

Nash

MINUTES OF MEETING - ASSEMBLY JUDICIARY COMMITTEE, 55th Session 2-155
First Meeting, March 19, 1969

Meeting was called to order at 4:00 P.M. by Chairman Torvinen.

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

Absent: None.

MR. SCHOUWEILER: I would like to ask the committee to introduce BDR 20-1827.

MR. REID: I move Committee Introduction.

MR. KEAN: I second the motion.

MOTION CARRIED.

AB 554: Provides for electronic interception of communication.

MR. REID: (Read amendment on this bill to the committee.) Communication research opinion is that there are no conflicts.

MR. BRYAN: I move to Indefinitely Postpone AB 554.

MR. KEAN: I second the motion.

MR. TORVINEN: I think that under our present law where this can be done in a limited number of cases, to kill this is being inconsistent. We should conform to the Federal Law. The district attorneys should be able to do the same things as the Federal people can do.

MR. SWACKHAMER: Why should this be postponed?

MR. KEAN: It is too wide open, allows too much. Our right to privacy overshadows the good it might do. What does it do to the two-party, third-party thing?

MR. TORVINEN: This doesn't apply to that at all. It applies only to interception court orders.

MR. PRINCE: I thought we decided last time we discussed this that it would do much more good than harm.

MR. SWACKHAMER: Should be willing to give up some of our rights in order to get some of the baddies out of the way.

MR. KEAN: Where in the new Act does it define the conditions under which you can wiretap?

MR. TORVINEN: It is in the Federal Act. The only difference is procedural difference of kinds of affidavits and the way it is done, etc.

MR. SWACKHAMER: If the Federal Agent comes in and wants to wiretap can he do it under the Federal Court of Nevada?

MR. TORVINEN: I think he would have an option to go to either the Nevada Court or to the Federal Court.

MR. SWACKHAMER: Why should we put the district attorney at such a disadvantage?

MOTION TO INDEFINITELY POSTPONE AB 554 FAILED, RECEIVING ONLY THREE AYES.

SB 216: Permits Nevada Girls Training Center to retain inmates until 20 years of age.

MR. SWACKHAMER: The present law is age 16. In some cases, the welfare people felt it would be better if they could keep them there longer.

MR. TORVINEN: There is a girl in Caliente who is just about to turn 18 and they feel they can help her if they can keep her there longer.

MR. REID: I move Do Pass SB 216 and refer to Ways and Means.

MR. KEAN: I second the motion.

MR. BRYAN: Can the boys be delayed at Elko past 18?

MR. TORVINEN: Yes.

MR. BRYAN: Let's make it harmonious with Elko.

MR. SWACKHAMER: If the bill is needed quickly and we amend there will be quite a slowdown in getting it out.

MR. BRYAN: Mr. Close said he was about to introduce such a bill but changed his mind when the additional cost was called to his attention.

MR. SWACKHAMER: I think we should pass this.

MR. REID'S MOTION TO DO PASS AB 554 AND REFER TO WAYS AND MEANS CARRIED UNANIMOUSLY.

AB 554: Wiretap.

MR. TORVINEN: The committee would like to know in what areas is wire-tapping allowed in the U.S. Code, Title 18. Are they in AB 554 or do we get them by reference or what?

MR. WRIGHT: AB 554 conforms almost exactly to the Federal Act. In our present law, 200.620 it says that with two parties to a conversation, both must consent for recording to be done.

MR. TORVINEN: The new law has to do with a third party. Interception means a third person. You can't intercept your own phone call. This is page 7, lines 9, 10, 11, 12. This is a different section.

MR. KEAN: This changes our law.

MR. TORVINEN: This is our law.

MR. WRIGHT: The definition of "interception" is on the first page. It is the same as the Federal.

MR. KEAN: On AB 554, my biggest complaint is on page 2, line 22. Wiretapping itself is a felony.

MR. TORVINEN: Not when you have a Court Order.

MR. KEAN: You are trading the additional apprehension of a few criminals for invasion of privacy.

MR. TORVINEN: Let's give AB 554 a little more thought.

SB 254: Clarifies postponement procedure of public sales in estate matters.

MR. REID: I move Do Pass SB 254.

MR. FRY: I second the motion.

MOTION CARRIED UNANIMOUSLY.

SB 24: Authorizes school districts to insure peace officers against tort liability in certain cases.

MR. REID: I move Do Pass SB 24.

MR. BRYAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AJR 46: Proposes constitutional amendment to alter composition of State Board of Pardons.

MR. LOWMAN: I move Do Pass AJR 46.

MR. KEAN: I second.

MR. FRY: I don't think the Attorney General ought to be on there. He is a party vitally interested. We can make it four residents of the State of Nevada, as far as I am concerned.

MR. TORVINEN: The Legislature is going to set by law the qualifications of the members. If we are going to do it for any, we should do it for all.

MR. REID: Why don't we just leave the number of residents up to the Governor? Right now he would appoint three people. I would assume that he would try to get people of different backgrounds, etc.

MR. BRYAN: Should we give the Governor veto power?

MR. SWACKHAMER: With a 5-man Board you can't exert so much pressure as you can on one man. Then the Governor couldn't get so much pressure as Governor Laxalt is getting right now.

MR. LOWMAN: Is this to be a continuing Board?

MR. TORVINEN: Yes. However, his qualifications and term of office should be set by law. This would stagger the terms. I suggest that we add something to make it very firm and definite that these terms of office be staggered.

MR. SWACKHAMER: I think that is a very good idea.

MR. KEAN: I move to adopt this amendment.

MR. FRY: Since Francovich is now putting in his appeal, maybe our timing is off. From what I read in the newspapers, this could be

misinterpreted.

2-158

MR. TORVINEN: From what I understand, the Governor; the Supreme Court and everyone wants this.

MR. REID: If we are going to do anything, let's do it now and get it over with. I think it would be worse to wait.

MR. LOWMAN: I will accept the amendment on my motion if the second will accept it.

MR. BRYAN: I think we should eliminate the Governor's veto.

MR. LOWMAN: We should not leave it to one man.

MR. FRY: Some day, God help us, Bryan may be Governor and we know his views. He could be completely reversed on this thing.

MR. REID: We have established that it would not be right for the Governor to make this decision by himself, but I am not sure he should not have the ultimate say about each case.

MR. LOWMAN: Then you have all the pressure on one man.

MR. BRYAN: If the Governor is opposed, then there is no point in even having a hearing.

MR. TORVINEN: I think the Governor will listen to all the arguments of the Board. There might be other reasons where a sentence should be commuted that we don't know anything about.

MR. REID: Let's analyze. The Attorney General is the legal "top" in the State. This will be a legal matter. What if the Governor is not an attorney?

MR. TORVINEN: Do you want the Attorney General on the Board?

MR. LOWMAN: No. We are taking him off.

I move we adopt the following amendments to AJR 46: Remove the Attorney General and change the number to be appointed by the Governor to 4, and add to line 7 "these qualifications and term of office shall be fixed by law."

MR. BRYAN: I second the motion.

MR. SWACKHAMER: What about the decision of the Board. Does it have to be unanimous, or what? Does that have to be specified by us?

MR. TORVINEN: That is in the italicized items in lines 13 and 14.

MR. FRY: I move to delete those, too.

MR. BRYAN: I second.

MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: On line 8, after the word "law" we will insert "or a major part of them."

MR. REID: That doesn't make sense.

MR. KEAN: Shall the Legislature set the conditions?

ALL: No.

MR. REID: I think we might be able to do it at line 12. Insert "any commutation must be action of a majority of the total Board."

MR. KEAN: I so move, but let's change it to "at least three members must agree."

MR. TORVINEN: "Any such action shall be taken by at least three members."

MR. LOWMAN: How about "any such action requires concurrence of any three members of the Board."

MR. KEAN: Let's use present language and just add "concurrence of three members of the Board."

MR. LOWMAN: I second the motion.

MR. KEAN: Is it a Board? The title says so but I don't see it anywhere else.

MR. TORVINEN: It isn't defined as a Board in this Act.

MR. WRIGHT: I think the constitution so defines it.

MR. LOWMAN: "Action has to be by three members."

MR. WRIGHT: You have not created what these people are to be members of.

MR. REID: Why do they have to be called anything?

MOTION ON THE AMENDMENTS CARRIED UNANIMOUSLY.

MR. KEAN: I move to amend and Do Pass AJR 46.

MR. LOWMAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AJR 40: Proposes to amend Nevada Constitution by prohibiting life sentence without possibility of parole.

MR. REID: I think there is confusion about what this means because the summary is wrong. What the summary says is not what the Resolution says.

Many jurors will sentence to death because they know if they give life without possibility of parole the man will still get parole. If we eliminate this sentence there is still the protection of a pardon if new evidence were to be uncovered.

I personally have received a lot of support for this since introducing it.

MR. WRIGHT: The Summary cannot be changed, so if you don't like it, you will have to start over and introduce a new bill.

MR. FRY: I disagree. This would mean that at no time in this man's life would he ever be examined. With any other lesser crimes they have someone to look at them somewhere along the line, but with this there never is such an opportunity. 160

MR. REID: If we are going to have such a sentence let's indicate that that is what it means. If not, let's do away with that sentence. We know the parole procedure is identical with that of commutation. It is not fair to the jury when they just want to put the guy away where he cannot bother anyone and don't want to kill him.

MR. SWACKHAMER: Isn't a lot of his history reviewed at the trial?

MR. FRY: Not necessarily. We may know he is guilty but maybe this is the only thing he has ever done. Maybe the jury doesn't know this.

MR. SWACKHAMER: They are not supposed to.

MR. BRYAN: The trial is only to determine guilt or innocence. Did he do it, or did he not? Then they have a separate short trial or hearing to decide what to do with him. Then his background important. Should he be put away forever?

MR. REID: Less than five states have this sentence. Under Nevada criminal law you are tried for that crime and you are sentenced for that crime. This only applies to the very serious crimes where he will get life or death. Three choices. If we are not going to have life without possibility of parole, then let's do away with it.

MR. TORVINEN: If you are chipping away at the death penalty, and if you want to do that - -

MR. REID: I am not saying that. Thousands of dollars are being spent trying to save these people sentenced to die. If they can really put him away where he cannot get out they will do that and save all this money.

MR. BRYAN: If we do adopt this----There has never been a jury or any place where a man's background has been considered in setting sentence and that disturbs me.

MR. KEAN: Then why don't you put that in there some place?

MR. REID: I withdraw my motion to Do Pass.

MR. LOWMAN: I withdraw my second.

MR. TORVINEN: I will have to agree with Bryan and Fry, since they have pointed this out.

MR. BRYAN: I agree with what Harry is trying to do but remember that life without possibility of parole involves cases other than murder.

AB 441: Declares certain contracts for personal services illegal and unenforcible.

MR. TORVINEN: We ran into this question with the architects because we did not like their wording. 441 says any illegal contract is not

collectible. I thought this was in the law already, until the Supreme Court made a ruling about a year ago. 2-161

MR. REID: He should at least be able to sue for the amount of his services. This is crazy.

MR. BRYAN: I move to Indefinitely Postpone AB 441.

MR. SWACKHAMER: I second.

MOTION CARRIED WITH MR. FRY VOTING NO.

MR. FRY: I would like to request that if there is some bill you give a vote of 5 on and we want to reconsider we have the right to do that.

MR. SWACKHAMER: When I am absent, I feel I have no rights to change what was done in my absence.

AB 488: Prohibits small print in contracts.

MR. LOWMAN: I move to Indefinitely Postpone AB 488.

MR. PRINCE: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 665: Increases time period prior to bail forfeiture.

MR. BRYAN: There is a companion piece of legislation, AB 469, which we could consider along with this.

MR. TORVINEN: We will hold until we get it.

AB 495: Declares that checks given or accepted in licensed gaming are enforceable.

MR. TORVINEN: Eventually, this is going to happen, either by the Legislature or by court rule. Is the tenor of this statute to say that you can collect a gambling debt?

MR. PRINCE: A man should not write a check unless he means to pay on it.

MR. LOWMAN: Why can't they sue now?

MR. TORVINEN: Because the law says they can't. If you win at Keno and they won't pay you you can't sue them. Why should they be able to sue?

MR. BRYAN: It is not unreasonable to believe that a check should be honored if it is issued.

MR. KEAN: My feeling goes beyond the practicality of the thing. I don't think their problem is as great as it might seem.

MR. PRINCE: They don't have to sue. We are just giving them the right.

MR. KEAN: They felt the gambling image would be hurt by suing.

MR. REID: How can we rationalize that we have legalized gambling but it is against public policy to collect a debt?

MR. KEAN: We have lived with this for years and our greatest desire is to promote gambling.

MR. BRYAN: This merely confers upon them the right to sue.

2-162

MR. TORVINEN: The California Courts say you can't sue in Nevada so why should we allow you to sue here? Even this law may not help there.

MR. BRYAN: I move Do Pass AB 495.

MR. REID: I second.

MOTION CARRIED, WITH MR. FRY NOT VOTING.

AB 543: Prohibits parole from county jail.

MR. FRY: The guy would be arrested in another state, released on parole from that state having a little parole time left to serve in Nevada. Rather than bring him back he would be dishonorably discharged.

MR. KEAN: I move Do Pass AB 543.

MR. Reid: I second.

MOTION CARRIED WITH MR. BRYAN NOT VOTING.

MR. LOWMAN: I move we adjourn.

MR. PRINCE: I second.

MOTION CARRIED UNANIMOUSLY.

MEETING was adjourned at 5:30 P.M.