

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 18, 1977

The meeting was called to order at 8:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Gojack
Senator Ashworth

ABSENT:

SB 167 Subjects grand jurors to civil liability for publication of prohibited report.

For further testimony on this measure, see minutes of the following meetings:

February 9, 1977
February 17, 1977
February 22, 1977
March 9, 1977

Senator Thomas R. C. Wilson stated that he had several concerns about this bill. The difficulty with reliance upon the district attorney is that if any indictable offense is suggested in the report, and there may be a whole series, and one is not accompanied by an indictment then the shield may be gone for the entire contents of the report. The bill as drawn and as proposed by amendment, does not limit the waiver of the shield to the reported offense that may be a misdemeanor or felony; not just for the offense that was not accompanied by indictment but for the entire report.

Another problem is that, while the grand jury doesn't waive its shield if it relies upon the advice of counsel, it sometimes doesn't occur in that black-and-white way. Whether or not you have adequate probable cause to indict really is a matter of balance judgment often times. What if you feel strongly that you ought to serve the public interest by making a report of general conditions. You may be able to draw inferences of misconduct because the report is critical or inferences even, of a criminal offense because a report is highly critical but what if your legal advice is qualified? Even if you include a disclaimer in your report that you are really not so sure as to go so far as to indict but the conduct is subject to such strong criticism that a drawable inference is one of criminal offense,

SB 167 you still may be liable if your legal advisor says to you that he is not sure that there is adequate evidence to justify a return of a true bill. Another problem, one that is more fundamental than the amendment and one that no one has addressed yet is that historically, the grand jury is a creature of the judicial branch of government. It is appointed by the court and it answers to the court. If there is criticism of a report which is abusive, the criticism shouldn't stop at just the grand jury or the district attorney. It should properly and fairly involve the judge, who doesn't have to accept the report and can send it back. The district attorney may be the legal advisor but if a report exceeds the policy of the state, the judge should send it back. The question is one of balance. How far are we going to go in exposing grand jurists, individually, to civil liability and in turn, how far are they going to go in returning reports, perhaps needed by a community, in the face of threatened civil liability. How chilling an effect will this have on the grand jury function?

Larry Hicks, Washoe County District Attorney and President of the Nevada District Attorney's Association testified on this measure. He stated that it bothered him that reference was continually being made to the Conforte Grand Jury Report and that nothing in that report had ever been held improper or illegal.

Senator Dodge stated that he felt there was a need to limit public comment on wrong-doing to the types of things that are criminal on the part of public officials. That grand jury commented on many things that were improprieties at the very least and at the very most, were wrong-doings and maybe even indictable. He felt that they should delineate the degree so that they are not casting aspersions about people's activities, which do damage to their reputations, but which fall short of some type of indictable offense.

Mr. Hicks responded that if you are talking about public officials and if their conduct is clearly misfeasance or neglect of their office, then a grand jury or somebody should be in a position to comment on that even though it is not criminal. The people elect these officials and they are entitled to know, for instance, if all the person does is pick up his paycheck and never shows up at his office.

Senator Clifton Young testified in support of this measure. He stated that something should be done to the existing law, if nothing more than to clarify it. The present law mandates that there should be no character assassination; no one should be specified by name. There is a presumption of innocence for everyone, including public officials and they should not have to go to court to expunge the record.

SB 167 He disagreed with Senator Wilson's observation that the judge should have final responsibility for the acceptance of the report. He felt this was the responsibility of the grand jury. They are picked because they are good citizens and are capable of discharging their duty.

Senator William J. Raggio testified in opposition to this measure. He stated that he agreed with the concept of the bill however he felt that this approach amounted to an over-kill of what they were trying to accomplish. He felt that the grand jury system served a very useful purpose and he hoped that before the Committee took any action in this regard that they would first have an in-depth study into the situation.

No action was taken at this time.

SB 294 Increases licensing fees; changes fund accounting and expands enforcement powers of private investigator's licensing boards.

Michael Dyer, Deputy Attorney General assigned to the Licensing Board testified in support of this measure. He was also appearing as spokesman for Attorney General Robert List who is the Chairman of the Licensing Board.

Section 1 would give the Board the right to seek injunctive relief. He stated that at the present time the Board has no right to take any action against a person who does not obtain a license. The only thing they can do is refer it to the district attorney for misdemeanor prosecution.

Senator Bryan noted that subsection 3, lines 12-14 allows for an award of attorney's fees should an injunction be filed and he commented that this is not part of the law anywhere else. Mr. Dyer concurred but stated that they would like that power in that they have a very limited budget.

Mr. Dyer stated that sections 3 and 4 should be considered together when reading the bill. This gives the Board the right to carry forward the balance in its treasury at the end of the year. The Board in the past has had a part-time secretarial position but as of June it became full-time. There is no appropriated money for this position and the salary will be paid out of the fees collected. It is a self-supporting position and in order to carry it out, it is necessary to carry forward the balance each year.

Section 5 is a request for the authority to delegate the hearing of disciplinary matters to a hearing officer. He stated that disciplinary hearings run for 4 or 5 hours and can be quite an expense item in that 2 of the Board members are from southern Nevada and 2 are from northern Nevada.

In response to a question as to who would be the hearing officer, Mr. Dyer stated that they would do like most other

SB 294 boards and enter into a contract with a private attorney.

Following a brief discussion, the Committee decided to delete subsection 3 of section 1, lines 12-14 regarding the award of attorney's fees.

Senator Ashworth moved to amend and do pass.
The motion was seconded and carried unanimously. Senator Dodge was absent from the vote.

AB 298 Provides for marriage with consent of only one parent.

George Flint, Nevada Wedding Association stated that this bill changes only the prerequisites as far as parental consent for the 16 to 18 year olds. For those persons under 16, they will still be required to obtain the permission of the district court but they will only need one parental signature before applying to the court. Most other states require only one signature and this is where the problem is arising. The state of Nevada, being a tourist state, attracts many individuals who come here to be married and they are not aware that Nevada requires two signatures. The couples get here, make all the wedding arrangements and then find out that they can't get married because they only brought one parent or an affidavit containing only one signature.

Senator Ashworth told the Committee that he had had a similar problem when he had been married and that he had finally had to bribe the clerk and lie about his age.
Senator Close pointed out that he probably was not legally married today, to which Senator Ashworth responded that he certainly hoped that was the case.
Following that statement, the Committee requested that a copy of the minutes be sent to Mrs. Ashworth.

Senator Gojack moved a do pass.
Seconded by Senator Ashworth.
Motion carried unanimously. Senator Close abstained from the vote and Senator Dodge was absent from the vote.

SB 279 Enacts Uniform Parentage Act.

Senator Sheerin stated that this bill was somewhat similar to SB 286 which provides for recovery of welfare payments made for dependent children.
It was the decision of the Committee to go with SB 286.

Senator Gojack moved to indefinitely postpone.
Seconded by Senator Ashworth.
Motion carried unanimously. Senator Dodge was absent from the vote.

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SB 279 Senator Bryan noted that this bill had been euphemistically referred to as something other than a "long arm statute."

AB 44 Transfers responsibility for training of justices of peace and police judges to court administrator.

Senator Close informed the Committee that John DeGraff, Supreme Court Judicial Planner had wanted to testify on this matter but was unable to attend the meeting. He stated that the purpose of this bill was to transfer the responsibility for training certain people from the judges to the court administrator.

The Committee had a question as to whether there should be a fiscal note attached to this. It was their decision to refer it to the Finance Committee for their review along with the budget for the Supreme Court.

Senator Ashworth moved to do pass and rerefer to Finance. Seconded by Senator Gojack. Motion carried unanimously. Senator Dodge was absent from the vote.

SB 200 Permits voluntary cessation of life-sustaining procedures for terminally ill persons.

In view of the bill being considered by the Assembly on this matter (AB 8) it was the decision of the Committee to go with that and indefinitely postpone SB 200.

Senator Gojack so moved. Seconded by Senator Ashworth. Motion carried unanimously. Senator Dodge was absent from the vote.

AJR 36 of Proposes flexible limit to original jurisdiction of
the 58th justices' courts.
Session

Senator Bryan moved a do pass. Seconded by Senator Ashworth. Motion carried unanimously. Senator Dodge was absent from the vote.

SB 48 Changes limit of jurisdiction of justices' courts over certain actions.

SB 48 Senator Close informed the Committee that this would increase the jurisdiction to \$1,000. He further stated that the issue at hand was what the function of the small claims court is. If it is supposed to be the layman's court then perhaps you would want to exclude attorneys from practicing. However, you don't want to allow people who, because of their repeat performances before the court have developed a certain expertise, to practice against private citizens. He cited collection agencies as an example.

In further discussion of the bill, it was the decision of the Committee to amend the bill to \$500.

Senator Ashworth moved to amend and do pass.
Seconded by Senator Gojack.
Motion carried unanimously. Senator Dodge was absent from the vote.

SB 162 Revises law on compensation for victims of crime.

For further testimony on this measure, see minutes of meetings for February 4, 1977 and March 11, 1977.

Senator Gojack stated that she did not care for the approach that had been suggested by the Rehabilitation Division. She further informed the Committee that Howard Barrett, Budget Director was in support of the bill with its present fiscal note. She felt that the Board of Examiners making the final determination on awards was a good provision in that they are a conservative body and not likely to make awards capriciously. In regard to putting some caps on this, she submitted an amendment for \$10,000 medical, \$10,000 death and \$3,000 rehabilitation benefits.

Senator Close stated that he did not feel the state should get involved with living expenses in that they would not necessarily be medical or death benefits.

There was further discussion on this matter however no action was taken at this time.

SB 88 Includes driver's license suspensions under implied consent law in consecutive suspensions.

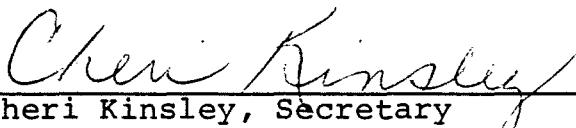
For testimony on this matter see minutes of meeting for February 23, 1977.

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SB 88 Senator Sheerin moved a do pass.
Seconded by Senator Bryan.
Motion carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN