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Date

2/21/81

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs

The meeting was called to order by Senator Edward F. Reilly at
Chairperson

11:08 a.m./~~p.m.~~ on February 15, 1980 in room 254-E of the Capitol.

All members were present except:

Senators Yost and Anderson who were excused.

Committee staff present:

Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statute Office
Marty Robison, Secretary

Conferees appearing before the committee:

Senator Bond
Juanita Carlson, ACLU
Ron Ross, Topeka

Chairman Reilly called the meeting to order.

Senator Bond moved the approval of minutes for February 14 and Senator Morris seconded. The motion carried.

A hearing was held for SB 77 which deals with mandatory life imprisonment for certain crimes.

Staff presented an overview of the general provisions of the bill which provides for a mandatory 40 year sentence for premeditated murder with aggravating circumstances if the aggravating circumstances are not outweighed by any mitigating circumstances. It provides for two trials.

Senator Bond said the essence of the bill is to call for 40 year sentences with no time off for good behavior and said this is an alternative to life without parole. He also said he would be open to amendments.

Juanita Carlson appeared in opposition to SB 77 because it is in violation to the 8th amendment to the U.S. Constitution because it inflicts cruel and unusual punishment. They based their arguments on three points: 1) that it would not be a deterrent, 2) that 40 years minimum for an unplanned murder is, in fact, a life sentence, and 3) that over the age of 20 leaves no allowance for rehabilitation (Attachment 1).

Ron Ross testified that a murder is never unplanned if they enter with a weapon because they know someone may die. He supports this as a deterrent and would suggest even harder sentences.

Discussion was held on SB 86.

Senator Morris moved the amendment recommended by the Department of Revenue regarding bonding. Senator Bond seconded and the motion passed.

Senator Vidricksen moved the amendment dealing with regulations for "gift packs" and Senator Ehrlich seconded. The motion failed.

Senator Vidricksen moved that SB 86 be passed as amended. Senator Bond seconded and the motion passed.

Senator Vidricksen asked the committee to consider introducing a concurrent resolution calling for a special election for the purpose of submitting a proposition to amend the Constitution, dealing with the medical malpractice resolution.

Senator Vidricksen moved the committee introduce the resolution and Senator Bond seconded. The motion carried.

The meeting was adjourned at 11:52.

February 15, 1989

THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

SENATE BILL 77

My name is Juanita Carlson. I am a law student at Washburn University. I am here representing the American Civil Liberties Union of Kansas and to oppose the provisions of Senate Bill 77 concerning the establishment of a 40 year minimum sentence for certain crimes. The ACLU is the only nationally recognized organization whose sole purpose is the defense of our constitutional liberties of freedom of inquiry and expression, due process of law, equal protection of the laws, and privacy.

The primary basis our our opposition to SB 77 is that it is a violation of the Eighth Amendment to the Constitution of the United States which states:

Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted

I present three arguments.

First, if there is a purpose to writing laws, then one purpose for SB 77 must be to deter criminal activity. There is doubt as to the likelihood of SB 77 accomplishing this goal however. I quote, with permission, Professor Michael Barbara, Washburn Law School who recently appeared before the Senate Judiciary Committee in opposition to the death penalty:

We have adequate laws which incapacitate convicted class A felons for at least 15 years. Since 1985, the Department of Corrections figures show an average length of 17 years and 5 months incarceration before release on parole. Of the 15 class A felons released from prison since 1982 all but 2 served more than 15 years... There have been no large numbers of class A felons released from prison. The few who have been released on parole (15 from 1982 through 1988) have recidivism rates lower than other released felons...None of these 15 has committed subsequent homicides.

Attachment 1

So, to inflict additional punishment for class A felons in the name of deterrence when it is shown that deterrence is not necessary is indeed inflicting cruel and unusual punishment, prohibited by the Eighth amendment of the Constitution.

A further argument for opposing this bill is that the 40 year minimum sentence constitutes cruel and unusual punishment because it is in fact a life sentence for non-premeditated murder committed in the event of a crime. A murder committed in circumstances such as a drug deal or armed robbery is not planned in advance; so to sentence someone to what amounts to a life sentence for an unplanned murder would impose an unduly harsh penalty.

Finally, the bill's 40 year sentence would impose a life sentence for anyone over the age of twenty; this assumes that anyone subject to this penalty is beyond hope and is not amenable to change and thus does not deserve a chance for parole. The bill's harsh penalties would fail to allow rehabilitation.

For these reasons, the ACLU is opposed to SB 77 as it is a violation of the Eighth amendment prohibition against cruel and unusual punishment.

Thankyou for this opportunity to present these views.