

Senate  
JUDICIARY COMMITTEE

188

MINUTES OF MEETING HELD

April 3, 1967

A meeting of the Judiciary Committee was held at 2:58 P.M., Monday, April 3, 1967 in Committee Room 56, State Capitol, Chairman Monroe presiding.

Members present:

Warren L. Monroe, Chairman  
Vernon E. Bunker  
M. J. Christensen  
Carl F. Dodge  
Procter R. Hug  
Coe Swope  
C. Clifton Young

Also present:

William Raggio, District Attorney,  
Washoe County; Robert List, District  
Attorney, Ormsby County; Leonard  
Root, District Attorney, Mineral  
County; Bill Macdonald, District  
Attorney, Humboldt County; Paul  
Toland, State Parole Officer;  
Joe Jackson, Reno Newspapers, Inc.  
Senator Fisher; Frank Daykin.

The meeting was called for the purpose of a hearing on A.B. 81.

A.B. 81     "New criminal procedure law."

Mr. Raggio passed out a letter from the office of the District Attorney, County of Ormsby, to Chairman Monroe and Clinton Wooster of the Assembly Judiciary Committee. Written under date of April 3, 1967, the letter took up A.B. 81 section by section. Mr. Raggio went through it the same way, discussing them in the order they appeared in in the letter. The letter was an expression of sentiments of the Nevada District Attorney's Association, concurred in by the authorized representatives of the Nevada Peace Officers Association and the Nevada Sheriffs Association.

Mr. Raggio first discussed changes or modifications in Section 13, Page 2, urging that district attorneys and their deputies be included in the definition of "Peace Officers." Mr. Raggio said perhaps they had not been as attentive as they should have been at the Interim Committee Session, but they had really seen no objection nor anticipated any. Mr. Daykin said he didn't see any objection to the point advanced. Mr. Raggio said he didn't want peace officer powers. Chairman Monroe said he should have the inherent power to do his job as district attorney without being a peace officer.

Section 67, Page 9. Mr. Raggio said Section 67 was in the original bill and it was assumed it would be adopted. It had spelled out the purpose of the preliminary hearing and it was indicated it would not be used for discovery. He said the purpose is to determine, after a complaint is filed, when sufficient evidence has been heard for the person who stands trial and he feels that preliminary hearing has become abused. He said the original draft had merit and should be retained but the Assembly Judiciary Committee struck it out. Frank Daykin said they did so, not because they felt it was wrong, but because they thought it unnecessary. Senator Dodge asked if it would be redundant to include it even if discovery provisions were left in. Frank said not.

Section 139, Page 24. Mr. Raggio said he has no objection to the defendant's having the right to take the deposition of a prospective witness who may be unable to attend a trial, but he feels the State should have the same right.

Section 152, Page 24. Mr. Raggio said the Assembly Judiciary bill drafters stripped District Attorneys of the right to issue subpoenas. Under the existing law, the district attorney has the right to issue subpoenas. He feels not being able to would drastically hamper the effectiveness of the prosecutor. Mr. Daykin said the Assembly Committee was bearing in mind that subpoenas may be issued in blank and he could simply have a pile of blanks in his drawer. Mr. Raggio said he thought this was very poor policy. Mr. Daykin said subpoenas are required to be issued to defense counsel in blank in connection with disclosure. Mr. Raggio asked why a clerk, bonded in the same bond, is any better to serve a subpoena than Mr. Raggio is. Mr. Daykin said it was the thought of the committee that prosecution and defense would thus be exactly on a parity. Mr. Raggio said district attorneys at their last meeting were appalled at this practice, which does not prevail throughout the country.

Sections 211, 212 and 213, Page 34. Mr. Raggio discussed cases where the Judge advises the jury to return a verdict of not guilty but the jury returns one of guilty. The jury is not bound. A new trial was granted in a case involving an attorney in Reno, which he cited.

Senator Dodge asked whether under this procedure, they had no right of appeal. Mr. Raggio said he could not appeal at all. Senator Dodge said he thought this was defective. The present version allows no appeal.

Section 225, Page 36. A typographical error in line 5 where the word "Convict" appears. This should read "Commit."

Section 247, Page 39. Mr. Raggio said he thought it was a mistake to take robbery out of the category of cases for which probation is not granted. He places robbery right after murder. He said it is the taking of property through use of force usually involving a weapon and should be placed ahead of kidnapping and rape. Senator Monroe said robbery might be the offender's first crime and could be handled through probation. Discussion. Mr. Toland said it would put a great burden on his department if robbery were included as probationary offense. Mr. Daykin said the number of robbers placed on probation would remain the same.

Section 284, Page 48. Mr. Raggio said he had no objection to the first section, but he feels the remaining portion should be deleted. He said he didn't know what the purpose of it is, but it seems to allow the court some second thoughts within 60 days. They are very strongly opposed to this, would have no assurance the same judge would be sitting within 60 days. Also, collateral question is whether this doesn't amount to commutation of sentence, constitutional problem involved. Frank Daykin discussed. Senator Dodge asked if had been abused under federal rule. Mr. Raggio said there is no constitutional restriction under federal statute. Mr. Toland said Section 2, 266, the Judge can stay the sentence then defendant submits sentence to Board of Pardons, which seems to take care of that problem. Mr. Raggio said they still have the right to apply for commutation. Judge has no machinery by which he could change the sentence, according to Mr. Raggio.

Section 373, Page 61. This matter was in a letter of the Legislative Counsel Bureau dated January 20, 1967 but he did not see it said Mr. Raggio. This would be a new section following 373, taken from the Illinois Code of Criminal Procedure. He said there has long been a need for an immunity statute and it is one of the prime recommendations of the crime report. Under this, witnesses couldn't come in and raise the 5th Amendment. Mr. Daykin said a new section would be added, 373 1/2. Raggio suggested words "or in Justice Court" in addition to "court of record." Mr. Daykin agreed.

Section 395, Page 64. Concerning search warrants. Feel Subsection 1(c) should be deleted. It would allow the suppression of evidence. Mr. Daykin said it was taken from federal law. Mr. Raggio said if

they are searching for stolen items and find something stolen from some other home and they list it, they will be prosecuted.

Mr. Toland discussed Section 243, Page 38, subsection 3 - pre-sentence. He read from bill. Discussion of A.B. 71. He thinks the Judge should set sentence in his department. Chairman Monroe asked whether it is not the law now and was told not at this time. Mr. Daykin said the purpose of putting it in was to provide information to the trial judge. Senator Swobe asked if he would go with first part but without statement of "survey of the United States as to what like offenses"? Mr. Raggio asked where one would find that information. Mr. Daykin said something should be put into the bill whereby information is made available to the Judge from some other source. Mr. Toland said he is strongly opposed to Judge setting sentence. He feels Pardons Board should have the authority. Discussion of Section 244, disclosure of confidential information. Mr. Toland said he would have to start preparing two reports, one factual, one for Judge and file. Mr. Toland said he didn't want his agents being put on the stand by defense attorneys and being asked for sources of confidential information. He would rather say that this right is within the discretion of the Judge. Suggested language read sources of information "shall not be disclosed."

Mr. Toland further discussed Section 267, Page 43 in Bill. - Commutation to the Board - Line 1, Page 44. He read language "Chairman of the Board" which he wished changed to "Secretary of the Board," as he handles all applications now for the Board of Pardons.

Mr. Raggio said he felt they were making a big mistake in A.B. 81 if they did not spell out nolo contendere, which he said he assumed had the same effect as a plea of guilty.

District Attorneys left at approximately 4:00 P.M.

S.B. 414 "Exempts corporate administrators, guardians, and trustees from voucher filing requirement when rendering account."

Disposition: Moved and seconded Do Pass S.B. 414.

## Senate

Minutes of Judiciary Committee Meeting held 4/3/67

Page 5

S.B. 209 "Increases renewal fees for licensing of certain private schools; makes changes in exemptions of other schools from supervision by State Department of Education."

Disposition: Refuse to concur.

S.B. 397 "Defines monorail as a motor vehicle and gives monorail companies certain powers of eminent domain."

Chairman Monroe said Senator Gibson had checked on the amendment.

Disposition: Moved and seconded concur on S.B. 209.

A.B. 223 "Bases allowance of attorney's fees by plaintiff in civil action upon amount recovered."

Change amount from \$3,000 to \$10,000 per Mr. Vargas.

Disposition: Moved and seconded Amend and Do Pass S.B. 397.

Committee agreed to introduce bill clarifying law relating to liens on trailer parks and other concerning state senator or assemblyman from multi-county district.

Meeting adjourned at 4:10 P.M.