

The meeting was called to order at 9:05 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Dodge
Senator Ford
Senator Don Ashworth
Senator Raggio
Senator Sloan

ABSENT: None

SB 194 Provides for preliminary hearing after indictment.

See minutes of Feb. 15 for previous testimony.

Cal Dunlap, Washoe County District Attorney stated he is in opposition to this bill. He stated he would first like to explain about the Grand Jury. Formerly the Grand Jury was a hand picked, blue ribbon panel. They were largely influential and prominent people in the community. That was attacked along with other processes of the Grand Jury and was changed to the present process of random selection. However, the results are not too different. The reason for this is that the judges still ask those selected if they can afford to serve. It is a burdensome duty to appear at least twice a month for all day away from employment. Because of this we tend to get people who are more or less independently wealthy. They get \$15 a day to be on the Grand Jury. Not too many people that are paid by the hour can afford to come in and serve that long. Most of these people give a great deal of thought before they indict or issue reports. The accusation is often made that the Grand Jury is the rubber stamp of the District Attorney, This is untrue. There is as great of a chance of failure to indict there, as there is in the Justice's Court. In 1978, 51 cases were presented to the Grand Jury. Those 51 cases were generally ones where waivers of preliminary examination probably would not have been obtained. Of the 51 cases 40% of those cases were in the category of murder, attempted murder, kidnapping and felony D.U.I. 30% were sex crimes, and approximately 14% were theft crimes. He stated that in the area of sex crimes, when it comes to witnesses, the Grand Jury is extremely important. Most of these are cases where children are molested. Where a father has intercourse with his daughter, or molests his son. No one has really spoken to the trauma of a victim who has to sit across from, and face, the perpetrator of the crime itself. The vast majority of sex cases do not get to trial. They are plea bargained because of the fact that there are substantial penalties for most of these offenses, ranging in some cases to life. The defendants are reluctant to take the matter

to trial, and the prosecution is very reluctant because of the effect on the victims. Because of the Grand Jury, we can usually persuade the victim that it is going to be a secret hearing, and that the guy will probably later plead guilty to the offense. There is also the myth that there are all kinds of people around who were falsely convicted. He cannot remember the last time an attorney came in and said his defendant was really innocent. In 95% of the cases, or better, they admit to their attorney that they are guilty and it is just a matter of how the case is going to be disposed of. What the basis of this bill is, is merely the difference in procedural rights.

Senator Dodge stated that the Committee's understanding is that there is a difference in procedure between the northern and southern part of the state.

Mr. Dunlap stated that the only difference is that it has been the policy in Washoe County for many years, not to have an open file policy. He stated that there are problems in Clark County that Washoe County does not have. He stated that if an attorney comes in and really wants to talk settlement, and he is willing to tell us what he can show, then we will tell him what we can show. As a matter of policy he believes in the closed file system. He feels that this whole situation is to get discovery beyond the statutory requirements. The whole purpose of the "prelim" is to find out if there probably has been a crime committed, and whether the defendant probably committed it. He stated that he would also like to bring up the point that the Federal System has the same procedure, except you do not even have a transcript. Exhibit A Exhibit B

Ted Olson with the American Civil Liberties Union, stated they are in support of SB 194. They believe that this bill is vital to insuring equal protection under the law, to persons accused of committing a crime. A preliminary hearing is held to determine probable cause and bring the person to trial. This is determined only after both the prosecution and the defense have developed their evidence, and after they have been able to contradict or explain the evidence presented by the other side. In a Grand Jury there is no allowance for the accused to present favorable evidence to his case. The defendant may thus be subjected to a time consuming and costly trial, which might have been avoided had there been a preliminary hearing. Another concern was the protection of witnesses in cases such as sexual assault, however, the rights on an innocent defendant must also be considered. The ACLU feels that the Legislature can do one of two things. Either require this preliminary hearing, as SB 194 would do; or upgrade the rights of the defendant before a Grand Jury.

No action was taken on this bill at this time.

SB 174 Amends requirements for notice of check refused for payment because of insufficient funds.

See minutes of meeting of Feb. 15 for testimony. Senator Glaser stated that the reason for this bill was that Red Ellis of the Commercial Hotel had a problem. A local man came in and wrote a check, however, he did not put his name and address on the check. The check was no good and they took it to the District Attorney to try and prosecute. Even though they knew where the man lived, because of this technicality in the law, they could do nothing. The present language says that they should have required the man to put his name and address on the check.

As the Committee had to go into session on the floor, no action was taken at this time.

The meeting was adjourned at 9:55 a.m.

Respectfully submitted,

Virginia C. Letts, Secretary

APPROVED

Senator Melvin D. Close, Chairman



Barbara Bailey, Executive Director
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STATISTICAL ANALYSIS OF FREQUENCY OF
GRAND JURY'S USE AND EFFECT THEREOF

According to the available statistics*, 48 cases were taken to the Washoe County Grand Jury in 1977. All but two resulted in indictments being returned. 51 cases went before the Washoe County Grand Jury in 1978, and all but one (1) resulted in indictments. In the one case in 1978 where no true bill was returned, it is significant to point out that the prosecution did not seek or request an indictment.

The succeeding pages herein are from the Annual Report of the Washoe County Public Defender's office. The significance is this: The public defender opened 2002 files for felonies and gross misdemeanors. Yet, in the same year, only approximately 50 cases went before the grand jury; thus 97.5% of all cases go to preliminary examination.

Of the 1,467 cases closed by the Public Defender's Office, 50% resulted in a plea to a lesser charge or complete dismissal. According to the testimony of William Dunseath, Washoe County Public Defender, this is a direct reflection of the importance of preliminary examinations. That is, when one has a preliminary examination, the potential weaknesses of the prosecutor's case are more vividly displayed. Accordingly, he is more likely to negotiate which ultimately lightens the case load saving the taxpayers thousands of dollars.

Of the 1,467 cases closed, only 15 went to jury trial, approximately 1%. This is due in no small way to the plea bargaining which is accomplished by the fairness, disclosure and adversary nature of the preliminary hearing.

"A"

*Washoe County District Attorney Cal Dunlap testified to these statistics at a hearing held February 5, 1979.

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S U M M A T I O N

During the fiscal year, July 1, 1977 through June 30, 1978, the office opened 2,552 files, which included 1,880 felony charges, 122 gross misdemeanor charges, 390 misdemeanor charges, 130 misdemeanor charges in the Municipal Court and 1,043 charges against juveniles for a total of 3,565 charges or counts. In addition thereto the office processed 28 Supreme Court appeals, 8 District Court appeals, 43 parole violations, 110 probation revocations, 13 sentence modifications, 14 extraditions, 35 insanities and 12 miscellaneous cases. There were also 81 closed files reactivated and 27 Habeas Corpus matters processed. Computations are as set forth hereinafter in the Case Load Review.

The case load continues to increase but not as drastically as in the previous year. Parole violations have become a significant part of our case load and probation revocations have substantially increased by approximately 25%. We have had an approximately 20% increase in our Supreme Court appeals. However, the Municipal Court misdemeanors are down almost 45%.

A recapitulation of the budgeted funds received and expended during the fiscal year is attached hereto and indicates that the office operated well within it's budget.

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P E R C E N T A G E S

Percentages below are based on all files closed during the period of July 1, 1977 through June 30, 1978, in the felony, gross misdemeanor and misdemeanor categories.

The total number of files closed for the year were broken down as follows:

Felony and gross misdemeanors	858
Misdemeanors	271
Others	

TOTAL: (1,467)

Included in this total are all probation revocations, appeals, miscellaneous, etc., each time they were closed.)

FILES CLOSED

AS CHARGED	28.97%
LESSER CHARGE	35.57%
COMPLETELY DISMISSED	15.47%
RELIEVED AS COUNSEL	7.91%
OTHER	12.08%

PROBATION REVOCATIONS

The number of probation revocations that were closed totaled 149 files.

REINSTATED	57.71%
REVOKED	40.26%
OTHER	2.03%

T R I A L
P L A N A L Y S I S
M E A N O R S / M I S D E M E A N O R S



WASHOE COUNTY SHERIFF'S DEPARTMENT

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CHIEF, OPERATIONAL SERVICE BUREAU

LORNE E. BUTNER
CHIEF, ADMINISTRATIVE SERVICE BUREAU

February 14, 1979

Melvin Close, Jr., Chairman
Committee on Judiciary
Nevada State Legislature
Legislative Building
Carson City, Nevada 89710

Dear Chairman Close:

We are opposed to S.B. 194 as pertains to Allowing
An Accused A Preliminary Hearing After An Indict-
ment By A Grand Jury.

This would impose an additional burden on not only
the overcrowded Courts, but the District Attorney,
Witnesses, Law Enforcement Personnel and all con-
cerned with such a proceeding.

The present system of Grand Jury Indictment appears
to be very effective and lawful. From experience,
I cannot cite any instance where I felt the District
Attorney or Grand Jury misused their authority, and
there are statutory reliefs for the defendant should
such action occur.

We feel the existing procedure is very sufficient for
bringing an accused to a Trial Court.

Very truly yours,

ROBERT J. GALLI, SHERIFF

By: 
William D. Mathews, Captain
Detective Division Commander

WDM:fmcc

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EXHIBIT B