

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
January 27, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close, at 9:35 a.m., Tuesday, January 27, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William H. Hernstadt
Senator William J. Raggio
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary
Iris Parraguirre, Committee Secretary

SENATE BILL NO. 12

Requires that information on effect of crime on victim be included in report of presentence investigation.

Barbara Durbin, Deputy Chief of Parole and Probation stated that the concept of the bill was excellent. She pointed out that their department had presented a new manual outlining the requirements for the presentence report in May of 1980, which included an extensive victim impact section. The concern of the department is how to implement further practice based on the content of the bill. Notification is difficult, medical releases are not available, and medical and cost impact cannot be determined. Referrals from the courts are months down the line and a tracking system is not available to them. Contact is lost with many of the victims.

Another concern of the department is that of the victim's confidentiality. More specific information on the report would make the

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

victim more reluctant in discussing the matter. In dealing with juveniles, parental approval of certain information is required or the information cannot be included in the report. The specificity of the bill could create some problems.

Senator Hernstadt asked if an amendment should be drafted to provide for anonymity of victims, with the provision if they cannot be located or respond to letters, that after 5 days, you would be able to forward the report to the court without delay.

Ms. Durbin stated it would be helpful to build into the bill some requirement to follow the policies and procedures already established by the department to preserve the anonymity of individual victims. With regard to the second part of the amendment, the wording could read "every attempt is made" for notification.

Senator Wagner asked if Ms. Durbin felt this legislation is necessary since the department is doing this now in terms of their rules and regulations.

Ms. Durbin stated if the presentence investigation must contain certain information, it is very limiting. There would be a possibility of the department being in violation of the statute by not including the information pertaining to the victim. The department is already doing it. It could cause some problems as written by requiring the information must be included.

Senator Raggio stated that if the department is already doing this, there is no harm in having it included. The bill, as written, is explicit in the language, to the extent that the information is available. If the information is not obtainable, you are not mandated to get something you can't get. Senator Raggio suggested that the anonymity of the victim would not be a problem because the defendant always knows who his victim is and it is included in the criminal complaint.

Ms. Durbin stated that the judge will ask the defense counsel to review the report with the defendant and be given the opportunity to refute any of the contents. The defendant has access to the report and the victim's name.

Senator Raggio stated that if attempts to contact the victim were fruitless and that was made known to the court, that would comply with the statute.

Ms. Durbin agreed there would be no problem.

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

Chairman Close stated that the department would not be required to go out beyond the information given to them by the victim to determine any physical or psychological harm. The bill could be amended to provide that the report would include whatever the department was advised as to the physical and psychological harm to the victim.

Senator Raggio stated it would be a good idea to amend it, otherwise it would leave the door open for the defense counsel to file a writ.

Senator Keith Ashworth stated that without the amendment, it would make possible the problem of additional litigation.

Ms. Durbin stated it would help to have no fiscal impact on them. Chairman Close stated that there was none, and the bill drafter had not felt the need to place a fiscal note on the bill.

SENATE BILL NO. 13

Adds supervised work as optional condition of probation or punishment for misdemeanor.

Ms. Durbin stated that the concept of this bill was excellent. It gives the judges an excellent alternative in sentencing. Ms. Durbin indicated her concern over implementing a program such as this since district courts are state wide, rural population is wide spread, and community service agencies that could assist in the program are not as readily available in the rural areas. Problems including supervision, screening of appropriate placements, documentation of work, paper work, tracking and recording processes would have a distinct fiscal impact on some body, whether the Department of Probation and Parole or any community service agency that might be willing to implement a court referral process.

Chairman Close stated there is not a fiscal note on this bill as the bill drafter felt it could be done with minimal expense and with the existing personnel.

Ms. Durbin stated that probation in this state is granted to felons and gross misdemeanants which would allow potentially dangerous people in society. Line 3, page 1, reads:
the court may offer to the defendant, as a condition of probation.
As the bill is written, these people would come under the bill's jurisdiction.

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

Chairman Close stated that a check would be made to see that the bill relates only to misdemeanants, as was the intent of the bill. Several states have this program and felons are required to devote many hours of community service as a condition of probation. It would prove a viable alternative to sending the misdemeanant to jail or turning him loose, or reporting to the probation officer. Judges are utilizing this concept but may not have the power to do it.

Ms. Durbin stated that at the current time, judges are ordering volunteer work as a condition of probation; once it is placed on the probation agreement and signed by the probationer, it is considered a voluntary acceptance of that condition of probation.

Senator Hernstadt stated that it was not the intention of the bill to ruin the program by including felons.

Larry Kitzenburger, Las Vegas Metropolitan Police Department, stated that through a law enforcement group, a bill to amend certain portions of Chapter 211 relating to jails and misdemeanor prisoners is being introduced. Other bills are forthcoming to allow municipal courts and justice courts to suspend misdemeanor sentences. It was his suggestion that the bill be held until the revision is out and incorporate the provisions of the other bill.

Senator Raggio stated that, without amending the constitution, there is no authority to give municipal courts the power to grant probation. This would be limited to the justice court. Information should be obtained to find what authority we have to do this in municipal court.

Chairman Close stated that the bill would be held, pending the introduction of the other bill.

Robert Lippold, Correctional Consultant pointed out that some individuals would prefer sitting in jail, rather than work. The judge should have the alternative to make that directive, rather than on a voluntary basis. If the judge is in the position to provide an alternative, and the defendant violates that condition of parole, he is subject to additional sanctions.

Dan Fitzpatrick, Clark County, pointed out areas of the bill that needed clarification. Line 23 specifically requires that a supervising authority must agree to accept the defendant for supervised work before the court may require him to perform that work. Line 3, specifies that the supervising authority must be located in or be the town or city of the defendant's residence.

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

Language could read: in reasonable proximity to the defendant's city or county.

Senator Wagner asked about the cost impact of the program. Mr. Fitzpatrick stated that there would be some cost involved, but minimal on local governments if the defendant was placed under a department which already has a supervisory force.

Senator Hernstadt was concerned with problems of injury. Insurance coverage would have to be provided. He stated that workmen's compensation is a monopoly now under NIC. Private insurance for workmen's compensation with the state is unobtainable because it has been pre-empted by the NIC structure.

Senator Wagner pointed out that the defendant is required to deposit a fee for liability insurance if he agrees to work, as stated on lines 12 through 15. An indigent may not be able to provide that fee.

Chairman Close pointed out that if he was indigent, and unable to put up the fee, he could not work. There is no fund available to pay for insurance.

Robert Manley with the Attorney General Office, Criminal Division, stated that he represented a group from law enforcement officers who would oppose or support various bills. He pointed out that on this particular bill, a defendant must agree to do the work because of the 13th Amendment which prevents sending people to jail because of inability to pay the insurance when others of greater financial sources have an alternative. He offered his help to the committee during the coming session.

Chairman Close pointed out that the minutes of the January 20, 1981, meeting were before the committee for approval.

Senator Don Ashworth moved that the minutes from the January 20, 1981 meeting be approved.

Senator Wagner seconded the motion.

The motion carried unanimously. (Senator Keith Ashworth was absent for the vote).

The following bills were presented to the committee for introduction:

BDR 8-415 - From Senator Hernstadt (S.B. 101)

Removes limitations on interest rates for loans.

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

The chairman advised the committee that the bills listed below came from Frank Daykin and are technical correction bills.

BDR 1-33 (S.B. 107)

Conforms certain statutory provisions to constitutional provisions relating to jurisdiction of courts of records.

BDR 6-128 (S.B. 106)

Makes technical correction concerning affidavits in small claims.

BDR 9-62 (S.B. 110)

Clarifies statutory procedure for releasing mechanic's lien upon posting surety bond.

BDR 16-34 (S.B. 108)

Reconciles penalties prescribed for possession of another's credit card.

BDR 16-56 (S.B. 109)

Removes conflict between statutory provisions which impose different penalties for similar assaults and batteries.

BDR S-1 (S.B. 112)

Ratifies technical corrections made to various chapters of NRS.

BDR S-2 (S.B. 111)

Ratifies technical corrections made to various chapters of NRS.

The chairman informed the committee that the gaming bills had been scheduled for February 17th and 18th.

Senator Raggio suggested an amendment to Senate Bill No. 12, to provide that the information required by the presentence report would be added to the report to the extent the same is readily available or ascertainable from the victim or related sources concerning the effect of the crime committed.

And that nothing shall be required with respect to any particular examination or testing and the extent of any investigation shall be within the sole discretion of the department or court.

SENATE COMMITTEE ON JUDICIARY
January 27, 1981

Senator Raggio moved that Senate Bill No. 12 be approved with a Do Pass with amendments.

Senator Hernstadt seconded the motion.

The motion carried unanimously. (Senator Keith Ashworth was absent for the vote.)

Senator Ford told the committee that in a discussion with the Displaced Homemakers regarding the question of liability in placing people on the job, the program was held up due to the NIC question. She will get any additional information available.

Meeting adjourned at 10:25 a.m.

Respectfully submitted by:

Shirley LaBadie
Shirley LaBadie, Secretary

APPROVED BY:

Melvin D. Close
Senator Melvin D. Close, Chairman

DATE: Jan 27, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on Judiciary, Room 213.
Day Tuesday, Date January 27, Time 9:30 a. m.

S. B. No. 12--Requires that information on effect of crime on victim be included in report of presentence investigation.

S. B. No. 13--Adds supervised work as optional condition of probation or punishment for misdemeanor.

