

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 8, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser presiding. All committee members were present. Jim Lear, Committee Attorney, was also present.

HOUSE BILL 4 REP. KEEDY, the bill's chief sponsor, indicated this was a relatively straight forward bill to interpret. Some of the district court judges around the state were unaware or sometimes taken by surprise by a provision in the current statute which automatically makes an inmate eligible for parole on a time sentence and whose eligibility for parole is not specifically in writing denied by the sentencing judge.

House Bill 4 would allow the offender to be eligible for parole automatically after 17-1/2 years. The bill is introduced merely as a clean up to try to bring the statutory scheme more in line with the expectations of our judiciary system and members of the public.

REP. KEEDY noted since 1977 only nine inmates have been denied parole. This bill, then, does not indicate that inmates are being locked up and denied parole.

CURT CHISHOLM, Department of Institutions, indicated the Department would like to testify at these committee meetings to give information on various sentencing, etc. He felt it was not proper on his part to agree or disagree with the various issues. CHAIRMAN KEYSER indicated Chisholm should indeed take a stand on the bills for clarification to the committee.

HOUSE BILL 5 REP. YARDLEY, chief sponsor of the bill, stated this bill was requested by the interim committee. The "Report and Recommendations of the Interim Committee on Corrections Policy and Facility Needs", November 1980 edition, was given to committee members.

REP. YARDLEY indicated 90% of the criminal cases are being held by plea bargaining. There is no uniform procedure at this time on plea bargaining. Briefly the bill would provide: Section 1 - permit the prosecuting attorney and the defense council to have discussion. The judge would not be in the discussion. Section 2 - hearing before the court, normally that hearing would be open. The court can allow or reject that agreement, or refer action for an investigation. If the agreement is not accepted by the court to determine plea bargaining arrangements, the defense has the right to withdraw the guilty plea. Section 5 - relates to when the withdraw can be used in evidence. Normally this is used. Section 6 - the court takes the time to find out if the defendant knows exactly what he is doing. Section 7 - requires the record of court proceedings.

REP. YARDLEY noted a survey was sent out in 1977. One of the questions asked dealt with plea bargaining. Of those who responded, 83% indicated the public should be informed of any plea bargaining cases.

Each county judge has his own system, Yardley indicated. This bill is an attempt to unify plea bargaining system.

There were no other proponents to this bill.

TOM HONZEL, Deputy County Attorney, was not opposed to this bill but was opposed to the manner in which it is being done. An amendment was presented to the committee. Honzel recommends the plea bargaining be done in writing and presented to the court. See Exhibit 1.

There were no other opponents to this bill.

In closing REP. YARDLEY stated if this bill were to be enacted, in 10 years there would be an increase of 25% of the prison population.

MR. RUSSELL, Department of Institutions, said from actual experience in Nevada since 1979 when they changed their inactment from 1/4 to 1/3 increased the population 28%; approximately 400 to 500 prisoners. Using the same calculations considering the releases Montana has had and the prisoners coming in expected a 25% increase which calculates to 175-200 inmates over a period of two to three years.

REP. DAILY asked what is the minimum sentence for a life sentence. REP. YARDLEY replied it is up to 30 years less good time.

REP. EUDAILLY asked would House Bill 4 and this bill conflict? JIM LEAR, Committee Counsel, stated the clerk's function is to check for conflicts between various bills. If there are conflicts, we do note the fact of the provisions that would occur.

CHAIRMAN KEYSER stated a subcommittee would be formed because of the large number of sentencing bills.

RUSSELL noted that the State prison holds 672 inmates and 632 are presently in the facility today. It costs the State \$32.50 a day. It was noted that the State often has prisoners from the Federal prisons or from other states. The State's total responsibility is 670 inmates, 632 of which are in state. For those out of state, we are exchanging inmate for inmate or we are paying that state to house the inmate.

No further comments on House Bill 5.

HOUSE BILL 6 REP. KEEDY, sponsor of the bill, noted it is possible for a defendant who is sentenced for a conviction to appeal the sentence to review the decision of the Supreme Court. The Review Board has three Federal judges who meet in Deer Lodge periodically. This is for defendants who believe their sentences were too harsh. The decision made by the Board to modify or increase the sentence is final. This bill is designed to create that it is not possible for the prosecuting attorney to actually have what he considers to be a relatively lenient or light sentence. This bill allows the prosecution and the defense to appeal before the Board the disposition of the sentence.

On page 1 of the bill a couple of amendments were given. Line 17 change and to or. Line 19 to have the County Attorney make the appeal.

That eliminates the prosecution to having to present the bill twice.

Other proponents

TOM HONZEL, Deputy County Attorney, supports this bill. He feels it is fair in most cases. He agrees with the amendment. The county attorney would be in a much better position to present the case before the Board.

There were no opponents.

QUESTIONS REP. EUDAILLY stated whether there would ever be a situation that the County Attorney was in the original case and would then present the case to the Board. REP. KEEDY stated no.

REP. KEEDY stated the committee should strike the attorney general and place the county attorney. The county attorney would still have to make a recommendation to the attorney general.

No further comment on House Bill 6.

HOUSE BILL 8 REP. DAN YARDLEY stated that the interim committee has proposed House Bill 8. It concerns that non-dangerous offender's time be increased to serve one-half of their time before parole is allowed and dangerous offenders having to serve two-thirds of their time before parole is allowed. A life sentence would limit 30 years before parole. See Exhibit 2.

This would apply to those sections only after July 1 of this year. Besides the 25-50% of good time this is an addition to the amount of time that makes a person eligible for parole. He/she can earn

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18 days a month of good time; before the inmate is eligible for parole good time is deducted. The average person can be eligible for parole in about 20% of the time served. A ten-year sentence would make a person eligible in two years.

This is part of the problem. The judges know if they give someone 10 years, they are eligible for parole in two years. Accordingly a judge adjusts his sentence to look good in the eyes of the public. The purpose of this statute is not to increase the prison population but to correlate the actual sentence with the time allowed before parole. This will at least double that time. A certain percentage of inmates that never apply for parole. Maybe they are scared, don't get involved with the programs, or don't want to be supervised when they are out of prison. 65-75% do get paroled. 20-25% do not.

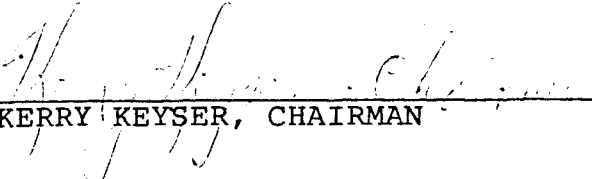
REP. YARDLEY is sure there would be some changes in the present prison population.

MR. RUSSELL, Department of Institutions, noted that the figures presume that the crime rate would remain as it is now. It does not take into consideration the increase of a dangerous offender population. The projections are minimal.

No further questions.

The meeting was adjourned at 9:10 a.m.

Respectfully submitted,


KERRY KEYSER, CHAIRMAN

Maureen Richardson, Secretary

AMENDMENTS TO HOUSE BILL NO. 5

1. Page 1, Line 12
Following: "discussions"
Insert: "and"
2. Page 1, Line 13
Following: "agreement"
Strike: "that, upon entry of a"
Insert: "in writing concerning the"
3. Page 1, Line 13
Following: "guilty"
Insert: "."
4. Page 1, Line 13
Following: "guilty"
Strike: Remainder of Bill.

STATEMENT OF INTENT PROPOSED BY
INTERIM COMMITTEE ON
CORRECTIONS POLICY AND FACILITY NEEDS

It is the intent of the Legislature in enacting this legislation that the time actually served in prison by an individual not be increased as a result of this change in parole eligibility but that the sentence that is imposed coincide more closely with the term of imprisonment. The law should be construed by the District Courts and the Sentence Review Board to effectuate having a sentence imposed which would result in a term of imprisonment comparable to the median prison term served for the same crime in the preceding ten years.

VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

ILL 4

Date 1/8/81

SPONSOR Keedy

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE COMMITTEE

NSOR Yarāley

Date 1/8/81

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VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

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Date 1/8/81

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HOUSE Judiciary COMMITTEE

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Date 1/8/81

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VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

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Date 1/8/81

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VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

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Date 1/8/81

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VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

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NSOR Keedy

Date 1/8/81

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