

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

FEBRUARY 25, 1977

The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 234 Permits application for writ of habeas corpus after entry of plea and prohibits appeal of denial of pretrial writ of habeas corpus until final judgment or verdict has been rendered.

Clark County District Judge J. Charles Thompson informed the Committee that this had been requested by a number of judges. However as presently written, it does not accomplish what they had intended. He submitted for the Committee's review a proposed amendment to SB 234 (see attached Exhibit A). Right now, when an individual comes before the district court for arraignment, he is asked whether he is ready to enter a plea. The present statute says that an individual may not enter a plea until all writs have been resolved. However no one is ever ready, at the time of arraignment, to decide if they are going to file a writ because they do not yet have the transcripts of the preliminary proceedings or grand jury investigations. It was their feeling that there was no reason why the filing of a writ should be geared or keyed to the entry of a plea. Under this proposal, a plea would be taken at their initial appearance and a date set for trial. If the individual wanted to file a writ he could do so under a certain time period after the initial appearance. It would also be appealable, which under the present SB 234 it would not be. This procedure would eliminate a lot of continuances of hearings. He stated that when a case is continued the entire process costs approximately \$50. It would also allow them to shorten and clean up their court calendars.

In response to a question from Senator Close as to the 15 day period, Judge Thompson stated that trials are set about 60

SB 234 days from the date of the arraignment. There is a very small number of writs ever filed, about 25%, and most of these are settled within 3 weeks, which is well within the 60 days. In those cases where it is a serious writ and it is going to be appealed, it may automatically be vacated by the court and then reset when the appellate court determines the writ.

Senator William J. Raggio stated that he was in full agreement with Judge Thompson's remarks. He further commented that during his service as Washoe County District Attorney that this presented a real problem.

Following a brief discussion it was the decision of the Committee to adopt Judge Thompson's amendment.

Senator Dodge moved to amend and do pass.
Seconded by Senator Sheerin.
Motion carried unanimously. Senator Bryan was absent from the vote.

SB 236 Revises oath to be administered to jurors and prescribes circumstances in which jurors may be discharged.

Judge J. Charles Thompson testified in support of this measure. Under the present statute, when a jury is sworn in the clerk must read the names of all the litigants in the case. He stated that in some cases the litigants are a page long and it takes 20 minutes just to swear the jury in. It was his feeling that if you asked the jury if they would well and truly try the case now pending before the court, that you would get an oath with just as much sanction as you would have if you read all of the names of the parties.

He further commented that the procedure for discharging a juror during the course of a trial is not presently outlined and this bill seeks to do that.

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

SB 235 Requires examination of prospective jurors to be conducted under oath.

Judge J. Charles Thompson stated that this was a housekeeping bill in conjunction with SB 236 (see above). The present statute requires that a jury be voir dired under oath but does not indicate what the oath should be.

SB 235 After a brief discussion, Senator Dodge moved a do pass. Seconded by Senator Gojack. Motion carried unanimously. Senator Bryan was absent from the vote.

SB 207 Guarantees employment of jurors following term of service.

Judge J. Charles Thompson stated that this has been a real problem for him in that jurors have come to him after 3 or 4 days of jury duty and told him that their employer wanted them back on the job or they would be fired. He informed the Committee that this has happened twice in the last two months.

Senator Ashworth stated that he had problems with this bill in that it addresses itself to the top level of management when the sanctions should be on the supervisory level in that they are the ones who would come in contact with this type of situation; they are the ones that do the scheduling.

Judge Thompson suggested that at the time the summons for jury duty is sent out, it should also include a notification to the employer that it is a misdemeanor for him to coerce an employee.

Senator Ashworth stated that he had no problem with that. However he felt there should be some time limit on the employee presenting the notification to his employer so that the necessary scheduling changes could be made.

In that regard, Judge Thompson suggested that they require the notice be given to the employer prior to the date of service thereby putting the burden on the employee to protect his job.

The Committee requested Senator William J. Raggio draft some language according to their comments. No action was taken at this time.

SB 225 Limits preemptive rights of corporate shareholders.

Judge J. Charles Thompson testified in support of this measure. The problem this bill is trying to reach is whether or not preemptive rights should exist for authorized but unissued stock. The present law is unclear on this and the courts would like some direction from the legislature. He informed the Committee that this bill had been taken verbatim from Section 26 A of the Model Business Corporation Act and has been adopted in whole or in part by 31 other jurisdictions.

SB 225 Senator Dodge expressed concern that some of the sections of this bill did not protect what exists in the law today; the rights of a minority stockholder to maintain his pro rata share or shares sold for a consideration other than cash.

Senator Bryan stated that he felt preemptive rights should exist except in certain, specified instances such as the publicly-traded corporation that Russ McDonald suggested (see minutes of meeting for February 24, 1977).

Senator Close commented that if the bill pertained only to sale of stock for cash then the protection it provided against the dilution of stock was only illusory. It was his feeling that the exchange of stock for real property could just as effectively dilute the value of other stockholder's shares as would the sale for cash.

Senator William J. Raggio concurred with Senator Close' remarks. He further commented that one of the reasons for supporting the Model Business Corporation Act was that it had taken this into consideration. It also dealt with corporations that had been established under the existing laws.

Senator Ashworth moved to accept Russ McDonald's amendment and do pass.
Seconded by Senator Dodge.
Motion carried unanimously.

SB 226 Authorizes sheriffs to break open building or enclosure to take possession of property.

Judge J. Charles Thompson informed the Committee that this was to have been enacted as an amendment to the execution statute but was somehow placed in the attachment section. It was his feeling that it should go in both.

At the present time, when a sheriff is attaching or executing upon property of a judgment debtor he is authorized by writ of execution to go out and seize the property providing it is in a public place. Through the use of a writ of garnishment in aid of a writ of execution or attachment he can acquire property that is in the hands of a third party; bank, relative, neighbor, etc. The problem arises as to what happens in the situation of the mini-warehouse or safe deposit box. The property is not in a public place nor in the hands of a third party.

Senator Bryan stated that he felt this was a policy question for the Committee. It was his belief that this problem would best be taken care of in the Claim and Delivery statute where-

SB 226 in the judgment debtor is holding property that rightfully belongs to the claimant. With respect to the attachment and execution, the claimant is seeking to apply that property which is not his but that he legally wishes to make his by virtue of a judgment or anticipated judgment under certain circumstances.

Senator Dodge asked whether or not the court could cite the judgment debtor for contempt if he refused to comply with the writs of attachment, execution or garnishment. Judge Thompson replied that an execution order is an order from the court to the sheriff to obtain that property and therefore the judgment debtor could not be in contempt.

Dave Hagan, Nevada State Bar Association stated in response to Judge Thompson's comment regarding the placement of this bill that the execution statute simply provides that execution be in accordance with the procedure set forth in the attachment statute. Therefore, an amendment to the attachment statute would suffice.

In further discussion of the bill, it was the decision of the Committee to look into what other states have done in this area. Senator Close will also ask Frank Daykin to draft something in that regard. No action was taken at this time.

Senator Dodge presented the following for Committee introduction:

- BDR 55-636 Restricts persons who may have access to another person's safe-deposit box and establishes procedure for removal of any contents.
- BDR 40-634 Prohibits signing of blank death certificates.
- BDR 20-636 Requires coroners to inventory property of deceased persons and provides penalty for disregard of coroner's seals or signs barring entrance to property of deceased persons.
- BDR 12-633 Provides a penalty for appraiser who purchases decedent's property which he has appraised.

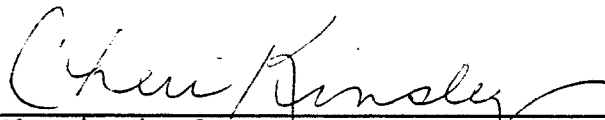
The above were unanimously approved for Committee introduction.

BDR 38-273 which provides for recovery of welfare payments made for dependent children was also approved for Committee introduction.

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There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

(1) Based on alleged want of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge [if such petition is not filed and brought on for hearing before a plea to the charge is entered by the accused or on the accused's behalf by his counsel or the court.], unless:

i. the petition is filed with all supporting points and authorities within twenty-one days after the first appearance of the accused in the District Court; and

ii. in the petition the defendant expressly waives the 60-day limitation set forth in NRS 178.556, consents that if the petition be not decided within fifteen days prior to the date set for trial, then the court may thereafter without notice or hearing order the trial continued either indefinitely or to such date as the court may designate, and consents that if either party appeals from the court's ruling on such petition and the appeal is not determined prior to the date set for trial, then the trial setting shall automatically be deemed vacated and the trial indefinitely postponed unless the court otherwise orders.

Blank — For good cause shown the court may extend the time to file the petition. The unavailability of the transcript of the preliminary hearing or of the proceedings before the Grand Jury, as the case may be, for more than 14 days after the accused's initial appearance shall be deemed good cause for the granting of an ex parte application to extend the time

for the filing of the petition. All other applications to extend
the time for the filing of a petition for a writ of habeas corpus
shall be made upon notice to the District Attorney.