

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 16, 1975

The meeting was called to order at 8:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Wilson
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Hilbrecht

AB 771 Makes various changes in provisions relating to grand juries.

Mike Fondi, Carson City Attorney, testified that this would allow any witness who appears before a grand jury for any reason to have an attorney present during the course of the inquiry and he felt the entire grand jury system would be jeopardized by this. In discussions of intimidation, he said he felt intimidation was not the real issue. The issue is, with this legislation, could the grand jury effectively operate and perform its function, which is to investigate and provide an impartial body by which certain information can be gathered that cannot be gathered in any other public form.

Assemblyman Bob Heaney testified this bill was introduced out of the concern throughout the country at this time as to the efficacy of the grand jury. He is concerned with the rights of the individual and feels this would provide some safeguard or balance in the situation where an individual faces an array of grand jurors and a district attorney. Mr. Heaney submitted to the Committee for the record two newspaper articles with background concerning providing an attorney to go with the witness to the grand jury room.

Senators Bryan and Hilbrecht questioned Mr. Heaney regarding appointing an attorney, such as public defender, for indigent witnesses. Senator Sheerin asked Mr. Heaney if he had any information from other States on this matter.

Mr. Heaney responded that there is an American Bar Association subcommittee study underway right now examining the grand jury system which the Committee may want to wait for, and he also stated that in the original bill there was provision for a Miranda type warning but that would mean the right to an attorney either at a person's own expense or public expense.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 2

AB 771 Senator Hilbrecht moved "indefinitely postpone",
Seconded by Senator Bryan,
Motion carried. Senator Sheerin opposed. Senators Wilson
and Foote were absent from the vote.

AB 712 Makes changes in criminal procedure following arrest.

Bart Jacka, Las Vegas Police Department, testified that this applies to arrest procedures on misdemeanor citations. The law presently says the arresting person has to consent to the citation and this is extremely unhelpful to law enforcement. He said they find that particularly in areas where stores are involved private security becomes very personally involved in the apprehension of offenders, particularly in shoplifting area, and they want the person fingerprinted, photographed and put in jail. He said they feel law enforcement officers have the training and discretion to determine what appropriate instance a citation should be issued versus going to jail.

Senator Hilbrecht moved a "do pass",
Seconded by Senator Dodge,
Motion carried unanimously. Senators Foote and Wilson were absent from the vote.

AB 774 Creates offense of retaining child in violation of court order.

Bart Jacka testified that in this State the only statute we presently have dealing with this matter is kidnapping. In the majority of child abduction cases, it involves a parent who has been separated from the child via legal process and either husband or wife will apprehend the child from the parent with legal custody and flee. There is no other course but to classify it kidnapping and in some instances injuries were sustained by the parent who doesn't have legal custody in his apprehension. Then once he is in custody, there is great reluctance on the part of the District Attorney to prosecute because there are such serious consequences.

Senator Dodge moved a "do pass",
Seconded by Senator Bryan,
Motion carried unanimously. Senators Wilson and Foote were absent from the vote.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 3

AB 751 Permits cash payments to be made to witnesses in criminal cases.

Richard Bunker told the Committee this would provide a procedure to make immediate cash payment to witnesses rather than wait for a month to six weeks as it now does.

Senator Dodge moved a "do pass",
Seconded by Senator Hilbrecht,
Motion carried unanimously. Senators Foote and Wilson were absent from the vote.

AB 614 Authorizes court clerks to refuse to accept surety on bond or undertaking if power of attorney in fact for the signatory is not on file in clerk's office.

Senator Bryan moved a "do pass",
Seconded by Senator Hilbrecht,
Motion carried unanimously.

AJR 28 Proposes to amend the Nevada Constitution to expand classification of crimes for which bail may be denied.

Mike Fondi, Carson City Attorney, stated he felt bail certainly should be denied in capital offenses and that it has traditionally been a fact, until some recent Supreme Court cases, that bail was deniable in all murder cases punishable by life imprisonment without possibility of parole. However, now when is crime punishable by life without possibility of parole; murder first is with or without depending on what the judge decides. This is like trying to predict what will happen.

Senator Dodge moved to "hold the bill",
Seconded by Senator Hilbrecht,
Motion carried unanimously. Senators Wilson, Foote and Sheerin were absent from the vote.

AJR 46 Proposes to amend Nevada Constitution by creating court of criminal appeals.

Mike Fondi testified he is opposed to this legislation for the reason that it just creates another judicial body which would cause further delay in the judicial process and also considerable expense.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 4

AJR 46 Senator Bryan moved "do kill",
Seconded by Senator Dodge,
Motion carried unanimously. Senators Wilson, Foote and
Sheerin were absent from the vote.

AB 559 Requires additional disclosures and reports of intercepted
wire and oral communications.

The Committee told Mike Fondi they were divided, 3 to 3,
on this bill and asked for his comments. He stated he
was in favor of this bill and single party consent was
very essential and should be put back into our wiretap
law. He said he knew of no abuses which occurred as a
result of one party consent.

Senator Bryan requested the record show that law enforce-
ment did not introduce such a proposal but that it was
an Assembly amendment.

Senator Bryan moved "indefinitely postpone",
Seconded by Senator Dodge,
Motion carried. Senators Close, Foote and Hilbrecht opposed.

AB 696 Removes specific restriction on length of time permitted
peace officers to detain criminal suspects under "Stop and
Frisk Law".

Senator Sheerin moved a "do pass",
Seconded by Senator Dodge,
Motion carried unanimously. Senator Wilson was absent from
the vote.

SB 616 Provides for compensation of public administrator with
respect to estates where he does not receive letters of
administration.

Senator Hilbrecht suggested new language to be used.
Presently law says "public administrator shall be allowed
with respect to each estate where he does not receive
letters of administration" and it should be changed to
read "public administrator shall be allowed with respect
to each estate in which he performs any services that
appear reasonably necessary but with respect to which he
does not receive letters of administration" to make it
clear this does not mean there would be a surcharge of
\$100.00 on each estate but only on estates where public
administrator is involved.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 5

SB 616 Nat Adler stated he disagreed with the amount set at \$100.00 as he felt it was inadequate. However, he did agree with the rest of the bill and the amendment suggested by Senator Hilbrecht.

Senator Bryan moved a "do pass as amended",
Seconded by Senator Dodge,
Motion carried unanimously. Senator Wilson was absent from the vote.

AB 638 Creates Administrative Hearing Division of Department of Administration.

Senator Sheerin stated he had discussed this with Howard Barrett and that while they were very encouraged by it there were no funds in the budget for this and no way to transfer any money. On that basis and with the idea of refiling next session, Senator Sheerin moved "indefinitely postpone".

The Committee said they would like to discuss this with Assemblyman Barengo before action is taken, and on that basis, Senator Sheerin withdrew his motion.

AB 728 Requires due process of law for suspension or expulsion of pupils from public schools.

Robert Petroni testified they would rather see SB 525 processed as the language is much better.

Senator Dodge moved a "do kill",
Seconded by Senator Bryan,
Motion carried unanimously.

AB 722 Revises laws relating to obscenity.

Mike Fondi stated he is opposed to this bill.

Joseph Anderson, State Librarian for Nevada, testified he is opposed to this legislation and submitted a letter stating his views for the record. (Copy attached)*

Carl Lovell, City Attorney, Las Vegas, testified he introduced this bill to update the definition of obscenity and pornography to bring it in line with the U.S. Supreme Court decision. The Supreme Court redefined obscenity and then left it up to the States to set their own community standards. He felt from a prosecutor's standpoint, and legal professional and elected standpoint,

* Not attached.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 6

AB 722 an obligation and sensed a public desire to be able to have a State Statute which would mean something and from which we could tell a business what may or may not be obscene and give everyone a knowledgeable definition. He stated that there were 13 questions on the 1973 ballot in the general municipal election in Las Vegas and each related to section 8 of this bill and had to do with adult oriented bookstores and theaters. He said that overwhelmingly the voting populace stated they were opposed to these types of businesses.

Senator Hilbrecht requested a copy of the questions as they were framed on the ballots. Mr. Lovell said he would supply him with a copy.

Mr. Lovell continued his testimony saying it is difficult to interpret this law as everyone disagrees on what is or is not obscene. But the purpose is to state that while individuals have rights, and those rights must be preserved and protected, society itself has some minimum rights and when those rights are offended society has the right to step in. AB 722 would give more clarity. He requested that the Committee either pass this bill or remove the present statute defining obscenity as it does not conform to Supreme Court decision and pass a consenting adult statute. He stated that without this bill and to leave the State statute the way it is we will continue to get different decisions out of different district courts with no help to judiciary through the county and certainly not the Supreme Court. He indicated he would like to see the counties set up their own community standards since there are differences between the counties.

Senator Wilson said he was shocked at the Supreme Court decision and did not feel this deplorable decision should be ratified.

Dorothy Hammill, Chairman of Advisory Council on Libraries, stated this is of great concern to the library community of the State. She said AB 722 is very arbitrary in make-up and a flagrant violation to her right to view items as described in the bill in section 4. She said this deals with the professional considerations of the American Library Association and the Nevada Library Association and felt it an obvious effort to censor material. She said any efforts in this regard should take into consideration the needs of the library community and would recommend that any future revisions of laws in this area should consider the library community.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 7

AB 722 William E. Andrews, Director of Libraries of Washoe County, stated he opposed 722 and it diminished his rights as an individual to make value judgments for himself. He told the Committee that in 1970 there was a legally constituted commission, the Commission on Obscenity and Pornography, who spent \$2.5 million in taxpayer funds to study this. Their report is still good and valid, even though not unanimous, as nothing is unanimous when it comes to deciding what people should read or look at, and urged the Committee to investigate it and read it. He felt the individual should be able to decide for himself and said censorship begins and ends in the home with the family unit.

Ed McGoldrick, Secretary of Reno Musicians Union and State Representative for Musicians in the State of Nevada, testified they object to the bill as it is written and urge the Committee not to approve it.

Mr. Lovell added he felt as a prosecutor with an obligation to society he should come and ask for some clarity rather than leave the statute the way it is.

Senator Wilson moved "indefinitely postpone",
Seconded by Senator Foote,
Motion carried unanimously.

The meeting was adjourned at 10:30 a.m. and resumed at 1:00 p.m.

AB 488 Extends jurisdiction of Nevada Crime Commission on Equal Rights of Citizens and clarifies certain practices.

Senator Bryan moved a "do pass",
Seconded by Senator Hilbrecht,
Motion carried unanimously.

AB 446 Authorizes visiting justices of peace from other townships or counties under specified circumstances.

Senator Bryan moved "indefinitely postpone",
Seconded by Senator Dodge,
Motion carried. Senators Close and Hilbrecht were opposed.

AB 672 Reduces minimum age for entry into certain professions and occupations.

Senator Foote made a motion to indefinitely postpone, however the Committee requested a discussion with Assemblyman Lloyd Mann before voting on the motion.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 8

AB 672 Assemblyman Lloyd Mann testified he felt if a person could qualify for a job then the age should not be a restriction.

Senator Sheerin moved a "do pass",
Seconded by Senator Hilbrecht,
Motion carried. Senator Foote was opposed. Senators Bryan and Wilson were absent from the vote.

SJR 26 Memorializes Congress to initiate hearings for the purpose of considering and proposing a human life amendment to the U. S. Constitution.

The Committee revived this resolution.

Senator Bryan moved a "do pass as amended",
Seconded by Senator Hilbrecht,
Motion carried. Senator Foote was opposed.

AB 754 Substantially revises law relating to condominiums and cooperatives.

Senator Bryan said he discussed this with Frank Daykin and Jerry Lopez and they indicated that we have not isolated or identified the problem areas in Nevada and until we do so this legislation may not be appropriate.

Senator Sheerin moved "indefinitely postpone",
Seconded by Senator Wilson,
Motion carried unanimously.

AB 97 Changes definition of capital murder.

Senator Bryan moved a "do pass as amended",
Seconded by Senator Sheerin,
Motion carried unanimously. Senator Dodge was absent from the vote.

FOR CONCURRENCE WITH ASSEMBLY:

SB 391 Prohibits certain acts respecting birth certificates.

Senator Bryan moved "do not concur, go to conference",
Seconded by Senator Wilson,
Motion carried unanimously.

SB 446 Amends certain provisions relating to contractors.

Senator Dodge moved "do concur",
Seconded by Senator Bryan,
Motion carried unanimously.

Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 9

SB 499 Permits Secretary of State to discard proposed regulation after adopted regulation is filed.

Senator Wilson moved "do concur",
Seconded by Senator Hilbrecht,
Motion carried unanimously.

SB 555 Revises schedule of maximum fees for court-appointed counsel for indigent criminal defendants.

Senator Wilson moved "do concur",
Seconded by Senator Bryan,
Motion carried unanimously.

SB 440 Provides salary for court reporters.

Senator Wilson moved "do not concur - go to conference",
Seconded by Senator Bryan,
Motion carried unanimously.

SB 133 Fixes responsibility for cost of counsel to defend members of Nevada National Guard in certain civil and criminal actions.

Senator Bryan moved "do concur",
Seconded by Senator Wilson
Motion carried unanimously.

AB 130 Enacts Fair Rental Housing Act.

Father Larry Dunphy testified he has some recommended language for certain sections of this bill:

Page 2, Section 7: suggest definition of dwelling be "dwelling or dwelling unit means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as a residence by a single individual or by one or more families and includes a mobile home in such use".

Section 27, subsection 5, lines 22-25: if you wish to delete this section relating to payments you must also delete Section 9 as its only purpose is to refer to Section 5.

Section 10, subsection 2: substitute this language "an agent of the above who enters into a rental agreement on behalf of the management and who fails to disclose as required by section 28 of this act".


Senate Judiciary Committee
Minutes of Meeting
May 16, 1975
Page 10

AB 130 Section 13: delete lines 28 and 29, and owner means one or more persons jointly or separately in whom is invested all or part of legal title to the property, this term includes the mortgagee in possession because there is no other reference to it or no distinction to other kinds of beneficial ownership in the act.
Section 15: premises means dwelling unit, appurtenance thereto, grounds and facilities held out for use of tenants generally and any other area or facility whose use is promised to the tenants.
Section 19: delete in its entirety.
Section 20: needed to deal with page 7, subsection 4, lines 24-29, to provide for an agreement that the single family resident must have where electricity and other things are under your own control.

Father Dunphy was requested to return to the next committee meeting to continue his testimony.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Katherine Berry, Secretary

APPROVED:


Senator Close, Chairman