

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 14, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:38 a.m. on Monday, May 14, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Steven A. Horsford (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1
Assemblyman Harvey J. Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Sig Rogich, Chair, Advisory Committee on Boxer Health and Safety

Senate Committee on Judiciary
May 14, 2007
Page 2

Keith Kizer, Executive Director, Nevada Athletic Commission, Department of
Business and Industry
Catherine Cortez Masto, Attorney General, Office of the Attorney General
Dino DiCianno, Executive Director, Department of Taxation
Fernando Romero, President, Hispanics in Politics
Gary Peck, Executive Director, American Civil Liberties Union of Nevada
Ray Bacon, Nevada Manufacturers Association
David K. Schumann, Nevada Committee for Full Statehood
Lynn Chapman, Nevada Eagle Forum
John L. Wagner, The Burke Consortium
Janine Hansen, Independent American Party
Frank Johnston
Cheryl K. Townsend, Director, Juvenile Justice Services, Clark County
Michael Pomi, Director, Juvenile Services, Washoe County; Nevada Association
of Juvenile Justice Administrators
Scott J. Shick, Chief Juvenile Probation Officer, Juvenile Probation Department,
Douglas County
Fernando Serrano, Administrator, Division of Child and Family Services,
Department of Health and Human Services
The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court
Peter I. Breen, Senior District Judge, Administrative Office of the Courts,
Nevada Supreme Court
The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court

CHAIR AMODEI:

The hearing is opened on Assembly Bill (A.B.) 418.

ASSEMBLY BILL 418 (1st Reprint): Makes various changes relating to unarmed
combat. (BDR 41-889)

ASSEMBLYMAN HARVEY J. MUNFORD (Assembly District No. 6):

I am here to introduce A.B. 418. During the past legislative interim, the Nevada Athletic Commission created the Advisory Committee on Boxer Health and Safety (ACBHS) after the unfortunate deaths of several boxers. I was honored to serve as a member of the ACBHS whose purpose was to find new ways or ideas to reduce the risk to boxers and improve safety measures. The ACBHS submitted its report to the Nevada Athletic Commission in June 2006. The report included important reforms to address concerns relating to the health and safety of boxers and many do not require statutory revisions.

Assembly Bill 418 addresses reforms that require statutory changes to the definition of unarmed combat. The original version of the bill eliminated the Medical Advisory Board, but that change was removed by the Assembly Committee on Judiciary. Sig Rogich, Chairman of the ACBHS, will further explain specifics of the legislation.

My love of boxing goes far beyond that of the ordinary spectator. Due to my experience as a spectator over many years and my service on the ACBHS, I have great appreciation for the effort and work that goes on behind the scenes to ensure the integrity and safety of this profession. It was an honor and privilege to serve on the ACBHS, and I am pleased to present this bill on its behalf. I encourage your support of this legislation.

SIG ROGICH (Chair, Advisory Committee on Boxer Health and Safety):

The ACBHS was formulated by former Nevada Athletic Commission Chair Raymond "Skip" Avansino, Jr. and the Nevada Athletic Commission in 2006. We spent eight months putting together recommendations that came about, in part, due to the untimely death of boxers. I thank the members of the ACBHS, Assemblyman Munford, Luther Mack, Dr. Jim Nave and the late Dr. Charles Ruggeroli.

The ACBHS focused on medical issues, testing, equipment, trainers and gymnasiums. One component was the elimination of the standing Medical Advisory Board that was formed around 2000-2001. It was eliminated because it only met approximately six times during that period and one member never attended meetings. We wanted to have experts help the ACBHS formulate opinions and make changes to protect boxers in regard to issues that pertain to the brain. We felt the ACBHS should meet either once a month or once every two months.

We request reinstatement of Amendment No. 389 for A.B. 418. Meetings with doctors, trainers, professionals and promoters convinced us the reinstatement would provide the ACBHS latitude to allow experts in the area of brain injury to provide ideas and thoughts on emergencies as opposed to having experts on the respiratory system.

We request approximately \$400,000 additional funding to accomplish the boxing health and safety recommendations made by the ACBHS. To put it into perspective, the ACBHS realizes these are tight times and money is not as

available as in the past. As former chair of the Nevada Athletic Commission as well as a 12-year member, I would like to point out that the Commission has always returned a surplus over our budget to the state General Fund; it has averaged approximately \$3 million a year over the past ten years. In the last couple of years, it has returned \$5 million to \$6 million to the state.

MR. ROGICH:

The requested increase would provide: magnetic resonance imaging capability, added inspectors, educational tools for boxers and trainers as well as allow us to go unannounced into gymnasiums to determine whether boxers are trained to a degree that might jeopardize them in the boxing ring. Our budget would be approximately \$800,000, including requested increases; the state would receive \$5 million plus to the General Fund.

We want to institute weigh-in penalties. Many times boxers attempt to weigh in to a degree that is unsafe and unhealthy. There should be an automatic 10 percent of the purse if a boxer does not make the weigh-in on the first attempt. We request electrolyte replacement drinks be used during a fight as well as random testing for drugs, steroids and monitoring. The most expensive item is the computed axial tomography (CAT or CT) scan.

During a fight on May 5, the boxer was examined with a portable CT scan. Although he appeared to be all right, the fight was stopped because the portable CT scan showed a brain bleed and a slight brain tilt. The boxer was immediately transported to the hospital and a second CT scan showed the injury was abating. The boxer received the necessary treatment and observation that would not otherwise have been done. That particular boxing event probably provided the state approximately \$1 million in revenue.

Nevada is the boxing capital of the world. The ACBHS has been the forerunner in safety and took boxing from 15 to 12 rounds; changed the use of tape over knuckles because hands get moist, hot and like sledge packs; changed ring cushions to standard; and made ropes standard at four instead of three because most injuries occur with three ropes. The ACBHS is looking at the consistency of gloves because they are all different, as well as studying the health and welfare potential for boxers. What we do here today will set the tone for other states to follow and the ACBHS will return with more recommendations over time.

KEITH KIZER (Executive Director, Nevada Athletic Commission, Department of Business and Industry):

Professional wrestling is not a real sport and falls under the Live Entertainment Tax. There are no tax or revenue consequences to either the promoter or the state; it is a wash in that regard. It takes professional wrestling athletes out of the realm of unarmed combat because it is choreographed.

CHAIR AMODEI:

The hearing is closed on A.B. 418 and opened on A.B. 383.

ASSEMBLY BILL 383 (1st Reprint): Makes various changes to laws related to immigration. (BDR 15-1053)

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No. 1):

Assembly Bill 383 does three things. First, it allows the Department of Business and Industry to put a link to federal social security numbers for employers verification. Second, it addresses victims of human trafficking. I submitted an article entitled "Women nabbed in raid to stay" from the *Las Vegas Review-Journal* ([Exhibit C](#)). Third, we are here to punish people who blatantly break our immigration laws by protecting human trafficking victims from this modern day form of slavery.

CATHERINE CORTEZ MASTO (Attorney General, Office of the Attorney General):

I support A.B. 383, specifically section 1. Arizona Attorney General Terry Goddard has been proactive in going after what he terms coyotes in the trade of human trafficking. In January 2007, he contacted me regarding events in Phoenix, which were bleeding into Nevada with respect to coyotes. Coyotes have formed large and sophisticated human-smuggling organizations using vans to transport illegal aliens from Mexico to the Phoenix area. After arriving in Phoenix, the illegal aliens are taken to a house owned by the coyote organization and kept there in bondage until family members or friends wire money to release them. The money is paid to the larger organization.

Arizona Attorney General Goddard has been proactive because Arizona has laws which allow him to go after and prosecute coyotes. Section 1 of A.B. 383 would allow Nevada to be proactive in the same manner and prevent people from attempting to transfer individuals into the state. Arizona has notified us that coyote actions are occurring in Nevada. Rather than taking a backseat, this

Senate Committee on Judiciary
May 14, 2007
Page 6

is an opportunity for Nevada to be proactive and go after the coyotes to protect against human smuggling.

There are no statistics at this time. We are creating a task force called Atlas, which deals with human trafficking and smuggling. In January 2007, the United States Border Patrol announced that approximately 217 illegal aliens had been arrested attempting to board flights at McCarran International Airport in Las Vegas. Coyotes typically bring individuals into a particular location, hold them in bondage and then ship them to other areas for involuntary servitude or human trafficking. We need to put a stop to it in Nevada.

CHAIR AMODEI:

Does a Category B felony match what is going on in Arizona?

MS. CORTEZ MASTO:

It is similar to what is already in statute regarding involuntary servitude, which is *Nevada Revised Statute* (NRS) 200.463, passed in 2005. It is a Category B felony and we wanted it to be consistent and under the same NRS chapter.

SENATOR WASHINGTON:

Is there an interstate agreement between states regarding prosecuting coyotes?

MS. CORTEZ MASTO:

There is no interstate agreement at the statewide level; however, there are laws addressing it at the federal level.

SENATOR WASHINGTON:

What is the punishment at the federal level?

MS. CORTEZ MASTO:

I will provide you that information.

SENATOR CARE:

Assembly Bill 383 only protects illegal aliens from trafficking, not United States citizens or individuals in the United States on a valid visa. Is it correct that you are only concerned with illegal aliens?

MS. CORTEZ MASTO:

That is correct.

SENATOR CARE:

Section 1.3, subsection 1, paragraph (c) of A.B. 383 says, "Commit any other crime which is punishable by not less than 1 year imprisonment in the state prison." Do you intend to include prostitution with the intent to commit any other crime?

MS. CORTEZ MASTO:

Currently, there is a problem in Arizona which is bleeding into Nevada. We are focusing on the coyotes. On a personal note, my daughter has a 17-year-old friend from Russia. These girls come to the United States thinking they will work as models or be in hotel shows, which does not turn out to be true. I am comfortable with the bill as it is because we need to begin somewhere.

CHAIR AMODEI:

Assembly Bill 383 talks about the Nevada Tax Commission verifying social security numbers. Would the database be available to businesses to encourage them to comply with the law?

MS. CORTEZ MASTO:

Ironically, when I began A.B. 383, the Office of Labor Commissioner put the database on their Website within a week. I amended it because it made more sense to go through the Department of Business and Industry.

SENATOR CARE:

What happens when an employer attempts to verify an employee's social security number and it turns out not to be that person?

MS. CORTEZ MASTO:

A successful federal government pilot program began in 2001 in which employers may participate. Employers register with the federal government and can call to verify social security numbers. When a social security number does not match the person, the employer is told the applicant may not be hired at this time and is given the name of the person who holds the social security number. It is the employer's responsibility to verify social security numbers. It is a growing trend and important for Nevada's employers to make the choice to verify prospective employees' social security numbers.

SENATOR CARE:

Has it ever happened that the employer verifies the social security number and it matches, but it is not the same person? Would the employer be immune from prosecution in that case?

Ms. CORTEZ MASTO:

Section 10, subsection 2 of A.B. 383 says the business owner would have the opportunity to show their attempt to verify the social security number; therefore, the employer would not be penalized.

SENATOR WASHINGTON:

Section 10, subsection 3, paragraph (b) of A.B. 383 says, "Willfully, flagrantly or otherwise egregiously, the Commission may suspend or revoke the state business license of the person depending on the egregiousness of the violation." Does the Tax Commission determine whether the violation is willful, flagrant or egregious? What constitutes flagrant or egregious?

Ms. CORTEZ MASTO:

I understand the first threshold must be determined by the U.S. Attorney General. Willfully, flagrantly or egregiously would be determined by the Tax Commission.

SENATOR WASHINGTON:

Section 10, subsection 3 of A.B. 383 says the Tax Commission determines—is that the second threshold?

Ms. CORTEZ MASTO:

The U.S. Attorney General determines there is a violation of the federal statute and the Tax Commission takes it from there.

DINO DICIANNO (Executive Director, Department of Taxation):

Assembly Bill 383 provides for the Nevada Tax Commission to hold public workshops with respect to promulgating regulations; there will have to be regulatory action taken first. This would be no different than what the Tax Commission does currently with respect to revoking a business license on anyone in regard to their actions if they violate any provision of the statute or current regulations.

Senate Committee on Judiciary
May 14, 2007
Page 9

CHAIR AMODEI:

Would those be subject to the Nevada Administrative Procedure Act in NRS 233B?

MR. DiCIANNO:

Yes.

SENATOR MCGINNESS:

Does the Tax Commission have anything under section 10, subsection 3, paragraph (a) of A.B. 383? If a business inadvertently violates the regulations, the Tax Commission may impose an administrative fine. Therefore, even if the business is acting in good faith, they can still be fined. It seems we are holding business to a pretty high standard in that instance.

MR. DiCIANNO:

Part of the process the Nevada Tax Commission will have to go through for regulatory process is to take that under consideration. If the Tax Commission determines a particular entity violated inadvertently, I doubt there would be any penalty.

CHAIR AMODEI:

Are they staffed with deputies from the Attorney General's Office?

MR. DiCIANNO:

That is correct.

FERNANDO ROMERO (President, Hispanics in Politics):

I love the United States Constitution and attempt to uphold it. I am a second-generation Mexican American and a resident of Clark County for 40 years. The first words in the first reprint of A.B. 383 are "an act relating to immigration." Until this moment, I thought immigration was a federal issue. In today's *Las Vegas Review-Journal*, U.S. Senator Harry Reid said the United States Senate would begin hearings on immigration matters tomorrow.

It saddens me to know we are, in essence, placing Nevada in harms way in violation of the United States Constitution and costing taxpayers court, lawyer and other fees because people like me would probably file lawsuits against this particular law in the future. It also saddens me that the term illegal alien is still being used when it should be undocumented immigrant. Illegal alien is

a derogatory term. A person is not illegal until found guilty of a crime. Undocumented immigrant is a more precise term.

I do not want sections 3, 4 and 5 of A.B. 383, which were added after the bill was submitted. This bill will violate the rights of businessmen and women as well as employees in Nevada. In June 2006, I attended a press conference where a number of hotel chief executive officers (CEO) and the union were present. One of the CEOs stated that 47 percent of his personnel were probably undocumented. How would section 10, subsection 3, paragraph (a) of A.B. 383 be applied to not only that particular property but all other properties within Clark County and Nevada?

Hispanics in Politics is opposed to A.B. 383 and ask it not be considered. If it is considered, the Committee is requested to vote against it.

GARY PECK (Executive Director, American Civil Liberties Union of Nevada):

I, as well as the American Civil Liberties Union of Nevada, am opposed to A.B. 383 for many of the same reasons mentioned by Mr. Romero. I do not question the motives or good intentions of either the sponsors of the bill or anyone who believes they should support it because it makes good policy. The fact of the matter is that immigration and immigration law are properly federal issues and should remain as such. A debate is about to ensue in The United States Congress in an effort to tackle this difficult matter. It seems ill advised to push forward with A.B. 383 at this time.

Section 10 of A.B. 383 does not answer a basic question. The language is vague and leaves decisions to the discretion of the Tax Commission regarding who would be fined and whose license would be rescinded. Forgive me for saying this, but major developers or major gaming properties will not be subject either to penalties or rescission of licenses under this law. The law will not be enforced in an evenhanded way which will cause serious, equal protection problems. It will be used to go after least politically powerful businesses that are most vulnerable, and workers will suffer who are likewise least powerful and probably not organized or covered by collective bargaining agreements. That much is clear.

As a result, people will be discouraged from hiring people with Latino and other ethnic surnames. It will also inadvertently open the door for local law enforcement, which has heretofore refrained from getting into the business of

enforcing federal immigration laws. Law enforcement will look at the business of the Legislature and say, "It looks like Nevada is getting into this business. Perhaps we ought to get into the same business as well."

Assembly Bill 383 is a bad idea that will not solve any problems. It includes vague language subject to abuse in a constitutionally impermissible way. Nevada would be well advised to leave it to the federal government to complete its deliberations and debate and make decisions as to how to properly enforce the federal immigration laws. We are operating in a political climate that includes some unfortunate aspects. I hope this Committee sees fit to do the right and smart thing as a matter of public policy and lawmaking.

CHAIR AMODEI:

With respect to the testimony of Mr. Romero and yourself, I do not recall you indicating anything in section 1 of A.B. 383 that talks about transportation, involuntary servitude and so forth. Should your testimony be categorized to oppose that part of the bill?

MR. ROMERO:

The Attorney General referred to a number of people being picked up at the airport as undocumented immigrants. Every one of those individuals was Hispanic. A few weeks ago, in regard to the "down house" matter, newspaper accounts indicated those individuals were Asian. These are recent matters the federal government should consider and we should leave alone.

CHAIR AMODEI:

Are you saying Nevada should not have a crime on the books making it illegal for a person to transport, procure transportation or assist in the transportation or procurement of another person into Nevada who he knows, or has reason to know, does not have legal right to enter or remain in the United States with the intent to subject that person to involuntary servitude? Does your testimony indicate we leave it to the federal government?

MR. ROMERO:

With all due respect, you are putting words in my mouth. I said the first words in A.B. 383 are "an act relating to immigration." That part should be left out. If you want to include the rest within an Assembly bill, please include it. I am asking you to amend it to eliminate "an act relating to immigration" and, in that

particular case, omit sections 6 and 10. I agree with sections 1, 3, 4 and 5 of A.B. 383.

MR. PECK:

I echo the sentiments of Mr. Romero. To the extent Nevada wants to deal with the procurement of people for the purposes of involuntary servitude, pass a law that says it is illegal to transport people for purposes of involuntary servitude.

CHAIR AMODEI:

With respect to section 10 of A.B. 383, are you familiar with the process the U.S. Attorney General goes through under 8 USC, section 1324a?

MR. PECK:

I am somewhat familiar with it, but I would not claim to be an expert. I understand the predicate is a finding by the federal government, but it does not eliminate the problems that exist in the language. You have not received a straight answer to questions regarding section 10, subsection 3, paragraphs (a) and (b) of A.B. 383, particularly language like flagrantly or otherwise egregiously. The answer to the question about an inadvertent violation made no sense whatsoever. The answer was, "If it is inadvertent, no one will be fined." If that is the case, why is the provision there?

CHAIR AMODEI:

Mr. Wilkinson, please provide the members of the Committee that provision of the United States Code.

RAY BACON (Nevada Manufacturers Association):

I am not opposed to A.B. 383; however, there was a contact from my counterpart in California regarding a case with the federal Basic Pilot program for immigration compliance where an illegal immigrant managed to acquire a legitimate social security number, address and so forth from a funeral home. He passed through the Basic Pilot program as legitimate when he was not.

The Basic Pilot program has had many errors on the other side, but that is the first time a person was declared legal when they were not. When that happens, employers should be held harmless because they took a legitimate source and received a bad answer. I agree with the trafficking parts of the bill.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood):

I would like to set the record straight. The U.S. Congress passed a bill a few years ago that would enable me to shut down one of these guys. It is called the civil RICO statute. If I know somebody is employing illegal immigrants, I can have them fined and make the money. If somebody robs a federal bank, local law enforcement can stop them. Therefore, this division between state and federal governments in enforcement of the law does not meet the common sense test.

I am in favor of A.B. 383, particularly section 10 because it will eliminate the magnet. These people come to the United States not just to go on welfare—although many do; they come to make 10 to 20 times the money they can make in Mexico, live well and send the balance home. This is a huge magnet and many employers hire illegal immigrants. Meat packers in Nebraska outrageously and blatantly hired illegal immigrants. The federal government raided Swift and Company meat plants in six different states and the illegal immigrants were replaced immediately. Unskilled immigrants are taking jobs away from unskilled Americans.

This great bill serves a marvelous purpose. Other countries require a visa stamp that says a person is admitted to the United Kingdom for six months, Tanzania for two weeks or Singapore for three weeks. Other countries control their borders and if a person driving a car does not have a driver's license, they must show proof they are British, Tanzanian or Singaporean or they are off to the pokey.

The United States federal government has failed to enforce immigration laws, and it is costing people on the lower end of the education strata. People in the U.S. Senate, such as Nebraska Senator Chuck Hagel, are aware of the employment of illegal immigrants and just go along with it. Nevada has to do something and A.B. 383 is a great response. Legislative Counsel can tell you we are not prohibited from taking action against an employer in Nevada who violates federal law.

LYNN CHAPMAN (Nevada Eagle Forum):

Eagle Forum has nationally been behind this type of legislation. We are against human trafficking. Phyllis Schlafly brought top speakers to the national Eagle Council to speak on this type of thing. Human trafficking is a terrible thing and we support A.B. 383.

American and Nevada citizens have been shouting and waving their arms for attention. The Nevada Assembly listened and stepped up to the plate by passing A.B. 383. We are asking the Senate to also pass A.B. 383 to stop human trafficking.

JOHN L. WAGNER (The Burke Consortium):

We favor A.B. 383. Human trafficking is one of the worst things that can happen. It happens worldwide. What do I do about it personally? I donate money to a Christian mission in India that helps young girls who are being trafficked by giving them homes to prevent them from going into prostitution. Most victims of human trafficking are women and children.

Insofar as A.B. 383 is concerned, it says an act relating to immigration. I pored through it briefly and I did not see the word immigration until I got to section 13, which has been in the NRS for a long time. It says "immigration to this State of all slaves." This must date back to slavery days.

What is immigration to the state? I immigrated to the state from California as did many others. I do not see anything that says immigration from any particular county, city or nation. I do not see where it has anything to do with any race of people. Assembly Bill 383 talks basically about human trafficking and codifying the law for penalties and so forth. Those who equate this to race in any way, shape or form are off base.

JANINE HANSEN (Independent American Party):

Assembly Bill 383 is about preventing exploitation. The first sentence of the preamble says it is to stop modern day slavery. We know Nevada and other states have the right to do that. If someone is convicted under the Tax Commission, through the Administrative Procedure Act, they have the right to appeal with due process. Administrative procedures always deny the right to trial by jury.

The Independent American Party supports A.B. 383. What we call the twenty-first century slave trade is a huge, well-organized business. The placement of immigrant workers into the United States workforce has become pervasive among lower tiers of employment. Hundreds of thousands, perhaps millions of workers are funneled into low-paying jobs completely off the books with no tax reporting.

There is an organization called "March for Justice" in honor of David March, a policeman who was murdered by an illegal alien who had been through the revolving door three times in the United States. He committed crimes and returned to Mexico. Page 4, line 17 of A.B. 383 in regard to adding a habitual criminal is important. Steve Spernak, who headed the March for Justice, said:

Where do you think the cartels get their money in Mexico? They sell their drugs and their human slaves to Americans who want an illegal buzz or cheap labor. They get rich selling drugs in the school yards and below minimum wage slaves to companies that don't want to pay employment taxes. They take that money and buy protection with the gang thugs, like Garcia, who is the one that killed the police officer, David March. The drugs coming into the United States are sold through the gangs, the transportation is safeguarded by the gangs and the sales are facilitated by the gangs. This is a lucrative and thriving business.

We hope you will support A.B. 383 which is about protecting people from exploitation. We do not believe in modern day slave trade just as we do not believe the previous slave trade in this country was right. It is not right to exploit people who cannot protect themselves. We need to step forward and protect them. Many of these people brought over the border by coyotes have died in the desert. We have every right in Nevada to do it. This is a state issue.

FRANK JOHNSTON:

There are three major problems. The first is identifying the people. A social security card has two components, a number and a name. Banks ask for a second piece of identification, perhaps with a photograph or a previous year's tax return. People use social security numbers that do not belong to them as well as trading social security numbers.

The second problem is limiting it to employers. Others benefit from the use of these people, such as labor contractors. Labor contractors provide a group of people to work for a company and they are responsible for saying these people are citizens; nobody checks and it ends there.

The third problem is illegal immigrants send money back to their countries and nothing is checked by financial institutions. They make huge profits on the

money, and there is no check. Putting the onus on employers is good, but other steps need to be taken as well.

CHAIR AMODEI:

The hearing is closed on A.B. 383 and opened on Justice Reinvestment ([Exhibit D](#), original is on file in the Research Library).

CHERYLN K. TOWNSEND (Director, Juvenile Justice Services, Clark County):

We conferred with Senators Horsford and Wiener and they would like us to emphasize a couple of policy issues. The first proposed conceptual amendment concerns juvenile justice and focuses on implementation of evidence-based programs in a continuum sanction for children that mirrors recommendations made for the criminal justice system.

The second policy issue considers whether the Legislature, when it invests new resources in the adult criminal justice system, also invests a proportional amount of money in the juvenile justice system. This addresses growth and reinvestment for underlying issues that contribute to criminal justice costs.

CHAIR AMODEI:

Is the investment to which you are referring programming for adults?

MS. TOWNSEND:

Yes. Under the Community Corrections Partnership Block Grant, we have had that kind of investment from the state since 1998. The original funding actually decreased 9.2 percent while the youth population increased 47 percent. The other is to reinvest in demonstration projects that contribute to the costs.

CHAIR AMODEI:

To what do you attribute the shrinkage in funds?

MS. TOWNSEND:

I have no explanation.

MICHAEL POMI (Director, Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators):

We support the proposed legislation. We testified before this Committee regarding evidence-based practice, and I spoke about a change being traded out in June at the China Springs Youth Camp/Aurora Pines Girls Facility.

Officer Ray Johnson was here from adult parole and probation and asked how to get involved. Adult probation and parole will be trained on evidence-based practice in June, and this practice will be implemented. This body once again showed leadership in Nevada in turning around the populations in both the adult and juvenile systems. It is a strong collaboration and the support given by this body has provided the ability to change policy and procedure. It will impact both systems down the road and the outcomes will be demonstrated to this body in two years.

SENATOR WASHINGTON:

Although I have no opposition to the proposed amendment, I have concerns. There should be a way to evaluate the evidence-based programs and report back to this body to ensure they are working according to design and decreasing the number of juveniles under probation. Would you be opposed to amending the amendment to provide an evaluation with a report to be returned to this Committee or an interim committee to verify the program?

MR. POMI:

The programs establish basic outcome criteria which are part of the evidence-based practice and available to the Committee. We suggest it be done in the interim to update you as quickly as possible as such programs are implemented.

SENATOR WASHINGTON:

I know they are available, but I would be more comfortable if it is not happenstance or overlooked. If it is in statute, we would know those reports are coming to us annually or biennially.

MR. POMI:

We support you on that.

SCOTT J. SHICK (Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County):

Rural jurisdictions are aligned with the amendment and feel strongly about alternative and evidence-based programs which are assigned and implemented differently based on logistics and population. We are on board with it and request strong consideration of the Community Corrections Partnership Block Grant, which is a resource for agencies in rural communities.

SENATOR WIENER:

Are you taking steps in working through the money committees in both Houses to address concerns in terms of policy? Where does it go from here on proportional funding?

MR. POMI:

Fernando Serrano, Administrator, Division of Child and Family Services, is here to answer specific questions from the state perspective.

CHAIR AMODEI:

The money committees requested policy input. Wednesday we may either submit amendments to germane bills to accomplish the policy side or a memorandum or amendment saying what the policy should be in these areas as well as the specific fiscal realities and implications. It is important to do it because the money committees will not. When it gets down to the end, things will shift without a lot of record; therefore, we will attempt to provide something in the record. If it is ignored, the question will logically come up, "What was your basis for ignoring this?"

SENATOR WIENER:

I want to be sure proportional funding does not get lost and the whole package is attained.

CHAIR AMODEI:

The reality is—it is all connected to the money. You cannot move people out of corrections quicker without providing the tools to deal with it effectively. All entities are linked.

SENATOR WASHINGTON:

In regard to policy issues, the Senate Committee on Transportation and Homeland Security, the Senate Committee on Judiciary and the Senate Committee on Human Resources and Education are linked with appropriations, funding and revenue. The chairs of those committees either miss opportunities or get lost in developing policy not realizing or having the information to provide appropriations to the appropriate policies. It is a frustrating process because we develop policies and hope the money committees provide the revenue to support those policies.

CHAIR AMODEI:

Mr. Wilkinson, please coordinate with Senator Washington's committee to ascertain whether those policies are appropriately germane.

FERNANDO SERRANO (Administrator, Division of Child and Family Services, Department of Health and Human Services):

It appears the discussion is twofold—policy and budget. On the policy side, the Division of Child and Family Services and the state support evidence-based programs and continuum of sanctions. The state passes a number of federal pass-through grants and looks for evidence-based programs which lead to a continuum of sanctions when approving that pass-through funding.

In terms of budget, an increase in the Community Corrections Partnership Block Grant was one of our funding priorities; however, there were not enough funds to cover all our priorities, specifically, child welfare in Clark County. Most funds went to issues surrounding child haven, foster care recruitment, retention, social workers in Clark and Washoe Counties and supervised increase in foster care caseloads.

THE HONORABLE JAMES W. HARDESTY (Associate Justice, Nevada Supreme Court):
Why did you want us here, Senator Amodei?

CHAIR AMODEI:

We are attempting to get a global view of the justice reinvestment issue. This Committee has been tasked by the money committees to set forth specific policy recommendations in the areas of crime, punishment, treatment and so forth. We want to have on record all individuals from the juvenile system through the adult system, parole and probation and corrections. We did not want the judiciary to think with respect to whether it was the treatment aspects of the drug courts when we talk about trying to minimize prison population in a policy sense.

JUSTICE HARDESTY:

I sent a number of changes to Senate Fiscal Analyst Gary L. Ghiggeri, Audit Division, Legislative Counsel Bureau and others that outlined suggestions for revising a number of statutes to deal with this Legislative Session and address in the next few months. It is our view that the Advisory Commission on Sentencing needs to be seriously revamped, retooled and recharged, which is the subject of Assembly Bill 508. The Advisory Commission on Sentencing

needs to be charged with a number of issues that would completely review the criminal justice system, mandatory sentencing and so forth.

ASSEMBLY BILL 508 (1st Reprint): Makes various changes to provisions concerning the Advisory Commission on Sentencing. (BDR 14-1378)

We proposed addressing prison overcrowding issues. A white paper was provided in which extensive comments were shared with Mr. Ghiggeri. I assume copies have been provided to Committee members. One component of the white paper was to change the statutes allowing good time credits to be afforded inmates in order to develop the release program to address current overcrowding problems. The prison system estimated if good time credits were applied retroactively to 1997, the current prison population could be reduced by approximately 1,600 inmates. It might not be the best policy. It may be better served by making the retroactive one minimum, rather than minimums and maximums, which would allow inmates to make application to the State Board of Parole Commissioners. Their right to seek parole would be accelerated and allow the Parole Board to screen inmates for release. They would work with specialty courts and the Division of Parole and Probation to attain a responsible and careful approach to releasing inmates. They would determine which inmates are prepared to enter society and how release would be staged.

We suggested the Committee peruse specialty courts and indicated the prison reentry drug court statutes are not working. I offered amendments to Chapters 209 and 218 of *Nevada Revised Statutes* (NRS). I trust you have those statutes and the recommended changes.

JUSTICE HARDESTY:

We suggested amending the residential confinement statutes. Less than 100 inmates are currently on residential confinement in Nevada. This is way too low and due in large part to the fact that elements in the statutes do not allow for consideration of the release of people who could otherwise be released. There are not enough probation officers to supervise them or programs for them when they are released.

Finally, we urged you to consider savings that can be generated in the prison budget and redirected to specialty court programs. However, specialty court programs are at maximum strength at this time. Senior District Judge Peter I. Breen can share with you some of the issues they are facing.

Clearly, as part of the white paper, we need to address retooling of specialty courts. It is not as simple as taking a group of inmates, moving them from the prison system and putting them in specialty courts. We need court clerks, bailiffs, judges, personnel and infrastructure to handle it. It is cheaper to do it that way, but those needs should still be addressed.

Senator Raggio suggested setting aside funds in the Interim Finance Committee for transition over the course of the summer. Practical considerations can be addressed by Carlos Brandenburg, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services. Before release from prison, inmates need to be screened to make sure they are amenable to treatment and the specialty courts can adequately supervise and care for them.

We also offered special programs. When a person is technically violated and sent to prison, rather than have them do the full minimum term, shorten the period to four, five or six months. They will get a taste of prison and then be allowed to reapply to specialty court. The program will receive them back since they now have the inmate's attention. The programs will work to substantially reduce and address prison overcrowding. They require careful communication and relationships between the specialty court, the Division of Parole and Probation and the Department of Corrections.

PETER I. BREEN (Senior District Judge, Administrative Office of the Courts, Nevada Supreme Court):

I will provide historical perspective to the issue of prison reentry drug court. Five or six years ago, former District Judge Mills Lane and I took offenders into our specialty courts over a period of a year and a half as the result of a federal grant. It worked well and was the most successful component of the drug courts. The clients were monitored, structured, given attention and followed in regard to being rearrested, charged with a felony and returned to prison. At that time, drug courts were smaller and able to be absorbed with no changes or funds other than those for treatment.

Today, drug courts are at capacity. The county supplies clerks, integrated case managers and so forth. Committees screened applicants and they flowed into the drug courts; then the grant ran out and the flow slowed to a trickle. Currently, 15 drug courts in northern Nevada and 20 in Clark County are financed from A.B. No. 29 of the 72nd Session funds; in some cases, clients

paid their own way. We have the experience and ability to handle clients, but drug courts can only take a few more.

Success depends on handling drug addicts and monitoring them carefully. They must be helped to get a job, find housing and place themselves in a safe environment. They cannot be sent back to the streets, which is the reason 80 percent of them return to prison across the nation over a period of time. We do not have the infrastructure to support a large number of people.

Years ago, we knew prison reentry would work and wanted to try it. We took what we could get for new programs. Now, the population is limited. Changes are needed to enable us to go after available populations.

Screening committees look at the people who have a chance to be successful. We have the experience to choose those individuals who need further development.

THE HONORABLE A. WILLIAM MAUPIN (Chief Justice, Nevada Supreme Court):
We have been attempting to reassess the current status of specialty court programs since formulating the Court's budget last summer. After receiving information from Judges Peter I. Breen, Andrew Puccinelli, Archie E. Blake, and Jackie Glass, a budget was formulated in which, in addition to administrative assessment money, General Fund supplementation was requested. The budget closing process reached the point to request changes in the funding mechanism for specialty courts. The budget was closed by the Joint Committee on Government Affairs with a primary additional component of non-specialty court assessments to supplement that budget.

We have been looking and reassessing specialty court programs since last August. Our first interactions with the budget committees provided an opportunity to look at the substantive abilities of the specialty courts. The Legislature has globally addressed the issue, along with all other calls on the General Fund throughout this session. The stress on the General Fund caused an important reexamination of public policy with regard to the state prison system as well as all other issues, including highways, education and so forth.

We are here to talk about the global problem of the prison system. We come to you with a prison system that contains 1,200 more inmates than budgeted for in terms of physical plant. The Legislature must deal with it in some way. The

prison will tell you the problem cannot be dealt with entirely with specialty courts; therefore, we must take a global approach. We also must take a global approach to the criminal justice system. Issues about the severity of mandatory sentences are not reaching public policy considerations that the sentencing structures were originally designed to achieve.

An example is our severe trafficking laws. This behavior needs to be stopped in Nevada. We are not catching notorious drug traffickers. It does no good to fine or imprison an individual for 15 years who is enticed or intimidated into carrying a bag of drugs into the state by bus and intercepted in Winnemucca, Lovelock or Elko before they get to their destination. That is not the way to solve the problem.

There are two major solutions to the prison population. One is incarceration, which is a major call on the state budget. There is also the specialty court infrastructure in place. Both are stressed to the maximum at this point. How do we address reallocation of state resources to these programs? Let me assure you, specialty court programs are cheaper to operate and have proven more effective, which is the reason The National Council of State Governments asked several chief justices around the country, including myself, to form a chief justice task force on mental health courts.

CHIEF JUSTICE MAUPIN:

When I first heard about the program, I was skeptical. I thought we needed to provide housing for these people and all other things were temporary measures that worked as long as the individuals were in the program. I formed the task force, listened to the stakeholders and went to a national conference for the Chief Justices' Criminal Justice/Mental Health Leadership Initiative at The Council of State Governments Justice Center. I discovered mental health courts around the country have become well recognized in not only temporary success but permanent success as well.

I also learned the statistical needs and the fact that people in mental health courts stay in prison longer than other inmates due to compliance issues. These individuals utilize all forms of government resources when they are not in the prison setting; overconditioning them in regard to probation or parole with which they cannot comply is a recipe for failure. Senior District Judge Breen is talking about a recipe for success. I am convinced the specialty court issue with regard to mental health court addresses not only mental health issues but co-occurring

disorders. Statistical information around the country indicates they work permanently if done appropriately.

We ask the Legislature to look at the fundamental policy question of where to apply General Fund resources. I understand how difficult it is to get a handle on the best public policy. As a citizen, I say 120 days is not long enough for the Legislature to get a specific handle on many issues. We are now in crunch time with three weeks left in the Legislative Session; I know you will do your best. We are at a new starting point and believe specialty court concepts will be a major contributor in not only achieving a successful outcome for individuals but a successful financial outcome for the people of Nevada.

JUSTICE HARDESTY:

The Nevada Supreme Court budget request was \$5.2 million for specialty court funding out of the General Fund; we received \$1 million, which was disappointing. We will do our best with the resources received compared to what was requested and the demand, which is \$30 million.

District courts in Nevada can give you numerous examples of circumstances in which mandatory sentencing laws should have been deviated. It makes no sense to sentence a young man to 10 to 25 years in Nevada State Prison who was paid \$150 to drive a car from Sacramento to Utah, got pulled over for a broken taillight and consented to a trooper searching the vehicle who then found a trafficking level quantity of drugs in the trunk. Our statutes do not permit the district attorney to deal that case or the judge to deviate it. We propose authority from this body to allow judges to deviate on mandatory sentencing cases with findings and allow those findings to be appealed to the Nevada Supreme Court in appropriate circumstances.

CHAIR AMODEI:

The key part is findings. Mandatory sentencing resulted from people who told stories of individuals who received sweet deals. Discretion is good as long as it is used communicatively to balance the sentence. There is no resistance to returning some discretion, but it also requires deviation from the previous historical practice. I do not envy the job and would never aspire to it. When those decisions are made, there must be ample record with specific findings that, in many cases, we may want to put in statute. In that event, should someone have a complaint, it can be proven communication took place.

JUSTICE HARDESTY:

Before suggesting discretion, I met with representatives of the Nevada District Attorneys Association and Nevada Sheriffs' and Chiefs' Association and they understand the proposal; R. Ben Graham and Kristin L. Erickson were present in the meeting. I understand they can live with appropriate findings required in the statute and the ability to have it reviewed on appeal.

Doing it now would allow the Advisory Commission on Sentencing to test it over the next two years. I do not mean to imply we are in a laboratory, but to a degree we are. It would allow us to compare what the sentencing would have been in some circumstances versus how the sentencing turned out with special findings. It would allow the Legislature to have facts to deal with rather than conjecture and speculation of individuals. Many people can give opinions, but we need facts with which to work. This gives the opportunity to do that, along with the Advisory Commission on Sentencing.

SENATOR WASHINGTON:

I was here when the sentencing structure was refurbished. Discretion afforded the court was somewhat ambiguous and of concern because there was no balance. It was not the intent of the Legislature to take away discretion but to provide balance so victims knew the process and procedure that would take place based on the crimes against them. I am not opposed to dealing with lower level crimes, Categories C, D and E. I agree the major drug trafficker penalties should be stiffer; however, a person crossing state lines carrying small quantities of drugs is a different situation.

I am concerned about backlog in dealing with restructuring good time credits in regard to successful drug completion programs to diminish the prison population. If specialty courts have \$1 million, what will the Division of Parole and Probation request for supervision of released parolees? How do we balance the ongoing demand? I agree that \$1 million is not enough for specialty courts, particularly with the addition of the mental health courts instituted a couple of Legislative Sessions back. How do we balance fiscal responsibility with ongoing demands of overarching requirements we are trying to develop, not only for justice but for incarceration, parole and probation and so forth. As a Legislator, I am at a loss.

JUSTICE HARDESTY:

I have a suggestion. The Department of Corrections indicated giving retroactive, good time credits back to 1997 would immediately release approximately 1,600 inmates. Is that the best policy? Probably not. It would be wiser to screen those people to determine how best to deal with them. Be mindful that only people who earned good time credits and performed well in prison would be considered. The question would be whether some of them should be released under supervision. The Division of Parole and Probation, working with specialty courts and the State Board of Parole Commissioners, can identify those people for a timed release. The system is not in a position to deal with the immediate release of 1,600 people.

Some people could be released and not be a threat to society, but they would first need to be screened. The Department of Corrections would not release people who are a public threat; they would release those who should be released. Individuals with addiction and mental health problems would be screened by professionals who perform this work, and they would supervise released inmates on a staged program.

You have a starting point because the Department of Corrections identified 1,600 inmates who could be the subject of this particular program. The question is how to approach that group and allow them to be supervised or released under that kind of system. That is the back end. The front end deals with the sentencing question, which is a separate issue. My proposal is—do not give judges unfettered rights to disregard sentencing statutes—to require special findings for deviation. You could provide a category of areas for those findings.

SENATOR WASHINGTON:

Do specialty courts deal with prerelease reports from the Department of Corrections to ascertain which inmates are released?

SENIOR DISTRICT JUDGE BREEN:

People in the drug courts confer with prison authorities to decide who is eligible for release. Federal grant money ran out which slowed the flow to a trickle. It was not picked up by the state and now would be a good time to do it.

I would like to seal the records of individuals on probation in specialty court and some people who graduated from mental health court; however, the former cannot be done at this time and the latter cannot be done in domestic violence

cases. Discretion would benefit specialty court judges. If a person runs the gauntlet of drug court, which takes 18 months to 2 years, I would like to provide them the opportunity to have their record sealed as well as a person who has not been convicted. Judges do not currently have that ability.

SENATOR CARE:

The Committee sees several bills every Legislative Session that create a new crime, which are Category B felonies. The question is why is it a Category B felony? This is my fifth regular session and I have been here long enough to observe what I term "felony creep"—Category D becomes Category C, Category C becomes Category B and so forth. Do judges discuss "felony creep"?

JUSTICE HARDESTY:

Yes, we do. The Advisory Commission on Sentencing was structured approximately 10 or 12 years ago but has not met in the last 6 years. Is it any wonder Senators and Assemblymen in this Legislative Session are left holding the bag trying to sort it all out without receiving advice from the Advisory Commission on Sentencing?

I testified on February 13 before the Assembly Select Committee on Corrections, Parole and Probation and urged them to retool the Advisory Commission on Sentencing, charge it with responsibilities that would benefit the Legislature on all issues, require the Commission to be impaneled by May 1 and call a special session of the Legislature by September to deal with the recommendations.

Everybody freaks when they hear the term special session, but these issues are enormously important. There will be no capacity in the women's prison by August 1; there will be no capacity in the prison system by November. Is that urgent enough? I think it is.

Range of sentences imposed has not been studied for at least six years. There is no competent evaluation of what kinds of range of sentences should be imposed. The Advisory Commission on Sentencing was designed to accomplish that and it needs to "get it on," to quote a famous predecessor.

CHIEF JUSTICE MAUPIN:

The truth-in-sentencing law was passed in 1995. Nevada judges were concerned regarding how long an inmate would be incarcerated and wanted a fixed period as to when they would be released. There was also concern about episodic reporting of judges having to enforce the Fourth Amendment of the U.S. Constitution. People thought defendants were released on technical grounds. As District Judge Lee A. Gates so eloquently said several years ago during a judicial campaign, "The Fourth Amendment of the United States Constitution is not a technicality." That was not the perception; there was concern judges were not exercising discretion in favor of public safety.

Since the truth-in-sentencing law came into being, 12 years of empirical experience shows us that Nevada judges have behaved responsibly in exercising their discretion. Judges are better trained and more cognizant of public safety issues. Judges' interaction with the public during election cycles provides them information to ascertain what is expected by people in the communities and the state.

District court judges have annual meetings at which the issue of judicial discretion and problem of severity of sentences are addressed and discussed at length. There are many resources to reassess the issue on which we can draw.

What do we do in the short and long run to deal with the crisis Justice Hardesty has evaluated? In the short run, there needs to be an assessment and triage of inmates who could be ready for release. This can be done with existing resources in specialty courts. Processes are in place to properly evaluate individuals placed in the program; however, those programs are now at maximum. With the concept in place, it is not a question of addressing more resources in the short run. It can be done in specialty courts this Legislative Session. A mid-range approach can be taken by holding money out for the Interim Finance Committee.

In the long run, the problems can be studied with the Advisory Commission on Sentencing and information gleaned from judges in the next two years to address the issue in the 2009 Legislative Session. We also need to train police, social workers and parole and probation officers in the concepts in order to deal with it at the back end in prison as well as at the beginning in the community when the police interact with these people. The court system should interact with the prison system which should interact with parole and probation. We

Senate Committee on Judiciary
May 14, 2007
Page 29

must take a broader approach that includes mental health programs. My recent experience with the Chief Justices' Criminal Justice/Mental Health Leadership Initiative taught me that drug and mental health courts should be expanded to include a prison reentry and probation court to address the issues.

CHAIR AMODEI:

There being no further business to come before the Committee, the hearing is adjourned at 11:28 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____