

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
February 28, 1969

Meeting was called to order at 3:15 by Chairman Torvinen.

PRESENT: Torvinen, Prince, Lowman, Bryan, Fry, Kean, Swackhamer, Reid Schouweiler.

AB 37: Enables State Board of Pharmacy to adopt more extensive regulations relating to sales of dangerous drugs.

An amendment suggested by the propriety medicine people was read and discussed.

MR. BRYAN: I have a bill on the same thing, AB 491. Can we dig that out and consider it at the same time?

MR. TORVINEN: AB 37, line 6: "as provided by law". I think that would apply to the Administrative Procedures Act.

MR. FRY: The Board has to provide notice and then hold a Public Hearing when they are going to change a regulation.

MR. BRYAN: The trouble is that the State Board of Pharmacy has no list of dangerous drugs. A kid might be picked up with amphetamines. What would you do? It isn't on the list.

MR. KEAN: The Board of Pharmacy, in my opinions, are not the people to do this because when you give it to them that leaves out the chemical people. They are the ones that supply the pharmacists. If we are going to create a list, it should be the narcotics people to do it.

MR. LOWMAN: It was the pharmacists that asked for this legislation.

MR. BRYAN: We may be traveling on parallel lines on this thing. Maybe Lowman's bill is a good one.

MR. TORVINEN: AB 491 would be redundant. We should have it uniform.

MR. LOWMAN: Can we get Grant Davis in here and find out if we can combine the two?

MR. KEAN: I think you are going at it all wrong.

MR. BRYAN: Under present Nevada law, the Dangerous Drug Act is unworkable because there is no complete list of dangerous drugs. It says it is "any drug useful for safe medication or any drug the sale of which has been restricted by the State Board of Pharmacy." There we have two different references to make a drug a dangerous drug.

MR. LOWMAN: It seems to me you can do this by statute or you can have a lag of two years.

MR. BRYAN: AB 490 lists those those drugs which have been considered dangerous for years and then leaves an opening to expand that list, an escape hatch to add those that come up from time to time.

MR. LOWMAN: Does that do away with AB 37?

MR. BRYAN: No, because it doesn't give any procedure for getting a drug off.

MR. KEAN: I would like to move that this committee get a new bill naming the Bureau of Narcotics as the one to make up the list.

MR. TORVINEN: We already have the Federal Food and Drugs lists as support of our statutes. AB 490 is not new wording. We have it already in the existing situation. We had a kid out in the desert near Reno killed with belladonna. This is not listed as a dangerous drug. I disagree that we should get rid of the local board. Maybe we should work on something new to include chemical components. The people best qualified to make judgments about dangerous drugs are the pharmacists.

MR. KEAN: How are they going to get their information? The Federal Bureau of Narcotics is the best source for that.

MR. PRINCE: How about 490 and adding from the Federal as they come along? Wouldn't that cover all avenues?

MR. KEAN: Where would I call for information about these various things?

MR. LOWMAN: Why can't we put power in to control the state agency?

MR. KEAN: I can bring in any amount of proof that all these drug clerks are not strictly on the "up and up."

MR. TORVINEN: To test this, peace officers went around and got all kinds of narcotics drugs without a prescription.

MR. BRYAN: Does the Federal Bureau under federal law have power to declare certain drugs as dangerous? To my knowledge, it does not have this knowledge or authority.

MR. KEAN: We are going to creat a State Bureau of Narcotics. What are they going to do?

MR. SWACKHAMER: What we want to do is get something so that you can identify dangerous drugs.

MR. BRYAN: We need to be able to certify that something is a dangerous drug. Right now we have no way to prove what these are.

MR. PRINCE: Since there is a "known" list, why don't we use that to start with?

MR. TORVINEN, at this point, called Frank Daykin to get his advice. Mr. Daykin said we need AB 491.

MR. BRYAN: There has been no prosecution in Clark County for the last couple of years because of a lack of authority and evidence.

MR. TORVINEN: I don't think AB 37 has any problem. "As provided by law" refers to the Administrative Procedures Act.

MR. FRY: AB 37, lines 15 through 18: I don't think that is necessary.

MR. REID: It is just a waste of words.

MR. FRY: I can't see what the purpose of it is.

MR. BRYAN: I agree with you.

MR. FRY: This would be in "all cases of arrests".

MR. PRINCE: Maybe that means when a guy dies of an injury.

MR. FRY: No, it says "all arrests."

MR. REID: Why do we even need AB 37?

MR. SWACKHAMER: The proprietary medicine people did not think it was broad enough.

Mr. Torvinen then read the amendment through.

MR. REID: Where are you going to put that?

MR. BRYAN: Is that exception too sweeping?

MR. TORVINEN: I think it is. I would be opposed to the amendment.

MR. REID: I move to kill the amendment to AB 37.

MR. BRYAN: I second the motion.

Motion carried, with Schouweiler voting NO.

MR. REID: I move Do Pass AB 37 with the deletion of lines 15 through 18, the amendment in section 2.

MR. KEAN: You are missing the biggest movement in the business today. Chemical components are not under the regulations. You are talking about only completed chemistry and you do nothing about the raw ingredients, which the kids can so easily put together to make dangerous chemicals.

MR. TORVINEN: We are not talking about the same thing. AB 37 is intended to keep stuff off the drug shelves where kids can walk in, pay a dollar, and walk out with it.

MR. KEAN: The whole thing should be put in one place. You are creating a Narcotics Bureau. Why don't you use it? Why don't we require that they get a permit from the Narcotics Bureau before being able to purchase these raw ingredients.

MR. TORVINEN: There is one other problem. The Bureau of Narcotics, as proposed in this bill, is going to work mostly at law enforcement. They are not going to be technicians. They will not know anything about your business.

MR. KEAN: He should go to the Board and get a list.

MR. TORVINE: Maybe, unless we have a separate board of people.

MR. KEAN: The Board of Pharmacy does not confer with the Bureau of Narcotics. He could, if we had this list of only five basic ingredients.

MR. TORVINEN: Can't we just list these five drugs and let the Board of Pharmacy issue the permits?

MR. KEAN: They don't know anything about it.

MR. TORVINEN: We are not creating a Bureau of Narcotics with that kind of people.

MR. KEAN: You would not need to. Anyone would be able to learn these few things.

MR. TORVINEN: Couldn't you call Bill Locke and tell him these things?

MR. KEAN: I did talk to him about it and he had never heard of these things.

MR. TORVINEN: We are not creating a new Bureau on Narcotics - just a new division.

I am going to appoint Mr. Kean a Committee of One to ask for a bill to be drafted that will require that before wholesale chemicals of a certain nature can be sold a permit has to be obtained from the Bureau of Narcotics.

GRANT DAVIS: It would be from the Chief of the Bureau of Narcotics.

MR. TORVINEN: We can't combine things that are on a drugstore shelf with wholesale chemicals in one bill.

MR. KEAN: I would like to ask that Mr. Reid and Mr. Bryan be assigned to work on this with me.

MR. REID: I will be glad to.

MR. TORVINEN: If the Board of Pharmacy is not doing a job, maybe we should devise a whole new system. I frankly don't know what the answer is. I don't believe what you are talking about conflicts with AB 37.

MR. REID: I withdraw my motion to adopt AB 37.

MR. TORVINEN: Mr. Davis, you have drawn up this package deal. What is your opinion of putting wholesale chemicals and drug store stuff in the same bill?

MR. DAVIS: I have never seen anything of this nature done.

MR. KEAN: That is just what I am talking about.

MR. REID: Who else uses the stuff legitimately?

MR. KEAN: In the state of Nevada, I can't think of anyone. If we had a law which required a permit be purchased before they could walk into a chemical store and pick up these certain items, even a cop would know enough for that.

MR. TORVINEN: I think we can do that and still go along with AB 37. At this point to put them together would require amendments to fifteen or twenty chapters of NRS.

MR. KEAN: Fine. Let's come up with a good bill to close the door.

MR. DAVIS: One thing more you must consider: AB 37, in effect, requires a Hearing before they can restrict any drug found to be dangerous. AB 221 does away with the Hearing, except in emergencies.

MR. TORVINEN: The Administrative Procedures Act requires this anyway.

AB 216: Resolves ambiguity relating to offense of narcotic drug possession.

MR. BRYAN: I move Do Pass AB 216.

MR. REID: I second the motion.

Motion carried unanimously.

AB 54: Prohibits sale of hallucinogenic drugs and increases penalty for unlawful use or possession.

MR. TORVINEN: This raises the penalty to a felony.

MR. BRYAN: This is a wise piece of legislation.

MR. DAVIS: We should add to the penalties under age 21 to conform to AB 219.

MR. BRYAN: I move Do Pass AB 54 with that amendment.

MR. SCHOUWEILER: I second the motion.

Motion carried unanimously.

AB 222: Prohibits fraudulently obtaining or procuring dangerous drug.

MR. FRY: I move to Indefinitely Postpone AB 222.

MR. BRYAN: I second the motion.

Motion passed unanimously.

It was decided to postpone AB 205 until next Wednesday.

AB 206: Prohibits unlawful use of narcotic drug.

MR. BRYAN: Will we have any constitutional trouble with that?

MR. DAVIS: Not if you are an addict. This has already been decided in court.

MR. BRYAN: My only reservation is making it a felony.

I move that the penalty section be changed to a Gross Misdemeanor.

MR. TORVINEN: If you catch a guy with enough heroin in his possession to be identifiable, or a roach of marijuana in his pocket, you know he is guilty of a felony. If you can prove he ingested it, you know he did have it in his possession, so what is the difference?

MR. BRYAN: Marijuana breeds its own community, but here we are talking about a guy who has just had a fix, or a smoke. How can you know he is a seller? / - 253

MR. TORVINEN: What about injecting LSD into the chocolate bon bon or into a cube of sugar? Lack of knowledge would not be a defense would it?

MR. BRYAN: We don't say anything about knowledge, yet the courts have ruled that you do have to have knowledge.

MR. TORVINEN: Age is of no importance in many places.

MR. BRYAN: In California it isn't.

MR. PRINCE: They are making marijuana now in liquid form that you can put in your coffee and so on. I wonder why we are having so much of this sort of thing?

MR. TORVINEN: Irresponsible reporting in the newspapers is one of our major problems in this field. Did you see how the morning newspaper headlined our hearing on these bills? MARIJUANA TESTIFIED NOT HARMFUL or something like that. There was only one testimony that it was not harmful and we had dozens that it was.

MR. BRYAN: I move we insert after the word "person" and before the word "to" the phrase "knowingly to use."

MR. TORVINEN: We still have a pending motion.

MR. KEAN: I second the first motion to lower the penalty to a gross misdemeanor.

MR. DAVIS: Is that for the first offense or the second?

MR. TORVINEN: The motion is just to lower the penalty.

MR. LOWMAN: Those who studied this felt that in the interests of uniformity we should not affect the possession or use of any narcotic. It doesn't make any sense to me to lower the general law.

MR. BRYAN: We are talking about use.

MR. LOWMAN: How do we stand now on use?

MR. TORVINEN: We have nothing on narcotics.

MR. DAVIS: You cannot prosecute an addict. It is considered a disease, not a crime.

MR. KEAN: Maybe we should be consistent and make the first offense a misdemeanor and the second a felony.

MR. TORVINEN: We are making LSD a felony.

The motion to lower the penalty section of AB 206 to a gross misdemeanor was defeated with PRINCE, LOWMAN, SCHOUWEILER, TORVINEN AND REID voting NO.

MR. BRYAN: I second the motion to amend to first offense a misdemeanor and the second offense a felony. I feel that a felony for the first time is too severe.

MR. TORVINEN: You could not ingest enough alcohol without knowing what you were doing. The same thing would apply to ingesting heroin.

MR. LOWMAN: I move Do Pass AB 206.

MR. BRYAN: I move to amend AB 206 to add "knowingly" at the proper place

MR. KEAN: I move to Do Pass AB 206 with that amendment.

MR. PRINCE: I second the motion.

Motion carried with 5 Ayes.

AB 207: Permits district attorneys to commit certain drug addicts.

MR. REID: How can we give the district attorneys authority to determine who is an addict?

MR. LOWMAN: We have registration of felons and that includes addicts.

MR. BRYAN: No, it does not.

MR. REID: My first case was an addict, but he was never convicted of being an addict. How can you tell when a person is an addict?

MR. DAVIS: This legislation was requested by the district attorneys to enable them to commit a man if he is in fact an addict.

MR. BRYAN: You convict the man and then you can have a hearing to determine if he is an addict.

MR. REID: This seems to me to give the district attorneys a lot of discretion.

MR. FRY: Who is going to help the addict?

MR. TORVINEN: The drug addict is treated exactly as an alcoholic under our statutes.

MR. REID: Why should the district attorney be able to do this?

MR. TORVINEN: The purpose is: they have a guy in jail drying out. He is bumping his head against the walls. They want to get him out and into a medical facility.

MR. DAVIS: They want this in order to be able to help the defendant, not to prosecute.

MR. REID: Why do we need this if we already have it on the books?

MR. TORVINEN: Snowy wants us to meet with them on AJR 5, the court study. We have hearings every day for the next two weeks except for the 14th. On the 5th is the Abortion Hearing. We will have to meet some night next week.

MR. LOWMAN: How long will it take?

MR. TORVINEN: Three or four evenings. I will try to set it for Wednesday evening.

MR. LOWMAN: Do we need Robert List here to speak on AB 207?

The decision was yes.

MR. TORVINEN: We will have him come on Tuesday.

AB 208: Permits imposition of tests to determine drug use as a condition of probation or parole of persons convicted of crimes associated with drugs.

MR. REID: I move Do Pass AB 208.

MR. FRY: I second the motion.

Motion carried unanimously.

AB 209: Prohibits use of peyote except as religious sacrament.

MR. REID: I move Do Pass AB 209.

MR. LOWMAN: I second the motion.

MR. TORVINEN: Apparently, if you take it in the button form of peyote it makes you so damn sick you have to be religious to take it.

MR. LOWMAN: The Indians never allow alcohol near it because apparently it is a very bad combination.

MR. BRYAN: How about making this consistent with AB 54? Why not just amend 54 to have that in there?

MR. TORVINEN: 209 and 54 have penalty conflicts.

MR. REID: I move amend to AB 54 and Do Pass AB 209.

MR. TORVINEN: It will be better if we put 209 provisions in AB 54. At least, we will have only one bill.

MR. BRYAN: I move to reconsider AB 54.

MR. LOWMAN: I second the motion.

Motion carried unanimously.

MR. BRYAN: I move lines 13 through 17 and line 2 of AB 209 in their present form be added to AB 54 as amended.

MR. REID: I second the motion.

Motion carried unanimously.

MR. FRY: I move we indefinitely Postpone AB 209.

MR. BRYAN: I second the motion.

Motion carried, with Mr. Lowman voting NO.

Meeting was adjourned at 5:15 P.M.