

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 30, 1977

This is a continuation of the morning meeting. The meeting was called to order at 12:10 a.m. Senator Close was in the chair.

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

ABSENT: Senator Gojack

SB 220 Provides conditions for imposition of capital punishment.

Senator Close stated that they all had the first reprint in front of them and if they would read through the bill and see if there were any questions or any changes that they had overlooked.

Senator Dodge stated that he thought we were all agreed on the hearsay aspect. It could help the prosecution but it was put in here to make every available shred of evidence admissible as far as the defendant is concerned.

Senator Bryan said he had a couple of questions on page 3 line 7 he didn't remember that we had qualified the language to the extent that this does. "mitigating circumstances that would be offered on behalf of the accused, any other mitigating circumstance of like nature or recognized by law".

Senator Dodge stated we did as far as the mitigating circumstance but not the aggravating. And again we did it for the same reason.

Senator Bryan stated but the "any other mitigating circumstance of like nature or recognized by law" is qualifying, and he is not sure what they mean. We say here that a mitigating circumstance is something that is not sufficient to constitute a defense or reduce the degree of the crime.

Senator Close stated on line 5 thru 8 on page 4, "the state may introduce evidence of additional aggravating circumstances if you give notice to the defendant before the penalty hearing". Is that additional circumstances other than those presented to the jury?

Senator Dodge said that this was a case where the aggravating circumstances have already outweighed the mitigating. Because this is prefaced on line 43 page 3. This is after the verdict and on the finding the defendant is guilty. So now it is a question of sentence, it is not a question of if he has committed the murder. It wouldn't influence a decision of the jury to find him guilty because they have already done that.

After some discussion by the Committee it was felt that perhaps there should be something in here as to when the penalty hearing should be held. They felt that this should be held as soon as possible. Also on the additional agravating circumstances they felt they needed some clearer language. Because as it reads it could allow them to bring in further additional agravating circumstances over and above the list in the bill.

Senator Bryan brought out the fact that he thought they had agreed not to go on the special verdict "the finding or verdict shall designate the agravating circumstance or circumstances which were found beyond a reasonable doubt".

Senator Dodge stated that he thought they did that if there were an appeal that the appellate court would have some record in that transcript upon what they hung their hat. Suppose it is a jury trial and they come in and say we find that the agravating circumstances outweigh the mitigating and therefore that is our finding. Based on what the law requires the judge says we sentence you to death. So what if the defendant takes an appeal from that without any indication from the jury about what they specifically found it seems to me the appellate court is left completely in the dark as far as trying to make a determination.

Senator Bryan stated that if the jury at the penalty phase was correctly instructed and if there was evidence to support any one of the agravating circumstances that we have enumerated here. Couldn't it be presumed that the jury found one or more of those agravating circumstances sufficient to outweigh.

The Committee decided after further discussion on this that they needed more testimony on this facet of the bill.

SB 184 Increases penalties and broadens reporting requirements for child abuse.

Senator Close stated he would just like to go back to this bill for a minute.

Senator Bryan stated that you want to be careful that you don't have some conflict with the existing battery law. Something that is presently in the law consitutes an agravating circumstance of battery, because battery applies to everyone not just the child abuse situation. Child abuse section is a seperate provision in the law. But I think we should look at those penalties pretty carefully so we should make the child abuse mutually exclusive. So defense counsel does not argue conspiracy.

Also after some discussion they decided that they wanted the five days on the investigation changed to be 3 working days.

Senator Bryan stated one thing he was trying to say is that 200.508 is a general battery statute, the kind of thing we are talking about in the new section is batteries, agravated admitedly. This is what worries me if we don't reconcile the two, by language excepting or excluding one. The general law is now that if a battery is committed, or if a battery is not committed with a deadly weapon and substantial bodily harm to the victim results, it is a gross misdemeanor. That is precisely the kind of situation that we contemplate over here, so I think what we have got to say is "except as provided in NRS 200.508".

Senator Sheerin stated he still had a problem with this, because if you had a 16 year old battering a 16 year old it should be under the battery section.

Senator Close stated that it would be under the concept of our bill.

Senator Bryan stated that his concern was that there have been several statutes in the last couple of years where there are other penalties provided for similar types of activity where the arguments have been advanced that the lesser penalty should apply and I just don't want to see that here.

Senator Close stated he would talk to Frank Daykin and see what he suggests.

There being no further business the meeting was adjourned at 1:20 p.m.

Respectfully submitted


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN