

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

JANUARY 18, 1979

The meeting was called to order at 10:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Dodge
Senator Raggio
Senator Sloan
Senator Ford
Senator Don Ashworth

ABSENT: None

SB 7 Repeals statutes on commissioned abstracters.

Frank Daykin, Legislative Council Bureau testified on behalf of this measure. He explained to the committee that a commissioned abstracter was a person who examined the public records of the county and prepared a list of the entries pertaining to a particular piece of property and then certified at the end of it what, if any, the outstanding interests or encumbrances were. He stated that this business has been taken over entirely by the title companies and that, to his knowledge, there has not been commissioned abstracters in this state for many years.

Senator Dodge moved a do pass.
Seconded by Senator Hernstadt.
Motion carried unanimously.

SB 8 Clarifies statewide applicability of provisions governing certain duties of coroners.

Frank Daykin, Legislative Council Bureau explained to the committee that this bill deals with the situation in which coroners must inventory money or property found on a dead person and take certain care of it. That duty applies to both Justices of the Peace when they act as coroners and to coroners who are appointed in large counties by ordinance. The statute so provides for this but not in this section. Consequently, this measure amends the sections in here to remove the apparently limiting references to the Justice of the Peace and simply says "the coroner shall" do thus and so. The reference to the coroner covers all situations.

Senator Dodge moved a do pass.
Seconded by Senator Hernstadt.
Motion carried unanimously.

SB 9 Revises criminal penalties.

Frank Daykin, Legislative Council Bureau informed the committee that this bill grew out of a resolution of the last legislature directing the staff of the LCB to study the penalties provided for various offenses and report to the Legislative Commission. All criminal penalties, except the standard ones for misdemeanors and gross misdemeanors, were arranged in two ways:

- 1) By the kind of offense so that one could see how the penalties for different offenses of the same kinds, i.e., different degrees of arson, malicious destruction of property, etc., related to one another; and
- 2) By severity of penalty so that one could see what offenses all carry, for example, a one-to-six year prison term and how they compared with one another in severity.

The Commission reviewed this material and decided that there were a number of changes that needed to be made. They fall into the following categories:

- 1) Felonies which carry a prison sentence of 6 years or less would be accompanied by an optional fine of \$5,000 which would either be in addition to, or would be in lieu of, imprisonment. If it was a one-to-ten year felony, the fine would be \$10,000.
- 2) Offenses which relate to the malicious or otherwise wrongful destruction of property were consolidated into a single section rather than having the dozen or twenty different statutes which provided the same penalty.
- 3) Offenses dealing with prostitution were uniformly treated so as to apply to persons who provided sexual pleasure for hire whether they be male or female.
- 4) Fines of a miscellaneous amount were standardized to either \$250 or \$500.

Senator Sloan pointed out that Section 31 has a fine of \$20,000 for a one-to-ten year prison term.

Mr. Daykin said that was a typographical error which should be amended to \$10,000.

Senator Ashworth expressed concern over the repeal of certain of the statutes in that, because of some technicality, a crime could come under one section but because of some prima facie evidence, it wouldn't come under another section.

Mr. Daykin responded that when these statutes were consolidated, the description was so broadened that anything which was under the individual offenses would be under the general description.

Senator Hernstadt asked whether there was any provision in this bill or in other aspects of the NRS that provided restitution to the victim.

Mr. Daykin stated that there are two provisions in the law which cover that:

- 1) A judge may impose, as a condition of probation, restitution to the victim; or
- 2) A civil action may be brought against the person for the value of the property, independent of the fact that he had been punished criminally.

Geno Menchetti, Office of the Attorney General, informed the Committee that, inasmuch as this bill was only available for review yesterday morning, his office and that of the Nevada District Attorney's Association had not had sufficient time to fully evaluate the changes being made. He requested that he be given additional time to examine the measure more closely.

The Committee agreed to hear this again at a later date and requested that Mr. Menchetti contact the District Attorney's Association for their input on this.

No action was taken at this time.

There was further discussion by the Committee, Mr. Daykin and Mr. Menchetti on the following items:

Determinate vs. Indeterminate Sentencing

In response to a question from the Committee, Mr. Menchetti stated that indeterminate sentencing is where a person is sentenced to jail for a certain period of time. Subsequent to incarceration, a board or panel does an analysis of the individual; is he progressing, is he going to school, is he adapting to prison life. They then make a subjective determination as to that individual - we think it is time for him to get out. The problem with that, from the prisoner's standpoint, is that he has no idea how long he is going to be there. Determinate sentencing, in the strictest sense, would be where there is no latitude for a judge. The judge is give the crime of "X" with a prison sentence of 10 years and \$10,000.

Mr. Daykin stated that Nevada follows a semi-determinate sentencing structure. The statute sets limits and the judge pronounces a determinate sentence within those limits.

Senator Raggio pointed out that the argument against determinate sentencing was that it lends itself to great inequities because of the individuality of the various judges.

Senator Dodge stated that the theory of the determinate sentence is that the judge can consider the circumstances and the gravity of the offense. There is some flexibility.

Enhancement of Penalty Statute for Crimes Committed with a Firearm

In response to a question from Senator Raggio, Mr. Menchetti stated that the use of a weapon in the commission of any felony carries a consecutive sentence equal to the initial sentence imposed.


Senator Close questioned whether that had been declared unconstitutional in California.

Mr. Menchetti responded that it was his understanding that when the use of the firearm is also an element of the first offense, then the person can't be given more time. That would be double jeopardy. For example, if the use of a gun is an element of a robbery, additional time cannot be given for the use of the gun again. However, in a rape situation, the use of a gun is not an element in the crime of rape. It was his feeling that it is a valid legislative enactment to increase penalty because of the use of a weapon and the potential danger involved.

Mr. Daykin agreed and further stated that the Nevada statute specifically provides that the enhancement does not apply if the use of a deadly weapon is an element of the crime. The Nevada statute has been specifically upheld by its Supreme Court.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

Senator Melvin D. Close, Chairman

S. B. 7

SENATE BILL NO. 7—COMMITTEE ON JUDICIARY

JANUARY 15, 1979

Referred to Committee on Judiciary

SUMMARY—Repeals statutes on commissioned abstracters. (BDR 19-91)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to commissioned abstracters; repealing all provisions relating to them as obsolete; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

**1 SECTION 1. NRS 240.240, 240.250, 240.260, 240.270, 240.280,
2 240.290, 240.300, 240.310, 240.320 and 240.330 are hereby repealed.**

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SENATE BILL NO. 8—COMMITTEE ON JUDICIARY

JANUARY 15, 1979

Referred to Committee on Judiciary

SUMMARY—Clarifies statewide applicability of provisions governing certain duties of coroners. (BDR 20-524)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to coroners; clarifying that provisions governing certain duties of coroners apply in all counties of the state; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 259.150 is hereby amended to read as follows:
 2 259.150 1. The [justice of the peace, acting as] coroner [,] shall
 3 inventory, in the presence of at least one other person, any money or
 4 property which may have been found on or about the deceased, unless
 5 taken from his possession by legal authority, and shall deliver without
 6 delay a signed copy of the inventory and the money or property to the
 7 treasurer of the county. If the [justice of the peace, acting as] coroner [,]
 8 fails to pay or deliver such money or property to the county treasurer, the
 9 county treasurer may recover it by an action at law.
 10 2. The [justice of the peace, acting as] coroner [,] shall affix appro-
 11 priate seals, signs or other devices prohibiting entrance to the residence of
 12 a deceased person who had lived alone under circumstances indicating
 13 that no other person can reasonably be expected to provide immediate
 14 security for the deceased's property. Any person, except the coroner, his
 15 deputy, a law enforcement officer or the executor or administrator of the
 16 deceased's estate, who removes such a coroner's seal, sign or other device
 17 or who enters upon any property bearing such a seal, sign or other device
 18 is guilty of a misdemeanor.
 19 SEC. 2. NRS 259.180 is hereby amended to read as follows:
 20 259.180 After the inquest, if no one takes charge of the body, the
 21 [justice of the peace] coroner shall cause [the same] it to be decently
 22 buried. The expenses of the burial [shall] must be paid from the money
 23 deposited with the county treasurer or the estate of the deceased, as the
 24 case may be. If the deceased has no money or estate, or the money or