

MINUTES OF HEARING - ASSEMBLY COMMITTEE ON JUDICIARY, 55TH SESSION

February 19, 1969

Meeting was called to order by Chairman Torvinen at 2:30 p.m.

Present: Torvinen, Fry, Reid, Prince, Swackhamer, Bryan, Lowman, Swackhamer and Kean

Absent: None

Also Present: Phillip Hannifan, Chief Parole and Probation Officer; Carl Hocker, Warden, Nevada State Prison.

A.B. 184, Authorizes work release program for State Prisoners

Torvinen: This bill was introduced by Mr. Lowman and we heard on this the other day, Flora Dungan. Do we have any proponents on this? I don't know what the opinion is of the probation department.

Hannifan: What we have to do here is to spell out the procedures, otherwise it would be likely to fail. We have to hold it in real tight. I propose some things and I am giving you a list of my recommendations. It does not pertain to this present bill especially, but to the work program in general.

Lowman: Are you proposing to give amendments to this bill?

Hannifan: No. This list should make it obvious what the amendments should be. I suggest we take the problem from the negative side first. If you give me the bill without putting in for the resources, I have a loser on my hands. The problem of transportation from place of habitat to his place of employment; for instance, in Clark County where the prisoners are working at the Mercury Test site, there is no way to get them back and forth. In the first place, their earnings are not much so we can't use that. If we house them at the county jail, there is a charge. It would appear to me to have the State pay Clark County and have the prisoner pay back through the State. The accounting procedures would be a burden also. The parole and probation department is not a big agency and I am not staffed for this type of operation. Also the length of time is a factor. If we put a man in the county jail for a two year program, he will not be motivated for work release. He has to see daylight before him. If it were close to parole release, it would be a good program.

Lowman: You don't think you have the latitude to determine these things?

Hannifan: Also is the problem of finding the proper staff to recruit employers. Mine is a small department and the needs are radical. Without these resources, the program can fail. The problem of local labor unions also; the prisoners are competing with union labor at a smaller hourly rate.

Reid: How about letting them join the union?

Hannifan: I would like to see that happen, but I am afraid the correctional system is second only to the Welfare system in punching back at someone. Once incident can cause all kinds of problems.

Reid: I understand the program is to be established by you. I think we would be ill-advised to set forth your instructions in a statute.

Hannifan: Section 3 provides for certain types of misconduct to warrant retake. To have to retake a person is going to be hard. This is not something that a court of law takes care of, it would be up to us. Section 9 states "If a prisoner enrolled in the work release program violates any law, any rule or a specific condition applicable to him under section 3 of this act, the state board of parole commissioners may immediately terminate the prisoner's enrollment in the work release program and transfer him to the Nevada state prison." However, much of the work has to be left to the judgment of the ones working with the man. It may be nothing more than a small transgression like getting involved with a girl on his lunch hour. It could have sufficient overtones to the staff to have him jerked out of there. Certain rules and regulations should not bind us too tight. In other areas you are not specific enough.

Bryan: Would you have it in your power to set the terms and conditions through use of this bill?

Hannifan: It would cause a mechanical problem within the State of Nevada. This state board of parole commissioners meet every five months and they are dedicated while in session, but have their other jobs to pursue when the session ends. If they were to draft a regulation, I couldn't tell them what to draft. I can only suggest and I feel it should be left to me if I am to administer this. This is in regards to the retake program.

Bryan: Would it be possible to correspond with other jurisdictions to get something to use as a guide?

Hocker: I have worked in this phase before and I found the Federal Act and the California Act are both good guides to follow.

Reid: You have not told us what is wrong with the present bill. It would be more helpful to us if you and the warden would go over the bill and tell us what is wrong.

Schouweiler: You said the program would make it necessary for you to have added funds?

Hannifan: In terms of resources, yes. I am talking about personnel and funding for the prisoners.

Schouweiler: How many people do you think would be necessary?

Hannifan: One possibly in the first year to get the program off the ground. A lot of ground-work is required. Then if the program develops in the second year, we would have to consider putting on one or two more. The cost would run about \$9,000 a year.

Torvinen: Assuming we found a number of jobs right now, how many prisoners do you feel would be eligible for this?

Hannifan: Not more than four or five under the circumstances.

Hocker: I have had the experience and worked with these people. I think this is a good program, but we need the means to be highly selective. The scientific means of determining a man's escape tendencies is involved. It starts from the time of his entry into the institution and points the way for the staff. You need to know if the potential is there and what should be done with him. This precludes the policy of the courts who allow sex offenders, dope addicts and others to be exposed to the people until there is a noticeable change in the man's attitudes. I think this is most important in being highly selective or we will fail in it. Processing in the prison, gathering the information, writing the description on him and classifying him. We can go further.... I agree that the rules and regulations should be changed on this misconduct portion.

Reid: Why does Section 9 refer back to Section 3? It seems to me it should refer back to Section 2.

Hocker: I point out that there exists a certain rapport between the parole commission and the probation board. When considering persons for parole they rely on our information in reaching a decision. But the responsibility in this matter is with the prison staff and not the parole commission. Another point has to do with what is to be done with the monies that the worker earns. I would suggest that we use our prison accounting office which is run by trained people and any money be deposited to the account of the prisoner. This would help Phil because he does not have any other way to perform this function. The provision has not been established in the area of lay-off either. We must remember that the only people we can consider for this program has to be considered reliable. Also, I feel it is impractical to put a man out who is not a prospect to go home in a few months. Say 6 or 8 months time. Again, there are no provisions established for funds for transportation, medical care, etc. We have the right to contract out of the jurisdiction but no funds.

Reid: I can see the problems that would arise if we moved these prisoners to other parts of the state. I feel the solution would be to keep them in the vicinity of the prison. Why are you talking about taking them all over the state?

Hocker: Because it is desirable to do so. In the Las Vegas area we have found this best when working for people off the prison premises.

Hannifan: Many when coming out of prison in Las Vegas were paroled to Northern Nevada. Ormsby County is almost saturated with parolees. The Sheriff of this county does not have the room to absorb any more in this area. Without the community support it will fall flat. In Carson City, they would stick out, they are very visible.

Hocker: In San Francisco, we had only two. I don't know how many there were in other parts of the state. We housed them in the half-way house run by the state. They were sent out to work in the morning and they had to be back at a certain time. In between these times, he was a free man. In one instance, we put one out on Friday and had to take him back on Monday. If we hadn't, he would have been in trouble eventually.

Torvinen: You said this was a good program. You say that the prisoner must be a good risk before he is put on parole. How do you draw the line between the parolee and the prisoner for the work program?

Hocker: We have the courts approve the average parolee. He has to be a high-classed prisoner; one on the work program would most likely be one who is not quite ready for parole according to the statutory requirements or maybe he just is not motivated for release yet.

Schouweiler: Regarding the supervision, you have had experience in this area. What are the factors involved.

Hocker: Preparations have to be made so that everything is very clear. (Mr. Hocker then cited an example where the preparations had not been complete) The conditions of release have to be completely set forth.

Schouweiler: Is it required to have someone watch over him?

Hocker: Not day and night. If that were necessary, he should not have been released in the first place. My thinking is that a man in Las Vegas would be living in the county jail during the work program. He would work in the day and have possible visitation rights with his wife, but otherwise, he would reside in the jail.

Hannifan: You understand that we have to be cautious because from the time he leaves to go to work until he checks back in there are 8 or 9 hours in which he can bolt on you. Also, if the man is working, he needs money for lunch in addition to the transportation costs.

Torvinen: A man staying in the county jail would be under a lot of pressure to run errands for the others.

Schouweiler: When you speak of transportation costs, would you have to provide a car for the guy?

Hannifan: That is our problem. Of course as long as there is a good bus line, there is a solution.

Hocker: Back to the funding thing, he won't get any gate money when he leaves the prison. He will have to be subsidized. In the event he lives in jail, meal times are not appropriate to him, so he has to be excused for breakfast and dinner also.

Bryan: We cannot begin to tell you the conditions under which you can release people or to what type of job. The problems are legitimate ones but the one thing you have pointed out that we can handle is the funding. We can also clean up some of the language. This would not be the same as a probation where you have to go to court with a violation. So the money is the important thing. Is there anything in the act that would make this bill legislatively unworkable?

Hannifan: No. There was a recent occurrence in the Federal Courts which required judicial review. If we were hampered in any way in handling our purposes, it would be bad. I think this has to be spelled out carefully. It falls on the prison staff for the valuation of these individuals. The staff is in constant contact with these people.

Bryan: You would have the power to do that if we make the language specific, but I want to know if you feel it needs other amendments.

Hannifan: We are talking about five people, room and board, transportation costs; that would come to about \$1000 a head, keeping in mind that some would come back through the prisoner's earnings. There is always the possibility that we may put \$200 or \$300 into the guy and then have to put him back in prison. It would be almost impossible to get the money back after that.

Bryan: Let's say \$9000 or \$10,000. Would that be enough?

Hannifan: Yes, I think it would be functional.

Kean: If we cover the problem of money and correct an error on Section 9, from "...applicable to him under section 3.." to read "...applicable to him under section 2.." and also spell out that the prison staff shall have specific choice of the prisoners for the program, I think there was one other ont.

Hannifan: The Parole Commissioners and the prison staff must of course be concurrent. But on selection, it must be at the full discretion of the prison staff, as well as retake conditions.

Hocker: Also on page 3, lines 22 and 23, "...contrary to the rules or specific conditions applicable..." I think it should be generalized to give latitude.

Reid: This program is beneficial for only 5 or 6 months and would be likely to refer to the ones now applicable for parole

but who needs a period of transition for full release, or one who will be eligible for parole soon.

Hocker: There is a savings of money involved here too. It costs approximately \$2300 to \$3000 a year to keep one prisoner. Most of this would be saved to some extent by putting them on the work program.

Hannifan: I note on line 15, Page 2, "All state agencies shall cooperate with the state board of parole commissioners in carrying out this section,....." That sounds good - in practice. We have a whale of a time in actual circumstances. In Clark County, Washoe County and Douglas County, we have had experiences in this regard. In many cases, the jobs are related to the gaming industry and require work permits from the local sheriff. You would be surprised how many sheriffs will refuse to issue the permit.

Torvinen: Don't you think a state agency is different from a political subdivision?

Bryan: Is this aimed at the state employment agencies?

Hannifan: No, not really. Our biggest problem is fighting public opinion. You know...Ex cons.... many employers however will take these people, they want them. But we must know what we are getting into. We have to know what employers will cooperate with us. In Las Vegas we have the 7-step program and it will take a while to determine the success of the operation.

Hocker: In Section 4, sub-paragraph (c), I suggest that all funds are deposited in the prison account in the name of the prisoner and we handle the disbursements necessary.

Bryan: Mr. Hannifan, can you meet with a member of our committee to help in the drafting of the bill?

Hannifan: Yes and I would like to have Mr. Hocker there too. If you notify us when, we will try to be there.

Lowman: Mr. Hannifan, before you leave, I would like your opinion on something. We had a proposed resolution which I introduced calling for a study of criminal justice. My learned colleagues felt that the resolution was too broad and indefinitely postponed it. Are there areas of criminal justice that you in your job could propose to us. I have the word of some that they would support it.

Torvinen: I don't believe it was indefinitely postponed - just deferred. It was in regards to the indeterminate sentencing. At the present time, on a four year sentence, you are immediately entitled to 14 months good time credit. By the time you are eligible for parole - taking off the 14 months - you may only have four months to serve. I feel we need an indeterminate sentence. As a stop-gap I have asked for a bill to be drafted to make good-time credits only apply to time actually served in the prison. Then if he served two years, he would only have four months good-

time credit. I think we should examine the whole concept of indeterminate and determinate sentencing.

Hannifan: There is a specific problem here. When revising the penal code, it was thought to make it clearer. I feel it was the intention to establish a "get tough" policy. That was not the result. Under the indeterminate law, a burglar sentenced to 1 to 14 years would actually serve either 1 year to possibly the maximum of 14 years. The current system lets a man who gets 4 years have his time expire within 2 and 1/2 years through the benefit of credits. I feel it needs to be re-evaluated. We are not punishing the criminal for what it calls for; we are punishing the County. If he is put into the County Jail, has no program. I would much rather see a guy do three months in the prison than three months in the county jail. That would be from the point of view of trying to do something for the guy.

Torvinen: This late in the session, it is hard to accomplish the things that are needed. You have to have a good board of commissioners before you have meaningful sentencing. You have said our board are not conscientious enough. How do you feel about having full time commissioners?

Hannifan: Don't get me wrong, these are all good men, but as I said they have their own jobs to think about; with regards to full time commissioners, I had planned to draft such a proposal but I held off.

Bryan: This bill was opposed by the district attorneys.

Torvinen: They did not oppose it until it was time to act on it. They were for the proposal until a month after the session started. We were locked into a program and had no time to re-evaluate.

Reid: We recommend legislative commission study on criminal justice. There is a problem of sentencing, but we need to make them specific.

Schouweiler: We need some guide lines for the committee to work on.

Lowman: That is what I was asking for. It was too broad and I would like some help to narrow it down.

Reid: Juvenile justice also needs so much more done to it. We should have something done, but we just don't have time.

Hannifan: Yes, juvenile justice finds people arrested on misdemeanors in and out - in and out. Also, about 1/3 of all arrests last year were due to drinking.

Torvinen: I considered writing a letter to the Governor regarding the good-time credits. Do we have a Crime Committee?

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Hannifan: Possibly a letter pointing out that we tried a stop-gap but failed and ask the committee to work on it. We do have such a committee. There are 17 people including the warden and myself on it.

Reid: I feel that the legislative commission should work on this also.

Bryan: Frankly, I feel the committee is too narrow. I feel there is not enough breadth to the committee. I am not saying they are not good men, but there is just not enough breadth. Who is on the committee other than yourselves?

Hannifan: I can't name all of them right now, but there is Woodrow Wilson, one of your assemblymen, and Bob List, alone with the sheriffs. There are no supreme court justices due to their possible conflict with sentencing.

Schouweiler: I feel before we get into this we should make a move with regards to the professional parole commissioners.

Hocker: There is no such thing as a professional parole board. The ideal parole board is a group of people with different backgrounds. That we have now in the State of Nevada. It is even true on the United States Parole Board.

Schouweiler: I agree with you, but I was using the term "professional" very loosely. I meant a full-time sort of thing.

Hannifan: These people are very interested in legislation on this, but they just don't have the time to devote to this type of job.

Hocker: There is something more important than the indeterminate sentencing. I have had experience with men such as Jack Summers. I knew he was not ready, but there was nothing that could be done about it. There are many such cases. Maybe if they had been sentenced under the indeterminate sentencing law, the problems would not have arisen. I feel this is a very important area.

Mr. Torvinen thanked Mr. Hannifan and Warden Hocker for their views and recessed the meeting at 3:45 p.m.

Chairman Torvinen reconvened the meeting at 4:00 p.m. and noted that all members were present with the exception of Swackhamer.

A.B. 70, Prohibits exhibition and sale of obscene material to minors.

Chairman Torvinen noted that there was an amendment necessary on this bill but he suggested that the amendment be made from the Assembly Floor. He stated that Las Vegas was in the process of passing an ordinance wherein those motion pictures that conform to the Code are exempt from the statutes. The words "motion picture" had been deleted through an amendment February 17, 1969 and it was necessary for it to go back in. In Nevada, a more restrictive ordinance is void. No action necessary by committee.

A.B. 184, Authorizes work release program for state prisoners.

Kean: I move that we refer this bill to the Committee on Ways and Means but first request amendments as follows: There be an allocation established for \$10,000 for staff personnel, \$5,000 for costs of transportation, food and other items; \$5000 as a rotating fund to be repaid by the prisoners, making a total of \$20,000. Also, on line 17, Page 3, reference to section 3 be amended to refer to section 2; and further on Line 22 and 23 add the specific rules and conditions for the protection of the prison staff; that the prison staff have the sole right of selection; and that Mr. Bryan be authorized to make all of these amendments and that we hereby pre-accept them.

Motion unanimously carried.

A.B. 117, Specifies time when one spouse may testify against the other.

Bryan presented the package with the amendment on A.B. 117, the deletion of lines 24 through 27 on Page 1. He explained that this bill refers to child beating and homicide where the spouse may be an important element to the solution to the crime.

Reid: I believe (b) pertains to matrimonial difficulties.

Bryan: Anyway it is ambiguous language.

Reid: How about a daughter being involved in it?

Bryan: That is covered in 5(a).

Bryan moved that A.B. 117, as amended, be given a Do Pass; seconded by Reid and unanimously carried.

A.B. 303, Prohibits wife beating.

Fry moved that A.B. 303 be indefinitely postponed; motion seconded by Kean and unanimously carried.

A.B. 182, Makes causing fires in certain public places of abode a crime.

Schouweiler moved that A.B. 182 be indefinitely postponed; motion seconded by Bryan and unanimously carried.

Chairman Torvinen introduced BDR 1331 requested by the State Bar Association pertaining to estates and guardianships. He noted that the guardianship laws are now extremely loose. It was suggested that Reid, Bryan and Fry study the bill and report back to the committee.

Lowman moved that BDR 1331 be introduced from the floor prior to study; motion seconded by Kean and unanimously carried.

Chairman Torvinen noted that A.B. 227, 232, 293, 298 and 314 would be heard on March 3rd at 2:00 p.m. He stated he had not been contacted by any of the collection agencies regarding A.B. 232 and requested all members to contact someone in the collection field and invite them to be present at the hearing.

A.B. 314, Increases interest rate chargeable and loan charges by pawnbrokers.

Reid stated that all pawnbrokers are located on Fremont Street and that the Sheriff was in accord on this bill. They request a raise on the minimum charge from \$2 to \$3 and that there has been no change in their rates since 1951. Their percentage is very small and they have to hold these items for 150 days prior to sale.

Lowman: I doubt if there will be any objection to this.

Reid: I will check to see if they could come up here for the hearing.

Torvinen: They might decide to designate someone from Reno to appear at the hearing on their behalf.

Kean: I recommend a Do Pass on A.B. 314.

Torvinen: A man wants to talk to us about this before we act on it. So I think we will hold up on this one.

A.B. 347, Permits action to establish parental relationship.

Reid explained that this bill came about due to a situation where a mother with an illegitimate child may die or become incapacitated and the father has no rights. He may want to help the child, but is prevented from doing so because there are no parental rights

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involved. Bryan noted that Eileen Brookman has put in another bill along these lines which would require the father's name to appear on the birth certificate. In that way there would be written proof of the paternity. Discussion was held on the pros and cons of Brookman's bill and it was determined to defer action on A.B. 314 until after the hearing.

Lowman moved for adjournment; motion seconded by Prince and unanimously carried.

