

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 24, 1977

The meeting was called to order at 12:06 p.m. Senator Close was in the chair.

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

ABSENT: None

SB 268 Revises laws regulating controlled substances.

Lt. Biggs continued going through the changes with the Committee.

Tom Beatty, Deputy District Attorney stated that their problem has been with the age factor. On a close reading, if you look at 453.321 the old language, if you are under 21 you can get one to twenty. Judges so far haven't given a 20 year sentence, but the question here is if you are under 21 you can get up to 20 years and if you are over 21 you can only get 6.

Senator Close stated he felt that perhaps there should be some reduced penalty for the under age group.

Senator Bryan stated if he understood correctly, it is a determinate sentence, the judge can fix anything he may want. The first offense is still subject to probation, and if so he doesn't see a problem.

Senator Close said, but the third offense is 15 years to life. There is nothing in the law now that goes 15 years.

Lt. Biggs said on a second offense, under 421 as it now stands, is life without possible parole.

Senator Close stated that it sounds good, but that really is only 7 years.

Mr. Beatty stated that he felt this would be rare in the first instance and secondly you still have some discretion.

Senator Close stated he felt that you just couldn't have extraordinarily high penalties in drugs and narcotics. In comparable areas, not dealing with drugs, you have much lesser sentences. He feels there should be some consistency running through the

entire law of sentencing.

Mr. Beatty stated that if the guy had done two prior sentences and gone out and done it the third time, that is what it really takes to get him convicted.

Lt. Biggs stated that on a first offense there is usually probation granted unless they are dealing with a large quantity of hard drugs.

Mr. Beatty stated that to have a third arrest there has to have been two previous arrests and convictions and sentencing and they can't be the same day, they have to be separate.

Senator Bryan stated that we are talking about a three time looser and his feeling is that it is about time to throw the book away.

AB 12 Changes provision which prescribes additional penalty for use of deadly weapon in commission of certain crimes.

Tom Beatty stated he had one quick comment on this. As he recalls this changes the use of a deadly weapon to 5 to life. The only comment he has is that in some cases it may actually reduce the penalty. Rape with a deadly weapon, we can get life, and if they use a deadly weapon we can get two lives. Now they can give a different penalty for the second.

Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Foote.

Motion carried unanimously, Senator Gojack was absent from the vote.

AB 338 Permits dedicated school lands to be reconveyed without cost to dedicator.

Senator Close stated that we will make it so that any land purchased had to be sold or leased by the school district and any land donated would go back to the donator or any successors.

Senator Ashworth moved amend and do pass.
Senator Dodge seconded the motion.

The motion carried unanimously, Senator Gojack was absent from the vote.

SB 268 Revises laws regulating controlled substances.

Senator Close stated that he felt we should take the most serious penalty and have something inbetween there for the rest of them. He felt most of them were just too high. There should be some differentiation in the penalty if you are going to differentiate the offenses.

Senator Bryan stated that several years ago the state bar

reviewed criminal sentencing procedures generally and they pretty well concluded that there was no justification for imposing greater penalties than say something under 10 or 15 years. Their justification was that with the determinate sentencing concept, the judge has the flexibility of fixing the precise number of years. In application the difference between a one to ten and a one to fifteen, is a loser. Even in a fifteen situation the person is eligible for parole in one quarter of the time served, less credit for good time. So if you crank that calculation in, the difference between the 12 year sentence and the 15 year sentence, it is hardly substantial.

Senator Dodge stated that he feels that even with the public, although they may have some sympathy for some of these penalties on users, they do not have any sympathy for dealers or pushers. It seems to me here, that this class of penalties has to do with the dealer and pusher. To that extent I really think we ought to have some tough ones, because the social problems of economic costs that those guys reap on society is unbelievable.

Senator Sheerin stated he had one observation along Carl's line. We are going to be faced with this marijuana bill and the reduction. If we strengthen up the sales, and there certainly is some logic to saying okay, the other side maybe we can do something about softning that and get all these mickey mouse things out of our courts and then concentrate on these heavier things.

Senator Ashworth moved amend and do pass.
Seconded by Senator Foote.
Motion carried unanimously, Senator Bryan and Senator Gojack were absent from the vote.

There being no further business at this time, the meeting was adjourned.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN