

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON JUDICIARY

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
February 25, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close, at 9:05 a.m., Wednesday, February 25, 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

The following bill drafting requests were presented and received for committee introduction:

BDR 3-730 (S.B. 308)

Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

BDR 11-549 (Wagner) (S.B. 311)

Allows district courts to order support for certain children who have reached majority.

BDR 14-659 (Wagner) (S.B. 310)

Revises procedures for release without bail.

BDR 14-700 (Raggio) (S.B. 307)

Removes requirement for presentence report in certain cases.

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BDR 14-741 (Wagner) (S.B. 309)

Eliminates requirement of endorsement of each jury instruction in criminal trial.

BDR 14-1014 (S.B. 306)

Extends limitation on commencement of criminal action for gross misdemeanor.

BDR 41-823 (Raggio) (S.B. 312)

Repeals statutory prohibition of lotteries.

A. J. R. 6 of the 60th Session--Proposes to amend Nevada constitution to confer right upon private citizens to keep and bear arms.

Assemblyman Robert E. Robinson, stated he is the primary sponsor of A. J. R. 6 of the 60th Session and it has passed three steps of the four necessary to place it on the ballot in the next general election. He said this is a short and brief change in the constitution which states that every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. The phrase, for other lawful purposes, was put in by amendment during the last session of the legislature. He said that it is a futile effort to have restrictive firearms laws as a deterrent to crime. Assemblyman Robinson stated that sufficient laws cannot be passed to prevent premeditated murders.

Assemblyman Robinson stated this constitutional change would guarantee private citizens the right to have firearms for protection and security of property and family, for hunting, target shooting events and recreational use. This legislation would prevent a state legislature from passing a restrictive or harassing type of legislation to prohibit owning and keeping firearms. He stated these are the reasons for requesting the amendment to the state constitution. He said he was surprised this was not in the state constitution now.

Senator Raggio stated he did not feel the language expressed in A. J. R. 6, if approved by the voters, would prevent a legislature from passing laws in the future regarding gun control. Assemblyman Robinson stated the laws in effect now will stay in effect and other laws passed in the future to control the lawful use of firearms will probably be acceptable.

Senator Raggio questioned what would be accomplished by this amendment to the state constitution. Assemblyman Robinson said he would be interested, as an elected official, of public opinion on the proposition when it is placed on the ballot.

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Mr. Warren T. Fowler, Nevada Wildlife Federation, stated that an additional protection is needed to say that a citizen has the right to keep and bear arms for legal purposes. He said he was surprised that in the Nevada Constitution, this right was not included. He felt that the constitution should state things as clearly and concisely as possible. The Nevada Wildlife Federation urges the completion of the fourth step and go to the people and see what the feelings are on gun control.

Ms. Barbara Durbin, Deputy Chief of Parole and Probation, stated that the language proposed in the amendment, using the wording, every citizen and keeping in mind it discusses the lawful uses and purposes, allows parolees, convicted persons and those persons otherwise prohibited from carrying weapons, to use this as a means of creating a conflict between the law and the constitution. She said that the interpretation of the wording is not sufficient to eliminate these individuals from seeing that this is a constitutional right versus their statutory limitations. The department would prefer the language to read, unless otherwise prohibited by law.

Senator Hernstadt stated if an amendment was made to this resolution, it would have to be started over since it was passed in the 60th Session. Ms. Durbin stated there would be a possibility of suits filed by parolees regarding their constitutional rights. Chairman Close advised the committee he would check with Frank Daykin and get a legal interpretation.

Assemblyman Jan Stewart stated the language in the amendment will spell out the intent of the bill. The right of a citizen is similar to the right of a citizen for free speech, it is limited somewhat by statute and court law. The statement is broad, however there is language in the bill which indicates the interpretation of the constitution will be spelled out.

A. J. R. 30 of the 60th Session--Proposes to amend Nevada constitution by prohibiting commutation of sentences of death and life imprisonment without possibility of parole to sentences which would allow parole.

Assemblyman Nick Horn stated that A. J. R. 30 corrects a real deception in the law with a constitutional amendment. He said society believes that when a sentence is given for life without the possibility of parole, that criminals are incarcerated for the rest of their lives. In reality, that is a deception because criminals can be back on the streets again in 10 to 13 years.

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Assemblyman Horn stated this constitutional amendment would correct the deception, life without possibility of parole would mean just that. The pardons board could no longer take a life without sentence and commute it to life with sentence and the parole board grant parole to these criminals. He told the committee some information regarding criminals in prison who have had their sentences commuted. Assemblyman Horn stated an amendment was drafted last session and adopted by the Senate which made it possible for the legislature to build in certain exceptions, laws or penalties that could be excluded from this provision. The Assembly concurred with the amendment and in this session voted 38 to 2 to send a clear message to the criminals that they would spend the rest of their lives in jail for these serious crimes. He said he hoped the Senate would join with the Assembly in passing A. J. R. 30.

Senator Wagner asked if a study had been made on the impact of the prison population if this resolution is passed. Assemblyman Stewart replied testimony had been given previously by Warden Wolff and could be made available to the committee.

Senator Wagner asked if the original idea of this amendment was to put it in the state statutes. Assemblyman Horn stated yes, but had been informed by Frank Daykin, Legislative Counsel that it was not possible. It would require a constitutional amendment, because Board of Pardons has the right to commute sentences. This would allow the board to commute sentences, with one exception. This exception is that when a sentence of life without the possibility of parole is given, the board would not be able to commute that sentence.

Senator Raggio questioned if this amendment is enacted, would the Board of Pardons still be able to reach the same decisions by going through the pardon process, rather than the commutation process. Assemblyman Horn stated this would be a decision of the Board, he hoped they would not pardon criminals with life without the possibility of parole sentences or death sentences. Senator Raggio stated the board does have the authority to pardon and could possibly abuse or utilize it in another manner.

Senator Hernstadt asked what is the average time served in prison for first-degree murder. Assemblyman Horn stated if a sentence is commuted, the time is from 13 to 14 years. Senator Hernstadt questioned if this would encourage criminals to further misbehave in prison because there is no chance of them ever being released. Assemblyman Horn said this was a concern, but he felt they would be better off in prison than on the streets with citizens.

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Senator Wagner asked if any figures were available on the return of criminals to prison after a release. Assemblyman Stewart said generally about 30% of people released on parole end up back in prison. Assemblyman Stewart pointed out the bill as written does not prohibit the commutation of sentences. The legislature would have to spell out the conditions upon which that would be granted, the same as is done with parole. There would not be an impact to the prison sentence by the passage of this bill. The impact would come in the future should this be passed by the voters, such as standards upon which sentences could be commuted.

Mr. Larry Ketzenberger, Metropolitan Police Department, Las Vegas, Nevada, stated that he supports A. J. R. 30. He cited an incident where a police officer was killed, the prisoner was given a commutation of the sentence from life without possibility of parole to life with possibility of parole. He is concerned that a jury determines from the testimony at a trial, what sentence should be given and the decision is not made lightly. However years later, a commutation may be given from life without possibility to life with possibility of parole and this does not prevent him from going out and committing other crimes. He stated in pardons hearings, the atmosphere of the court room and testimony originally given are not the same. The documentation which was presented to the jury at the time of the guilty decision and recommended sentence is not available at the pardons hearings.

Mr. Charles Wolff, Director of the Nevada Department of Prisons, presented to the committee some statistics regarding the prison population. With death sentences and life without possibility of parole, there are ten death sentences and 88 individuals doing life without possibility of parole, which is about 5.37% of the total population of the Department of Prisons. The department projects an increase from 98 to about 140 inmates in these categories if sentencing procedures proceed as they have been in the last few years. He stated in 25 years of experience in the prisons, he has never dealt with a situation of prisoners not having hope of parole or commutation of sentence.

Chairman Close asked Mr. Wolff if any other state has the law which precludes the commutation of life without the possibility of parole down to a life sentence. Mr. Wolff stated he did not know of any, however there might be.

Senator Hernstadt asked if Mr. Wolff could foresee any additional problems in the prison as to discipline if this amendment is passed. Mr. Wolff stated if individuals are not given the opportunity to have the possibility of freedom in the future, some additional problems are going to be encountered.

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Senator Wagner asked Mr. Wolff if he supported the legislation in A. J. R. 30. Mr. Wolff stated he is testifying on the impact to the prison system. He said because of his experience in corrections, his opinion is that if a person is incarcerated, he should be entitled to some hope of release.

Chairman Close stated that the jury is misled in the instructions as to the penalties which can be imposed in a guilty verdict. The committee is trying to clarify the language so that a jury can rely upon the decision which they render to be enforced. There is a loophole, as it is written, by providing by law how commutations of sentences can occur. Application of the proposed legislation in the future will indicate if it will work.

Mr. Bob Lippold stated this amendment still provides the opportunity for the pardons board to meet and make a determination at some date whether or not a pardon will be granted to an individual. He said if the legislation is passed, it is good that this option is still available to the board, the right to pardon. Senator Hernstadt asked Mr. Lippold if this legislation is not approved by the voters, or passed by the legislature, should the jurors be given only the two alternatives of death sentence or life with possibility of parole. Mr. Lippold stated that the death sentence is not a real alternative since only a few death sentences have been carried out in the last few years. He said his main concern was that the decision of the jury should be reviewed after a period of years. Mr. Lippold stated in the case of the death sentence, there are extensive review procedures that a criminal may go through before an execution. In the case of life without the possibility of parole, there is no review procedure available to the criminal.

Senator Don Ashworth asked when the determination of sentencing should be made regarding the criminal. Mr. Lippold stated the initial determination should be made at the time of the trial. Chairman Close asked Mr. Lippold if he was aware of any other state which has a statute which would preclude the commutation of a sentence of life without the possibility of parole. Mr. Lippold stated that he does not know of any state which has precluded that option. Chairman Close said this statute would not do this either.

Assemblyman Stewart advised the committee that Maine has done away with parole entirely, it has gone to definite sentences. Chairman Close stated that a definite sentence is set up by the trial court and these sentences are less severe.

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Mr. Norm Herring, State Public Defender, stated that over the past few years he has represented a considerable number of people before the Nevada State Pardons Board. He stated that typically prosecutors are higher paid, better funded and have greater investigative services available to them at the time of trial than a defense attorney. Most judges are former prosecutors and a trial has a definite slant. He stated that if it is felt that jurors are being misled concerning the possible punishments that are available, the jury should be instructed that the statement, life without the possibility parole does not exclude the possibility of executive clemency.

Senator Hernstadt asked if this amendment is not processed and the follow up legislation to implement it, should the language be removed from the statutes, life without the possibility of parole. This would give the jury the option of only the death sentence or life with the possibility of parole. Mr. Herring stated this is a very realistic statement because there are people in prison now that will never get out because of nature of the crime or criminal history. Mr. Herring stated that in closing, he felt the United States is a Christian nation and these criminals should be forgiven. Mr. Herring cited an incidence of a particular man in prison who was a model prisoner, did youth work and worked with inmates in prison. He said if this man was not given mercy, he would have spent the rest of his life in prison.

Mr. Mike Melner, Attorney at Law, Reno, Nevada stated he was testifying in behalf the American Civil Liberties Union. He stated that the union and the warden were on the same side regarding this amendment. He said the jury system is a good system, but not perfect. Mr. Melner stated he felt that it would be wise to leave a ray of hope to prisoners to be released from prison. Review procedures should be left available to the criminals and the option of mercy should be left open.

Mr. Bob Lippold stated that Ms. Durbin had become ill and would testify in her behalf. Ms. Durbin represents the Parole and Probation Department. The department is concerned with maintaining a review procedure by the use of the pardons board. The board is the only professional learned body which has the authority to intervene in select cases. If restraints are to be put on the board, some kind of time limit or consideration of case factors should be considered.

Barbara Dunne, Parole and Pardons Board, stated that there should be some hope for criminals of eventual release. She stated in 1972 when the death penalty was outlawed, eight

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people on death row were reviewed by the pardons board and were given life without possibility of parole. Now some of these people are applying for life with the possibility of parole. She stated this is not right. The public is misinformed when a sentence reads life without the possibility of parole. They believe that person will never be on the streets again. A legal limit as to when life with possibility of parole can be heard could be done, rather than pass this bill. Senator Raggio stated this cannot be done. Chairman Close stated the reason you cannot is because the constitution gives the pardon board the right, without restriction, to review all cases. He said the legislature is reserving the right to pass laws setting up the times when life without the possibility of parole may be commuted to a sentence.

Testimony on the bills on the scheduled agenda was concluded.

The committee discussed S. B. NO. 118 which was scheduled on the February 24, 1981, agenda.

SENATE BILL NO. 118--Prohibits use of list of registered voters for selection of jurors and increases fees for jurors. (Exhibit C)

Senator Keith Ashworth moved for indefinite postponement of S. B. No. 118.

Senator Raggio seconded the motion.

The motion failed to carry. (Senators Close, Don Ashworth Ford, Hernstadt and Wagner voted "No".

The committee further discussed S. B. NO. 118 and the possibility of raising juror fees. Chairman Close asked that information be obtained from research as to the fees federal jurors are paid. Mr. Don Rhodes with the research division advised the committee there is a \$30 appearance fee, there is a \$50 per diem in Reno for a 24 hour period. In Las Vegas, the per diem is up to \$75 per day.

Senator Don Ashworth moved to amend and and Do Pass S. B. 118.

Senator Ford seconded the motion.

The motion carried unanimously.



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There being no further business, the meeting was adjourned  
at 11:00 a.m.

Respectfully submitted by:

*Shirley LaBadie*  
Shirley LaBadie, Secretary

APPROVED BY:

*Melvin D. Close*  
Senator Melvin D. Close, Chairman

DATE: *March 3 1981*

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on JUDICIARY, Room 213.

Day Wednesday, Date February 25, Time 9:00 a.m.

A. J. R. 6 of the 60th Session--Proposes to amend Nevada constitution to confer right upon private citizens, to keep and bear arms.

A. J. R. 30 of the 60th Session--Proposes to amend Nevada constitution by prohibiting commutation of sentences of death and life imprisonment without possibility of parole to sentences which would allow parole.



**S. B. 118**

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**SENATE BILL NO. 118—SENATOR KOSINSKI**

**JANUARY 28, 1981**

**Referred to Committee on Judiciary**

**SUMMARY—Prohibits use of list of registered voters for selection of jurors and increases fees for jurors. (BDR 1-354)**

**FISCAL NOTE: Effect on Local Government: Yes.  
Effect on the State or on Industrial Insurance: Yes.**

**EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.**

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**AN ACT relating to jurors; prohibiting the use of the list of registered voters in selecting jurors; increasing the fees for jurors; and providing other matters properly relating thereto.**

***The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:***

- 1     **SECTION 1. NRS 6.045 is hereby amended to read as follows:**  
2     6.045 1. The district court in and for any county with a popula-  
3     tion of 100,000 or more, may by rule of court designate the clerk of  
4     the court or one of his deputies as jury commissioner, and may assign  
5     to the jury commissioner such administrative duties in connection with  
6     trial juries and jurors as the court finds desirable for efficient admin-  
7     istration.  
8     2. If a jury commissioner is so selected, he shall from time to time  
9     estimate the number of trial jurors which will be required for attend-  
10    ance on the district court and shall select that number from the quali-  
11    fied electors of the county not exempt by law from jury duty, [whether  
12    registered as voters or not.] *but he shall not use the list of registered*  
13    *voters to make these selections.* He shall keep a record of the name,  
14    occupation and address of each person so selected.  
15    **SEC. 2. NRS 6.050 is hereby amended to read as follows:**  
16    6.050 1. In counties where there is no jury commissioner, the  
17    board of county commissioners in each county shall at its first regular  
18    meeting in each year, by an order duly made and entered on its min-  
19    utes, estimate as nearly as possible the number of trial jurors that will  
20    be required for attendance on the district court of the county until the  
21    next annual selection of trial jurors. The board shall thereupon select  
22    from the qualified electors of the county, [whether registered or unregist-  
23    tered.] not exempt by law from jury duty, such number of qualified elec-  
24    tors as it has been estimated to be necessary [.] , *but the board shall not*  
25    *use the list of registered voters to make these selections.*

1       2. The board shall transmit to the county clerk, who shall keep a  
2 record thereof in his office, the name, occupation and address of each  
3 person so selected.

4       SEC. 3. NRS 6.150 is hereby amended to read as follows:

5       6.150 1. Each person summoned to attend as a grand juror or a  
6 trial juror in the district court or justice's court, unless on or before the  
7 day he is summoned to attend he is excused by the court at his own  
8 request from serving, is entitled to **[\$9]** \$20 for each day he is in attend-  
9 ance in response to the venire or summons, which includes Sundays and  
10 holidays.

11       2. Each grand juror and trial juror in the district court or justice's  
12 court actually sworn and serving is entitled to **[\$15]** \$30 as full com-  
13 pensation for each day of service.

14       3. Each person summoned to attend as a grand juror or a trial juror  
15 in the district court or justice's court and each grand juror and trial juror  
16 in the district court or justice's court is entitled to receive 15 cents a mile  
17 for each mile necessarily and actually traveled by the shortest and most  
18 practical route. Where the mileage does not exceed 1 mile, no allowance  
19 may be made therefor. If the home of a person summoned or serving as  
20 such a juror is 60 miles or more from the place of trial and the selection,  
21 inquiry or trial lasts more than 1 day, he is entitled to receive an allow-  
22 ance for lodging at the rate provided by law for state employees, in addi-  
23 tion to his daily compensation for attendance or service, for each day on  
24 which he does not return to his home.

25       4. In civil cases, the per diem of each juror engaged in the trial of  
26 the cause must be paid each day in advance to the clerk of the court, or  
27 the justice of the peace, by the party who has demanded the jury. If the  
28 party paying **[such]** *these* fees is the prevailing party, the fees are  
29 recoverable as costs from the losing party. If the jury from any cause is  
30 discharged in a civil action without finding a verdict and the party who  
31 demands the jury subsequently obtains judgment, the fees so paid are  
32 recoverable as costs from the losing party.

33       5. The fees paid by a county clerk to jurors for their services in a  
34 civil action or proceeding (which he has received from the party demand-  
35 ing the jury) must be deducted from the total amount due them for  
36 attendance as such jurors, and any balance is a charge against the county.