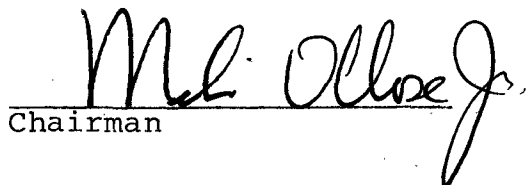
As there was no further business the meeting was adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary

Approved:



Chairman