MINUTES

ASSEMBLY JUDICIARY COMMITTEE
March 25, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Banner
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblyman Wagner

The meeting was called to order by Chairman Barengo at 8:15 a.m.

AB 327: Assemblyman Nick Horn testified on this bill as introducer. His comments are attached and marked Exhibit A.

Chairman Barengo asked Mr. Horn how he would account for California having recently gone away from this concept. Mr. Horn replied that they had an A,B,C system which was in effect a definite sentencing approach in his understanding. Chairman Barengo stated he believed they have gone back to doing it the way we are presently in Nevada. Mr. Horn stated he could not speak for California.

Mr. Carl Hocker, Warden of the Nevada State Prison and member of the Parole Board, testified that, contrary to Mr. Horn's remarks, that no one had been paroled from a Nevada prison due strictly to lack of room or overcrowded conditions. He also stated that he wanted to point out an historical point, that if you take hope of parole from these people, as had been done in California at one time, you are ultimately only going to end up with more problems with handling the prisoners as well as more crowded conditions.

He stated that in regard the the courts modifying a sentence after the individual had been sent to prison, that he did not feel that was possible due to the fact that, according to a Supreme Court decision, once a court sets a sentence, they lose jurisdiction over that person.

Mr. Price told Mr. Hocker that it seemed, to the people on the outside of this situation, the ordinary citizen, that the current system certainly doesn't appear to be working for the protection of those citizens. He stated that there seems to be a great misunderstanding regarding how the system works. For instance, when someone knows that a criminal has been sentenced to life in prison and then gets out of prison in what seems to be a remarkably short time, it undermines the confidence that the public has in the judicial system. He stated that somewhere along the line there must be a balancing of rights of the citizens against the rights of the criminals.

Mr. Hocker pointed out that in California a person who is convicted of first degree murder and sentenced to "life" is not eligible for parole for ten calendar years. However, a sentence of life without possibility of parole, is exactly that, unless the pardons board commutes it to life with possibility of parole based on the merits of the case.

Mr. Bud Campos, Parole and Probation Department, stated that, as has been expressed to the committee prior or other bills, there are many other things that need to be looked at in the system. He also pointed out that this brings up the great importance of the full-time parole board. He stated that he felt there is a need for change, but, that the rules they are working under now are those which were put into effect in 1967 and at that time were proposed to tighten the requirements in this area. He said he felt these rules all to often put the Parole Board in the position of releasing some of these offenders before they actually should considered for release. He stated that they had tried before to have a law passed regarding people with prior convictions, and, due to technicalities of getting information of prior convictions, it was defeated. This would have made parole eligibility impos- for those with four prior convictions. He did state that he did not feel that parole, as such, should be eliminated entirely. He then went on to explain how he felt the full-time board could help provide direction in corrective legislation in this area. He also explained some of the benefits of the parole system.

Discussion followed between Mr. Campos, Mr. Hocker and the committee regarding these issues.

AB 367: Assemblyman Nick Horn presented this bill to the committee as introducer and his comments are attached and marked Exhibit B.

Mrs. Wagner stated she felt this would be unfair to those who could not afford to pay these damages because those who could pay would be able to get out more easily. Mr Ross also pointed out that he feels this would be a violation of the equal protection law. Discussion followed on this bill with no firm conclusions. It was brought out in the discussion that approximately 90% of the criminal cases are represented by the public defender and it might be asumed that if they cannot afford an attorney, they also could not afford to pay damages to these victims.

In closing Mr. Horn stated he felt there should be some sort of legislation, if not this legislation, that would help to relieve these victims somewhat.

Chairman Barengo stated to the committee that it was his opinion that he did not feel there was any way to be able to clear up the Judiciary bills by the 15th of April without exhausting the members. He stated he wanted to express this to the speaker and wanted to know if the committee felt this same way. The members expressed to him that this was their position also.

Chairman Barengo said that he had several proposed bills which had been given to him for committee introduction. After a brief explanation of content, Mr. Price moved for committee introduction of these.

Mr. Price also passed out, to the committee, some additional information on the marijuana issue. It is attached and marked Exhibits C and D.

Also submitted to the committee, for the record, was a letter from Kenneth J. Sharigian of the Division of Mental Hygiene and Mental Retardation which is attached and marked Exhibit E, referencing AB 240.

The meeting was adjourned at 9:00 a.m. so that the members could attend session.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

NICHOLAS J. "NICK" HORN
ASSEMBLYMAN
CLARK COUNTY DISTRICT NO. 15
2543 BOISE STREET
LAS VEGAS, NEVADA 89121

EXHIBIT A

(with attachments)

COMMITTEES
VICE CHAIRMAN
EDUCATION
MEMBER
TAXATION
ELECTIONS

Nevada Legislature

FIFTY-NINTH SESSION

PRESS RELEASE

Assemblyman Nick Horn has introduced a bill in the Nevada Assembly that will do away with parole for anyone convicted and sentenced after July 1, 1977.

~~Assemblyman Horn's~~ This bill provides a new formula for sentence reduction for good behavior and prison work incentive programs instead of parole.

~~Horn said~~, "This bill is a direct result of the 13 area meetings that I held in my Assembly District prior to coming to the Legislature. My constituents have requested this legislation. They are tired of seeing the criminals' hands slapped and sent back on the streets."

~~Horn added~~, "This bill does 5 things: 1) It lets the 'would be criminal' know that Nevada is going to get tough on crime and he'll get every day in prison that he has coming to him. 2) When the judge says 20 years as a sentence, that's exactly what he means and he won't be out on parole in 2 years or 10 years. 3) The criminal knows just how many years he is to serve and if he wants to participate in incentive programs such as work, there is the possibility for reduced time. 4) It lets the citizen know that the criminal will not be out on parole and back on the streets because we've now stopped playing games with our justice system. 5) It doesn't effect the convict's chances of parole who is sentenced prior to July 1, 1977. This bill is patterned after the State of Maine's."

AB ~~326~~ 327

The underlining objective of this bill is To require definate Term sentencing

former Gov. Dan Walker in Illinois established a state Commission to study the legislative feasibility of establishing a definite sentencing system

3-States: Calif, Indiana & Maine — already have enacted definite sentencing legislation. And Minn Correctional Authority revised its administrative procedure to narrow its discretion in parole release decisions

At least 4 other States — Alaska, Florida, Illinois and Ohio seriously considered, although they did not pass, substantive and comprehensive definite sentencing or No parole proposals during The 1976 legislative session

The No parole or definite sentencing is advocated on The Assumption That narrowed sentencing discretion will reduce a) disparities & b) promote fairness to inmates ~~2)~~ c) reduce somewhat through the incarceration of the small core of Violent or career Criminals

P 9 Sentencing of criminal offenders section of State Gov't Quarterly publication

"With the elemination of parole release, this approach attempts to narrow both the amount & points of discretion in setting terms of impresonment Calif in it ~~enacted~~ SB 42 has adopted this approach. Slightly different versions of basically the same concept have been considered in Alaska, Florida, Ill., Minn & Ohio."

AB 327 provides ~~a new formula~~ for definate Sentencing and a new formula for sentence reduction. So The Criminal Knows just where he stands and how long he is going to be in prison & just what he needs to do if he wants an early release.

AB ~~287~~ 327

To allow parole — because the prisons are overcrowded is to me hypocritical and ~~an~~ unacceptable rational

Here we say on one hand That prisons are built to incarcerate criminals — To Keep Them from Society. If this is The objective — we are not accomplishing it by turning people loose Because the prisons are full.

In other words

A man committs a crime — we remove him from Society (prision) because he is a danager to society — we Then parole him (put him back into society) because the prision, which are designed To Keep him from society, are full. (DA upto 80% of crimes are repeat offenders) — So he back on the streets with Less than a Just sentance — because of parole — and we call This Justice.

We Have Not Really accomplished The Objective That prision were intended to acomplish — we have traveled the The path of "CIRCular NONSense"

The ABC special on crimes & prisons with Howard Kay Smith emphasized This point

State of Maine has moved in the direction to halt This Mocarary of our Judicial System — other State previously Stated are Movingin The Same direction. I engourage you to See to it That NV does The Same.

EXHIBIT B

AB 367 begins after the defendant is found guilty — at that time a separate hearing is held to determine whether or not the defendant is liable for any damages.

In the hearing, evidence may be presented by the victim relative to the amount of damages which he claims. The defendant may offer any evidence which may refute the claim.

The jury then deliberates and announces its findings. If the jury finds that the victim has proved that he has suffered damage, the jury shall so announce and also indicate the amount of restitution to which the victim is entitled. If the jury finds that the victim has not proved that he has suffered damage, it announces that the victim is not entitled to restitution

If the jury finds that the victim is entitled to restitution — The Court shall order the defendant to make restition

Section 3 #2 is an Important consideration

In determining the method of payment, the Court shall take into consideration the financial resources of the defendant and ~~its~~ his ability to make restitution.

Then (after that determinat is made) the court shall ~~and~~ direct the entry of the final judgement against the defendant for the amount of restitution the jury has announced.

Sec. 4 Indicates primary who this bill is directed towards. If restitution is ordered the court shall make it a condition of the convicted defendant probation or suspension of sentence and Failure to do so is a violation of a condition of probation or suspension of sentence.

I donot believe that is the objective of the our criminal law to ~~at~~ protect the criminal. If justice is to be served, the criminal must not only pay a penalty such as time in jail or probation under guarded conditions which limits his freedom — but he must also make Restitition to the Victim. Our laws need to spell this out — so that the criminal doesnt enjoy the luxury of his crime and the Victim ends up with an empty bag.

The idea that the criminal will robb victim #2 to pay Victim #1, to me doesnt hold water. That's why Section 3 #2 was specifically requested. If a robber is going to repeat his crime, my bet is that it wont be to pay off victim #1, he'll do it for his own personal gain — ~~[illegible]~~ I also believe that our judges are honorable & realistic men and they ~~[illegible]~~ can recongized willingness to pay, as opposed to willingness to try and beat it (not pay) — and ~~[illegible]~~ long as the desire & effort are there to make Restitution — I think the judge will take this into consideration. ~~[illegible]~~ However

I think its about time the tail stopped waging the dog and that we pass laws that take care of the Victim instead of protecting the criminal

APPENDIX 1 EXHIBIT C

CALIFORNIA'S NEW MARIJUANA LAW

SB 95, CHAPTER 248, STATUTES OF 1975

(Record destruction provisions modified by AB 3050, Chapter 952, Statutes of 1976)

1. Possession of one ounce or less of marijuana is a misdemeanor.

   A. Police will issue a citation for an alleged offender to appear in court. If the individual signs the promise to appear, and properly identifies himself, he will not be fingerprinted or photographed and will not be taken into custody.

   B. Procedurally there are options left to the local magistrate, and hence, to the alleged offender.

      1) If the magistrate sets bail for alleged offenders, those who have no prior convictions for possession of marijuana may choose to forfeit bail and avoid any further proceedings. An alleged offender with such a prior conviction may forfeit bail only if the magistrate determines that requiring a court appearance will cause him undue hardship.

      2) If the magistrate decides not to set bail and authorize the above procedures, an alleged offender will appear in court and be apprised of his right to an attorney, his right to test the evidence against him and his right to a speedy trial. He may also be eligible to participate in the Drug Offender Diversion Program (P.C. 1000).

   C. The maximum fine for conviction is $100.00.

   D. After three or more convictions for this offense within a two-year period, the fourth conviction requires the offender to enter the Drug Offender Diversion Program, if a program will accept him.

   E. All records of the event - the citation, court proceedings, conviction, etc. - will be destroyed or permanently obliterated after two years.

2. Simple possession of more than one ounce of marijuana is a misdemeanor. (Possession of marijuana for sale is a felony.)

   A. Police have an option to arrest or to cite an alleged offender.

   B. As in current procedures, an alleged offender is arraigned on the charges and is apprised of his right to an attorney, his right to test the evidence against him and his right to a speedy trial. He may also be eligible to participate in the Drug Offender Diversion Program.

C. The maximum penalty is six months in county jail and/or $500.00 fine.

D. The same records destruction procedures apply as above, including the destruction or permanent obliteration of state "RAP" sheets in the Department of Justice.

3. Simple possession of any amount of "concentrated cannabis" may be prosecuted as either a felony or a misdemeanor. Concentrated cannabis is defined as "the separated resin, whether crude or purified, obtained from marijuana". (Includes hashish and hash oil.)

A. Police will arrest an alleged offender and take him into custody as a felon.

B. The district attorney or the court will determine whether the case will be handled as a misdemeanor or a felony.

C. The same rights and court procedures apply as in 2.B. above.

D. The maximum penalty is one year in county jail and/or $500.00 fine, or state prison for one to five years.

E. Records destruction provisions do not apply.

4. Transporting or giving away one ounce or less of marijuana is treated the same as possessing one ounce or less, except that the diversion provision (1.D. above) is not mentioned.

5. It will no longer be unlawful to possess marijuana smoking paraphernalia, nor will it be a violation to visit a place where marijuana is being used.

6. While marijuana intoxication in public will still remain a violation, being under the influence of marijuana will no longer be a Health and Safety Code violation with a mandatory minimum ninety-day jail sentence.

7. Any person who was arrested and/or convicted of a marijuana possession or specified misdemeanor marijuana offense prior to January 1, 1976, can have certain arrest, citation and court records destroyed or permanently obliterated.

A. The procedure begins with an application to the California Department of Justice.

B. The Department, upon verifying the applicant's identity and offense, and upon the applicant's payment of not more than $37.50, shall notify the Federal Bureau of Identification of the destruction of the records, and shall destroy its own records and request that the appropriate law enforcement agency, probation department and Department of Motor Vehicles destroy their records. The petition and order itself will also be destroyed.

under these provisions shall be deemed an accurate or relevant record. No employer may ask a potential employee about an arrest or conviction for such a marijuana offense more than two years from the date of its occurrence.

9. Diversion under Penal Code Section 1000 et. seq. remains an option for qualified offenders charged with any of the three marijuana sections (1, 2 or 3 above).

Assembly Judiciary
3/25/1977

EXHIBIT D

PROPOSED AMENDMENTS IN SUBSTANCE TO A.B. 253

Simple possession of one ounce of less:

First offense - misdemeanor

Second offense - misdemeanor

Third offense and thereafter - gross misdemeanor

Use of any extracts (hash oil, etc.) be a felony.

Should be a citable offense, leaving the officer discretion to arrest.

SUGGESTED AMENDMENT TO LINE 3:

If a peace officer finds that a person unlawfully possesses one ounce or less of marijuana, he may issue a citation or take the person into custody.

EXHIBIT E

STATE OF NEVADA
DIVISION OF MENTAL HYGIENE
AND MENTAL RETARDATION
4600 KIETZKE LANE, SUITE 108
RENO, NEVADA 89502
(702) 784-4071

MIKE O'CALLAGHAN
Governor
CHARLES R. DICKSON, PH.D.
Administrator
MENTAL HYGIENE AND
MENTAL RETARDATION

JACK MIDDLETON
Associate Administrator for
Mental Retardation

March 18, 1977

Assemblyman Robert Barengo
Nevada State Legislature
Carson City, Nevada 89710

Dear Assemblyman Barengo:

During my testimony on Assembly Bill 240 before the Assembly Judiciary Committee March 14, several legal questions were raised regarding the proposed repeal of NRS 41.300 through 41.330. I have requested the Deputy Attorney General assigned to the Division of Mental Hygiene and Mental Retardation to provide information on that topic. A copy of the response is attached for your information.

Sincerely,

Kenneth J. Sharigian, Ph.D.
Special Administrative Assistant
Division of Mental Hygiene
and Mental Retardation

KJS/jq
enclosure
cc: All members Assembly Judiciary Committee.

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF MENTAL HYGIENE
AND MENTAL RETARDATION
4600 KIETZKE LANE, SUITE 108
RENO, NEVADA 89502
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ROBERT LIST
ATTORNEY GENERAL

SHIRLEY SMITH
DEPUTY ATTORNEY GENERAL

March 16, 1977

MEMORANDUM

To: Ken Sharigian, Special Administrative Assistant
Division of Mental Hygiene and Mental Retardation

Fr: Shirley Smith, Deputy Attorney General SS
Division of Mental Hygiene and Mental Retardation

Re: AB 240

The provisions of NRS 41.300 through 41.330 place the burden upon allegedly mentally ill persons to prove that they have been restored to their legal capacity by either obtaining a certificate of discharge from commitment, (NRS41.300), or by initiating judicial proceedings for an order restoring capacity, (NRS 41.320). These provisions have been in effect, in substantially their present form, since 1931.

In 1975, the Legislature enacted provisions, the intent of which appear to be contra. NRS 433A.490 provides for automatic restoration of legal capacity unless affirmative action is brought by the person who would challenge capacity. This has the effect of shifting the burden of proof from the alleged incompetent to the challenger, a considerable protection.

The potential for injury arises form the apparent contradiction between the 1931 and 1975 provisions. With both on the books, people are exposed to the risk of having their contracts, marriages, drivers licenses, etc. challenged under the older provisions and may be obliged to defend by asserting the new provisions.

Rules of statutory interpretation require that legislative acts must be harmoniously construed, where possible. First American Title v. State of Nevada, 91 Nev. 804 (1975). Other rules require that where contradictory provisions cannot be reconciled, the later expression of legislative intent will prevail.

To allow both provisions to remain on the books places mentally ill persons at risk of having to defend their legal acts in court, thereby, for practical pur-

poses, rendering the automatic restoration of capacity provision ineffective. It is uncertain what result would obtain after such litigation. Repeal of the older provisions would alleviate that risk.

Repeal would not deprive people of access to the courts for judicial relief where necessary through legal and equitable remedies such as declaratory judgment, mandamus, etc.

SS:jlb

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
CArl Hocker	Parole Bd	X	
A.A. CAmpos	Parole & Probation	X	