SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 16, 1977

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

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

ABSENT:

SJR 10 Proposes consitutional amendment to establish staggered terms for district judges.

Frank Daykin, Legislative Counsel Bureau informed the Committee that there were two ways to approach this: 1) 2 successive terms of 4 years beginning with judges elected in 1984. You would then have everyone in line by 1992; or 2) Have 1/3 of the judges take a 2 year term and everyone would be in line by 1986.

Senator Ashworth noted that as a transitional thing, a two year term would not be objectionable.

It was the consensus of the Committee to go with the 2 year term.

No action was taken at this time.

SB 220 Provides conditions for imposition of capital punishment.

Messrs. Frank Daykin, Legislative Counsel Bureau and Dave Frank, Judicial Planning Unit, Supreme Court continued discussion of this matter with the Committee.

SECTION 10

Mr. Daykin: This is provided only upon a plea of guilty without a specification as to degree.

Senator Bryan: In the situation where an individual pleas to a non-specified sentence, why wouldn't the trier of fact have to consider the same criteria that a jury would at the time they were considering the penalty phase?

Mr. Daykin: They do. What it says is to consider and, by examination of witnesses, determine the degree or facts of the defense and the presence of aggravating and mitigating circumstances and give sentence accordingly.

Senator Bryan: Wouldn't we have a more defensible position if we set forth the same criteria? You are correct that it touches upon the concept but there seems to be, with respect to the jury, a desire to be quite specific.

Mr. Daykin: We could say "give sentence accordingly in the same manner as a jury."

Senator Close: In subsection 2 where the panel has the right to take new evidence by calling in new witnesses, are we talking about mitigating circumstances only?

Mr. Daykin: We are talking about two things. This is a conviction upon a plea of guilty and they have to determine degree and sentence.

Senator Close: Does the court call witnesses or is it presented by the District Attorney and the defense attorney?

Mr. Daykin: This does not say and under our statutes, generally speaking, either side may present evidence and the court may, under our general procedure statute, call and examine a witness.

Senator Bryan: Maybe that should be clarified. You raised the consideration that the judge is making two determinations. I was thinking that he was only making a penalty determination but he is adjudicating the degree of guilt and determining the penalty. Shouldn't we spell out that the aggravating or mitigating criteria would be admissible only to determine the penalty?

Mr. Daykin: We could do that. What we did here was to recall into the law the old language and under the old language, the aggravation versus mitigation factor was not present.

Senator Dodge: It might be well to point out to the court that they have two functions in that case.

Senator Bryan: I would think, too, that there should be two separate stages even before a trial before the court.

Mr. Daykin: On the question of degree and on the sentence. There is no question of guilt.

Senator Bryan: I have substantial doubt in providing evidence, as we set forth in the penalty phase with a jury, to allow that evidence to be admissible as to degree of guilt. That may get us into trouble.

Mr. Daykin: You are right. In drafting this we made the tacit assumption that a judge would automatically separate the inadmissible from the admissible and consider evidence for a limited purpose. But on a matter as important as this, it probably would be well to specify that this is a two stage consideration and what evidence is admissible at each stage.

Senator Bryan: In subsection 2, it would appear that only the court could ascertain whether or not a witness was to be recalled or whether additional evidence would be submitted. When one panel has developed an impasse, are we taking all the discretion out of the District Attorney and the defense counsel in presenting evidence to that second panel? If they decide to go on the record that is alright, but if they are going to be calling in new witnesses it seems to me that counsel on both sides should be given some latitude.

Mr. Daykin: Once there is a trial de novo, both sides normally present their witnesses.

Senator Dodge: But the original determination about whether they are going to rely on the record or have a trial de novo is with the court.

Senator Bryan: I have no quarrel with that but this goes one step further. This says that, in effect, if the judges elect not to rely on the record then they, and they alone, can determine which witnesses they want to call. If they are going to be involved in calling new witnesses it seems to me that the prosecution and defense should also have that opportunity. I can foresee a situation where the second panel would call a new witness who may have substantially new evidence to present and for which the prosecution or defense may have counter-balancing testimony that should be heard.

Mr. Daykin: Then we shall include that if the court calls new witnesses, the prosecution and defense may do so also.

SECTION 11

Senator Close: Does line 38 refer to the Gillmore situation? Is that required?

Mr. Daykin: Not constitutionally required. For review of a sentence only, this is new ground. In 1967 we provided for an automatic appeal of a death sentence unless there was an affirmative waiver. Now we are saying, even though the defendant affirmatively waives his appeal, which would go to the issue of guilt, the sentence portion shall still be reviewed. That is a question of policy. However, the Supreme Court, in its several opinions, laid great stress upon the provisions of the statutes of other states for the review of the sentence. This would insure that there was such a review in every case.

Senator Bryan: I would think that might be one way of protecting the underlying conviction itself. Heretofore, when you didn't have the option to review the sentence, the only device the court could use, if it were in fact truly more upset with the sentence than with the guilt determination, was to reverse the entire thing and retry the case on the question of guilt and obviously, the penalty as well. Here we are providing a mechanism to review the sentence so that you would only get involved in the question of whether or not there were aggravating circumstances which transcended any mitigating circumstances.

Senator Close: Doesn't (a) substantially enlarge upon what evidence they may consider?

Mr. Daykin: Now that we have dropped the language about aggravated murder, it would not determine whether the evidence supports the finding of the necessary aggravating circumstances.

Senator Sheerin: Are we going to give these matters some kind of priority other than the normal rule of priority?

Senator Bryan: Do we have the authority to do so?

Mr. Daykin: The Supreme Court indicated, in its opinion on the old water appeal, that it would recognize legislative priorities.

Mr. Frank: Chief Justice Cameron M. Batjer asked me to raise two questions with you. One of them deals specifically with the question of priority. (see attached Exhibit A, Nevada Rules of Appellate Procedure, 4) In the Advisory Committee notes, subdivision C was added at the court's suggestion in anticipation of certain cases that would require priority consideration.

Senator Close: On page 6, lines 2-4 should be deleted.

Mr. Daykin: I agree. The reason for inserting that, and it is a policy question whether you do, was for the guidance of the trial court: The thought was that the court would develop a body of case law upon sentencing and this was an attempt to nudge them into greater precision in that regard. This was specifically to make sure that when the trial court got this back, they knew exactly what the Supreme Court had in mind when they returned the issue. It is policy as to how far you want to go.

Senator Close: The problem with that though is that in one particular case, if the death penalty was imposed, then that would be the guidepost in which all future death sentences would be imposed and vice versa.

Senator Sheerin: The only reason we should have this would be if the Supreme Court decisions require us to. Short of that, we should not be telling our Supreme Court how and what they should write in their decisions.

Mr. Frank: Also, on page 5, line 49 where it talks about similar cases in Nevada, we have a problem as to whether or not there are any similar cases available at the moment.

Senator Close: Insert similar cases "if any" on page 5, line 49.

Senator Bryan moved to amend and rerefer to this Committee.
Seconded by Senator Sheerin.
Motion carried unanimously.

SB 268 Revises laws regulating controlled substances.

John D. McCarthy, Commander, Juvenile Vice and Narcotics Bureau, Metropolitan Police Department, Las Vegas stated that over the past 10 to 12 years there has been a tremendous increase in the drug problem and cited statistics indicating this increase. He stated that there is presently a national push on to legalize all drugs, including heroin. The proponents of this embrace what is known as the "personal choice" approach; it should be life to the individual to decide whether or not he uses drugs. It was his feeling that the law should protect individuals who are grossly immature and generally seek a hedonistic existence. If all drugs were to be legalized in the future, we could expect that 1) there would be no incentive for a person to rehabilitate if he knew he could get all the drugs he wanted; 2) there would be a "missionary effect" where when someone gets turned on to something good, they then turn their friends on to it; and 3) it is a characteristic of addicting or habituating drugs to increase the dosage as individual tolerance builds.
Their proposed legislative package advocates heavy penalties. For many years, people in law enforcement have advocated a two-pronged attack on the drug problem: strict enforcement against violators and support for the rehabilitation of drug-dependent persons. He further stated that there is every reason to believe that the overall drug problem and related criminal activity will continue to increase; as long as there is a demand for drugs there will always be a supply.

Lieutenant Tom Biggs, Commander of the Narcotics Section reviewed the bill, section by section, with the Committee.
Section 2 is new legislation which is referred to as the "possession for sale" statute. Under the present Controlled Substances Act, there has to be an exchange of narcotics and money

SB 268 involved before you can consumate a sale. Under this statute, once the undercover agent has seen the narcotics, it has been offered for sale and the deal has been made, he can then arrest for possession for sale based on the amount of the drugs he had. This law is based on the California statute.

Senator Sheerin asked how they could prove the general intent of possession for the purpose of sale as opposed to ordinary possession.
Lt. Biggs replied that it would depend on the amount of the substance involved. You cannot set a minimum amount limit. The amount is based on the expertise of the individuals, surveillance, total investigative techniques and what you know about the individual and their connections. This is the same language as California's and they have good case law that backs it up.

In response to a comment from Senator Sheerin that you cannot have open-ended penalty provisions, Lt. Biggs suggested amending subsection 2, (b) to 10-20 years and (c) to 15-30 years.
Senator Close made the observation that you could get less for killing a person and that this would have to be a policy decision for the Committee.

Section 3 is the possession for sale which goes into Schedule 3, 4 and 5 drugs. He recommended that subsection (c) have a top of 20 years.

Section 4 is a new law which is referred to as the "turkey law." This is an attempt to get at individuals who are selling substances which they purport to be controlled substances but in fact are not. He stated that in an effort to curtail the flow of drugs, their department goes out on the street and purchases drugs daily and are frequently getting "burned."
Senator Bryan asked whether this would require the element of knowledge.
Senator Sheerin responded that it would because of the use of the word "fraudulently"; that is a specific intent requirement. If he tells you he is selling you heroin and in fact he has not, he has made a mistake of law and you can't get at him.
Lt. Biggs stated that he had talked to Los Angeles, Arizona and the federal people about this and they didn't seem to have that big a problem with it. They were not going after single sales; this is an on-going program. There are people who deal strictly in selling nothing.

Section 5
Senator Dodge asked what was the purpose of the procedural language as far as enforcement is concerned.
Senator Bryan stated that there is an argument that unless the accusatory pleading contains an allegation of previous convic-

SB 268 tions, you may not impose the enhanced penalties. The dilemma that the prosecution faces is that they can jeopardize their case, by reading to the jury in the charging allegation, the fact that the individual had been convicted on a previous felony. That is generally not admissible except for purposes of impeachment. Section 5 is an attempt to address that issue by saying that it has to be in the accusatory pleadings.

Section 6 is a new section that goes to the common nuisance statute. There are places that are known hangouts for dealers and users, frequently referred to as "shooting galleries" and when they enter these places, whether it be with search or arrest warrants, and they find other individuals who are know frequenters of such places this will allow them to make an arrest. As this does not specify a penalty, it will revert back to the misdemeanor offenses in NRS 193.170.
Senator Sheerin stated that he was opposed to making association a criminal offense.

Section 8 is the seizure statute. Lt. Biggs distributed proposed amendments to the section. (see attached Exhibit B) He stated that if this was left as it was originally written, they would be allowing between $300,000 and $500,000 worth of drugs before they could seize a vehicle. He further stated that under most statutes they do not specify any amount whatsoever. It goes back again to the individual involved, the circumstances and the amount and type of drugs. He informed the Committee that he had talked with the District Attorney's office in Los Angeles and what they have done is worked out some minimal amounts, depending on the type of drug they were dealing with. He has also spoken with Washoe County District Attorney, Larry Hicks and Clark County Assistant District Attorney, Tom Beatty and they both felt that this would be a workable solution.
In regard to line 7, Senator Close stated that the only concern the holder of the security interest should have would be getting the balance of his loan. He noted that the federal law takes it regardless; there doesn't have to be any consent.
Senator Bryan indicated that there would be a due process problem with regard to the community property interest. He cited as an example, the husband who is a dealer but the wife has no knowledge of it. He questioned whether, in a forteiture proceeding, they could divest her of her interest for the misconduct of her husband. He requested that Lt. Biggs check into what Arizona and California have done in this regard.

Section 9 they are requesting an amendment so that these matters can priority over other civil proceedings. The problem they are encountering is that they have had vehicles in impound for over three years while awaiting a forfeiture hearing and the vehicle has become virtually unserviceable.

SB 268 He further stated that this would involve only about 5-10 forfeiture hearings a year.

Discussion of this bill will continue tomorrow morning at 8:00 a.m.

SB 279 Enacts Uniform Parentage Act.

Ron Bloxum, Clark County Deputy District Attorney and Project Director with the Family Support Unit informed the Committee that this bill had been requested by Clark County District Judge J. Charles Thompson. He stated that there is a serious problem in the area of illegitimate children and quoted the following from an article in the Family Law Quarterly which is produced by the Family Law Section of the American Bar Association. "Despite declining birth rates, the problem of illegitimacy remains at the level of a national crisis." He stated that in Clark County alone there are 4,563 cases of non-supporting parents and of that, there has been no paternity established in approximately 50% of them.
In 1973 this Act was written and adopted by the National Conference of Uniform Acts. Under this Act, there would be an informal hearing before a hearing officer who would listen to both sides of the case and make recommendations or dismiss the case without prejudice. The Act also calls for a non-jury trial, which is conducive to getting at the truth and much less embarrassing for both parties. It also provides for appointed counsel.
In response to a question from Senator Bryan as to the allowance of blood tests as evidence and the accuracy of them, Mr. Bloxum stated that 95% of the time the test will be exclusionary and 65% of the time it will point the finger at the right man.

A main portion of this bill will change the statute of limitations. At the present time, an action must be brought within two years of the birth of the child unless there is a written acknowledgement of paternity. Basically there would be no statute of limitations if certain presumptions were present, otherwise, it would be 3 years. However, the child could be the action within 3 years after reaching the age of majority.
In respons to a question as to the purpose of this, Mr. Bloxum stated that it would be for social security benefits, and estate and inheritance purposes.

Don Miller, Business Manager of the Family Support Unit in Clark County testified as to the financial impact of the bill. Existing DDDD legislation allows for a 25% incentive payment on monies collected for Aid to Dependent Children. However,

SB 279 one of the most difficult problems in collection of ADC monies is the establishment of paternity. The provision for the closed hearing before the hearing officer would reduce the amount of time that they would have to wait to establish a paternity case considerably.

Due to a lack of time, the bill will be rescheduled for further testimony at a later date. No action was taken at this time.

SB 273 Prohibits signing of blank death certificates.

Bill Isaeff, Deputy Attorney General, informed the Committee that SB 273, SB 274 and SB 275 all were the result of the Churchill County Grand Jury investigation into the estate proceedings of Virgil Coleman Cox. One of the problems that they found was that the Justice of the Peace/Coroner was signing blank death certificates and giving them to the local funeral home who would later fill in all the details.

In discussion of the bill, it was the feeling of the Committee that there should be nothing unlawful in submitting death certificates in blank form in that it would include stationary supply houses. Therefore, it was their decision to amend the bill as follows:

"It shall be unlawful for any person to affix a signature to an uncompleted death certificate."

Senator Gojack moved to amend and do pass.
Seconded by Senator Bryan.
Motion carried unanimously.

SB 274 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.

Frederick C. Gale, Chief Deputy Coroner testified in support of this measure. He had a question as to whether this bill would pertain to ordinance-appointed coroners. He also suggested that the term "found with the deceased" be more specifically defined. He stated that he had once spent 6 hours inventorying the personal property of a woman who had died in her home. He felt that the law was so broad in this respect, that it had had to be done.

Bill Isaeff informed the Committee that this would apply to all coroners, pursuant to NRS 259.010 but that he would include language in this bill which would more specifically indicate this.
He further concurred that the term "found with the deceased" should be more clearly defined.
Senator Dodge suggested it be amended to say "on or about the

SB 274 deceased." The Committee concurred with that amendment.

Senator Dodge moved to amend and do pass.
Seconded by Senator Gojack.
Motion carried unanimously.

SB 275 Provides a penalty for appraiser who purchases decedent's property which he has appraised.

L. J. McGee, Pioneer Citizen's Bank and Chairman of the Trust Committee of the Nevada Banker's Association stated that they supported the philosophy of this bill however he felt that in many instances this could be a disservice to the estate. Often times the appraiser is the only person interested in buying the items. He felt that full disclosure to and approval by the cour would solve this problem.

Senator Sheerin also suggested that there should be a provision included that should the appraiser fail to do that, the sale would be void.

Bill Isaeff concurred with both amendments and suggested the following language:
"No appraiser may directly or indirectly purchase any property of an estate which he has appraised except when such purchase has been approved in advance by the district court after full disclosure of all relevent facts. Any person who violates this section is guilty of a misdemeanor."

Senator Dodge moved to amend and do pass.
Seconded by Senator Gojack.
Motion carried unanimously.

AB 206 Corrects obsolete references relating to official bonds.

Senator Bryan moved a do pass on the consent calendar.
Seconded by Senator Gojack.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Sheerin
	Senator Bryan		Senator Ashworth
	Senator Foote		
	Senator Gojack		
	Senator Dodge		

AB 212 Deletes redundant and inaccurate reference to maximum expenditure for local public improvements by special assessment.

Senator Gojack moved a do pass on the consent calendar.
Seconded by Senator Foote.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Sheerin
	Senator Bryan		Senator Ashworth
	Senator Dodge		
	Senator Foote		
	Senator Gojack		

AB 214 Deletes obsolete references to emergency fund account.

Senator Gojack moved a do pass on the consent calendar.
Seconded by Senator Foote.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Sheerin
	Senator Bryan		Senator Ashworth
	Senator Dodge		
	Senator Foote		
	Senator Gojack		

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley

Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

Rule 4.

Appeal — When Taken

(a) **Appeals in Civil Cases.** In a civil case in which an appeal is permitted by law from a district court to the Supreme Court the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within thirty (30) days of the date of service of written notice of the entry of the judgment or order appealed from. If a timely notice of appeal is filed by a party, any other party may file and serve a notice of appeal within fourteen (14) days of the date on which the first notice of appeal was served, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Nevada Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the date of service of written notice of entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) granting or denying a motion for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk.

(b) **Appeals in Criminal Cases.** In a criminal case, the notice of appeal by a defendant shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within thirty (30) days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within thirty (30) days after entry of the judgment. When an appeal by the state is authorized by statute, the notice of appeal shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from. A judgment or order is entered within the meaning of this subdivision when it is signed by the judge and filed with the clerk.

(c) **Expediting Criminal Appeals.** The court may, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

1. Elimination of steps in preparation of the record and the briefs.
2. Expediting preparation of stenographic transcripts.
3. Priority of calendaring for oral argument.
4. Utilization of court opinions or per curiam orders.
5. Other lawful measures reasonably calculated to expedite the appeal and promote justice.

Advisory Committee Note

Subvidision (a) is revised to delete references to federal proceedings in admiralty and bankruptcy, and to substitute a reference to Nevada Rules of Civil Procedure rather than the federal rules. Also, the rule is revised to preserve existing Nevada law providing that the 30-day period within which an appeal may be taken runs from the date of service of written notice of entry of judgment or order appealed from, rather than the date of entry of judgment or order appealed from, under federal law. In addition, existing Nevada law, to the effect that a judgment or order is "entered" when it is signed by the court and filed with the clerk, is preserved, rather than when it is entered in a civil docket, as under federal law.

The provision in the first paragraph of subdivision (a), authorizing any other party to file a notice of appeal within 14 days after service of the first notice of appeal represents a departure from existing Nevada law, which requires notices of appeal by all parties wishing to appeal within 30 days after service of written notice of entry of judgment. The committee felt this provision desirable, for it allows parties other than the first appellant a reasonable time within which to decide whether to perfect an appeal of their own after the first appeal has been commenced.

The second paragraph of subdivision (a) is revised to include in part (4) orders granting as well as denying motions for new trial, to preserve current law as stated in NRCP 73(a).

The third paragraph of subdivision (a) of the federal rule, authorizing the district court to extend time beyond the 30-day appeal period for filing the notice of appeal, was deleted as unnecessary and undesirable under Nevada practice.

Subdivision (b), governing appeals in criminal cases is revised to substitute "state" for "government," and to preserve existing Nevada law to the effect that a judgment or order is "entered" when signed by the court and filed with the clerk. The appeal period is altered to conform with NRS 177.066, which prescribes 30 days from the rendition of the judgment or order of the district court.

Subdivision (c) was added pursuant to the court's suggestion to the committee (paragraph 14) that provision be made for expediting criminal appeals where appropriate.

SEC. 8. NRS 453.301 is hereby amended to read as follows:
453.301 The following are subject to forfeiture:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.551, inclusive.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.551, inclusive.

5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, *possession for sale,* or receipt of property described in subsections 1 or 2, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the provisions of NRS 453.011 to 453.551, inclusive;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(c) A conveyance is not subject to forfeiture for a violation of NRS 453.336 [; and] *(simple possession) where the substance possessed was marijuana* unless more than [1 kilogram of the controlled substance] *eight (8) ounces of marijuana was in the conveyance; and*

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission. The [division] *Law Enforcement Agency* may, with consent of the holder of the security interest, pay off the existing balance and retain the conveyance for official use.

No person whose interest does not appear on the certificate of registration for such conveyance shall be a proper party to any forfeiture proceedings.