

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 16, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:47 a.m. on Wednesday, May 16, 2007, in Room 2149 of the Legislative Building, Carson City, 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
Senator Steven A. Horsford

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Howard Skolnik, Director, Carson City, Department of Corrections
Frederick Schlottman, Administrator, Offender Management Division,
Carson City, Department of Corrections
Kathy A. Hardcastle, District Judge, Department 4, Eighth Judicial District

CHAIR AMODEI:

I will open the hearing with comments from the Department of Corrections.

HOWARD SKOLNIK (Director, Carson City, Department of Corrections):

I would like to introduce, Don W. Helling, Deputy Director, Correctional Programs, and Brian W. Connett, Deputy Director, Industrial Programs. I will start with the JFA Institute's projections and recidivism report on Justice Reinvestment by the Council of State Governments Justice Center ([Exhibit C](#), original is on file in the Research Library). We have come to our present situation of overcrowding due to projections over the last 10 to 20 years. New projections were done two months ago and our prison population is already at the projected September level. Projections continue to underestimate the growth of the Department of Corrections based on current statutes.

There are ways to address this problem, but the discussed solutions tend to impact our minimum security camp beds. It does not affect our medium or maximum security beds, and this is where most of our construction programs are being targeted.

Reducing the population is important, but we need more impact on the front line. Help in this area may come from the Advisory Commission on Sentencing (ACOS). If we start at the rear of our system by increasing good time credits, it will take three to four years to see a reduction in numbers. Anything that is not retroactive will not affect us for the short term. Retroactively, you either include the population in its entirety or take a look at the sentencing laws in order to separate time credits based on the category of felony.

The danger in doing this is that many inmates are coming into the system for a crime not represented by the category of felony they initially came in under because of plea bargaining. For example, JFA recommended that all Category E felonies be placed on probation. Some felons are more serious offenders than others who have prior offenses being addressed under the current court system.

A bill is coming from the ACOS and the impact it will have on sentencing, probation and diversionary programs needs to be examined. Recidivism has been defined as a return to the Department of Corrections within three years of release. Our current numbers for recidivism are the best in the country at a rate of 25 percent to 30 percent.

FREDERICK SCHLOTTMAN (Administrator, Offender Management Division, Carson City, Department of Corrections):

Some of the strategies to be considered involve fine-tuning the credit system and our programming. The objective in corrections is to reward people for taking positive steps. We have one-shot credits where an inmate may go through anger management which equals up to 15 days off their sentence. A consideration may be a tiered approach. Currently, we have one system where you get ten days per month toward good time.

If the inmate is making progress in the tiered program, you can build incentives. As you project out the prison populations, you can address some of the long-term implications. If the inmate engages in the program on an ongoing basis, they will be rewarded by an earlier release.

It is hard to project who will be released based on not knowing who will take advantage of this program.

CHAIR AMODEI:

The ACOS has been discussed. For purposes of the budget cycle, what fiscal impact will good time credits have on the capital improvement schedule?

MR. SKOLNIK:

The impact will be small. We have already exceeded our inmate capacity by 1,300 inmates and all of our modular units are filled. Retroactively across the board from 1997, we are looking at 1,600 inmates being released. By the end of the biennium, we will fill those modular units with the intake of more inmates. We will be back in two years indicating the same situation unless something is done.

CHAIR AMODEI:

What is your best advice?

MR. SKOLNIK:

The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court, made a proposal on applying time credits to the minimum sentence. This moves everyone up to the State Board of Parole Commissioners sooner and will provide the safety net to the community. The proposal will affect the lower classes of offenses but remove individuals from the system while providing a safety net from the violent offender we do not want in the communities.

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An approach of across-the-board time credits is to have a huge impact on the other end of this system. You are releasing 1,600 inmates by July 1, and all the community organizations that assist inmates are going to be overwhelmed. We have to let them go because their time is up. It is not a parole situation, it is a discharge situation. This is a policy decision, I am pleased to say, I do not have to make.

SENATOR WASHINGTON:

If good time credits become retroactive, what is the actual caseload going before the State Board of Parole Commissioners?

MR. SKOLNIK:

I do not have that information available. It would depend on how far back you went, retroactively; July 1, 2006, may possibly be a starting point.

SENATOR WASHINGTON:

Could you give us those numbers for 2006 and 2005, possibly going back to 2004? How many hearings does the Parole Board perform currently?

MR. SCHLOTTMAN:

The Parole Board releases approximately 3,200 inmates per year on parole and they have paroles to consecutive sentences. Therefore, it is approximately 280 hearings per month.

SENATOR WASHINGTON:

These are just hearings, correct?

MR. SCHLOTTMAN:

Yes.

SENATOR WASHINGTON:

In previous sessions, we dealt with the Division of Parole and Probation having tremendous caseloads; therefore, we need to know the impact on retroactivity and its effect on the Parole Board as well. Do they have the manpower to handle the added caseloads? Inmates should not be released if there is not enough manpower to deal with the situation.

MR. SCHLOTTMAN:

If the sentence credits are provided retroactively, you would be in a discharge situation. If it is on the front and back end of the sentence, it would probably be a wash for the Division of Parole and Probation.

SENATOR HORSFORD:

I have some questions on your earlier statements about the total number of inmates who could be released. You indicate multiple approaches could be applied. Which ones do you recommend or have analyzed to yield the best results for inmates successfully reentering communities while giving the system the flexibility it needs?

MR. SKOLNIK:

The best approach is to increase the amount of time earned for programming as a primary vehicle. Most of our inmates engage in some form of programming.

Today, inmates working in prison industries are not earning program credits off their sentences; they are earning work credits but nothing for the fact they are learning a trade. An expansion on this would have the best and safest impact for the community.

Anything across the board is going to result in the release of inmates who have a history of violence or sex offenses; there is no way around it. They are there and they are going to get good time credits. Anyone having a maximum sentence will have credits applied to that maximum, and it will reduce the sentence. They will come out as discharged and will not be under any supervision.

I would not recommend this as an approach for the safety of the community. It is a good approach for the safety of our staff by reducing the population, but what is the cost? I do not see a simple solution for the coming biennium. What needs to be done is to review what we are doing in criminal justice and determine if we want to keep building prisons or whether we want to do other programming to divert people from prison.

CHAIR AMODEI:

Is your definition of a thoughtful systemic approach the ACOS?

MR. SKOLNIK:

It seems to be the best body to do this, although I have concerns about a 16-member body effectively getting anything done in 2 years.

SENATOR HORSFORD:

Part of your testimony is forward-looking for the 1,600 inmates who could be released based on retroactive good time credits. What options do we have with this group and what is the time line if the law was passed for retroactive good time credits? How quickly would they move?

MR. SKOLNIK:

If we were to retroactive credits back to 1997, we would release approximately 1,600 inmates. Unless a schedule was provided to us, we would release all of them on the day the law becomes effective. This would be a nightmare unless other language was provided in the law for scheduling.

It could be done by class of felony. The unofficial word from the Office of the Attorney General says that you would have to look at the sentencing laws as well to incorporate a combination of changes to allow for differentiation on the application of time credits.

SENATOR HORSFORD:

Of the 1,600 inmates, how many are on parole and how many are on probation?

MR. SCHLOTTMAN:

All 1,600 would be from the Department of Corrections, and approximately 2,000 others would come from Parole and Probation. Mandatory parole is linked to an expiration date. If you change the expiration date, you change the mandatory parole date and have another cadre up for a mandatory parole hearing.

SENATOR HORSFORD:

Of the 1,600, how many would be released to parole and how many would be released to probation?

MR. SCHLOTTMAN:

None of the 1,600 would be released to parole or probation; they will all be released or discharged.

SENATOR HORSFORD:

Because we are giving the good time credits, is there no statutory option to require some level of limited supervision?

MR. SKOLNIK:

That is a question for the Legislative Counsel. There may be a way to incorporate that language into the statute, but I do not know.

SENATOR HORSFORD:

I would want to look at that option. You are talking about 1,600 people being released and two-thirds coming to southern Nevada. They are coming back to the same communities where they committed the crimes that caused them to be incarcerated. This becomes a public safety issue not only for the inmates but for the community at large. This area could be researched some more.

I have another question that was asked of Dr. Carlos Brandenburg, Administrator, Division of Mental Health and Developmental Service, Department of Health and Human Services, the other day. Of the 1,600 discharged, would there be any assessment for mental health, substance abuse or career skills that would allow them to transition successfully and who would be doing those assessments? Would you have time to do assessments if the law required you to release them at one time?

MR. SKOLNIK:

The intake assessment is the only assessment done on an inmate. We will not do assessments because they are expiring, and any controls we may have had will be gone. We have spoken to some of our community partners who have indicated they will be overwhelmed and not able to provide quality service to this kind of influx.

Some people will not have any place to go. They will be dropped off and we hope for the best. This is not a good policy.

SENATOR HORSFORD:

Would there be any assessments done prior to release?

MR. SKOLNIK:

How much time the Legislature gave us between the laws being passed and implemented would determine if we were capable of doing anything. If the law was passed and became effective July 1 —

SENATOR HORSFORD:

Most of our laws are effective October 1, unless the Legislature specifies another time.

MR. SKOLNIK:

Even at October 1, our effort will be in processing the paperwork to identify the inmates and making sure that by October 1, we are not unlawfully holding anyone who should be released. Our limited resources will not cover any meaningful assessments.

SENATOR HORSFORD:

Have discussions come up in either the working group or the money committees for budget enhancement needs in the short term to address substance abuse, mental health assessments and community programming to support the partners you spoke about? For disclosure, my agency works in the community and will be one of the agencies that serves 20 percent of former offenders by getting them employment. Have any discussions come up in the technical workshops for funding of housing, possible supervision and Parole and Probation officers?

MR. SKOLNIK:

No, they have not.

CHAIR AMODEI:

Senator Care made a good point about your concerns for 16 people doing something in 2 years, what is your confidence for 63 people in 120 days?

MR. SKOLNIK:

That is a fair question since the budget has not yet been approved.

CHAIR AMODEI:

What is your understanding of where we are in the budget process? We have been asked to provide policy input.

MR. SKOLNIK:

The budget submitted includes the four pre-engineered buildings, and staff is still on track. We have not seen anything to indicate we will not receive funding. Senate Bill 190 which provided the preliminary funding to draw the architectural engineering work for the pre-engineered buildings passed through both Houses. We have committed over \$800,000 to the modular units. The construction at the High Desert State Prison for women has started this year.

It is a serious problem that has taken many years to develop and will not be resolved in 120 days.

CHAIR AMODEI:

Ms. Eissmann, will you check with Gary L. Ghiggeri, Senate Fiscal Analyst, Legislative Counsel Bureau, and e-mail the Committee as to what is going on with the budget corrections? Also check on policy issues that can be resolved this session that will have a material impact on the budget. We need to put people on the record for the issues.

SENATOR WASHINGTON:

Whatever we do will have an impact at the local level and deal with law enforcement in all the counties, especially Clark County and Washoe County. What is the financial impact upon those local law enforcement agencies and their capacity? Once released into the communities, some have a tendency to re-offend, then they have to be housed in a local jail. We may not have considered this impact outside of what was mentioned for the specialty courts.

MR. SKOLNIK:

Local law enforcement and jails have felt the impact. Clark County has over 300 inmates on cots; Washoe County at one time had to put inmates on the gym floor of their facility. This is not just a Nevada issue; Oklahoma had to refuse inmates into their prison system because, by law, they were not allowed to go over 97 percent and they had already exceeded that percentage.

It is a national issue and may be a result of the truth-in-sentencing laws passed nationally in 1995 that have now come home to roost.

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SENATOR WASHINGTON:

If we decided to do this retroactively and phased it in, is there a federal time frame to enact this policy?

MR. SKOLNIK:

I asked that question of our National Association of Correction Administrators and was advised that the general lead time between federal intervention starting and actual intervention occurring is seven to eight years. We have time to fix the problem.

SENATOR WASHINGTON:

That gives us seven years plus.

SENATOR HORSFORD:

How many inmates are released on an annual basis from the Department of Corrections?

MR. SKOLNIK:

It is approximately 5,500.

SENATOR HORSFORD:

About 4,800 of those inmates are returned to southern Nevada; that is the statistic I had been given.

MR. SKOLNIK:

Between two-thirds and 70 percent return to southern Nevada.

SENATOR HORSFORD:

I want to put this into context. It is not that we cannot handle 1,600 people, but we need the proper structure in place for corrections, supervision and the community to handle the influx. We release people every day.

MR. SKOLNIK:

Yes, we need the proper structure.

SENATOR HORSFORD:

We need to focus on this. I am surprised that the money committees have not looked at housing, mental health screening and basic things to make sure that someone is successful in reentering. We have that research and know the

Department of Corrections received a federal grant from the Department of Justice that deals with reentry of former offenders. For us not to consider this in a legislative forum is missing the boat.

Mr. Chair, I do not know how we bring these issues to the forefront; we are focused on the policy, but in part, the policy cannot work if the structure is not in place for these basic areas.

CHAIR AMODEI:

Does anyone else want to testify on the justice reinvestment issues? We will close the hearing.

Mr. Wilkinson, we need to know what we can do with respect to the Advisory Commission on Sentencing dealing with policy. There is the juvenile justice issue where we have a clean proposal—one is financial and the other is policy. We might have to make some bill drafts for next session to deal with the issues in our jurisdiction.

The sentencing issue is our jurisdiction, and we have one amendment in the works for the firearms enhancement. I do not know of other areas where discretion can be put back under findings and communicative circumstances.

At some point, we should be on the record and communicate to the money committees that while they are balancing the budget or making value, these are the operational impacts and policy considerations that affect this.

SENATOR HORSFORD:

One more clarifying point is that these individuals will be discharged unless a law can be passed to require supervision for some period of time. This should be explored as to constitutionality and if so, what is the budget implication for supervision? I cannot see releasing 1,600 people if we are not going to provide assessment or housing for them. It is a recipe for disaster.

CHAIR AMODEI:

If that decision is made, it is within the jurisdiction of this Committee. If it is made for us by the money committees due to circumstances not having an impact on the budget in the next two years, then on the record, I am against it. If the money committee is closing tomorrow with retroactive good time credits with no impact on the budget, that should say something.

SENATOR WASHINGTON:

There is one saving grace. The federal government has given us a window of seven to nine years. If we are going to look at the sentencing structure, the reentry and prerelease programs and Parole and Probation to make sure these individuals are not discharged without supervision, we should take a more comprehensive look and convey this message to the money committees. As we set these policies, they should work in conjunction with our Committee to make sure the necessary resources are there to support these policies in the long term.

We can come up with a short-term fix, but from what I hear from the Director, it is a long-term venture and this message needs to get across to the money committees as well.

CHAIR AMODEI:

We need to update and talk about what needs to go into the Committee bill draft request, see what is available after the budget closes and send a letter to the money committees with seven signature blocks.

SENATOR WIENER:

At one time, all of us have been on the ACOS and the former Attorney General was eager to take jurisdiction in the ACOS; therefore, can we send a letter to the current Attorney General to encourage frequent meetings? This will allow us to have an influence on the process.

CHAIR AMODEI:

We can do that. What bill is the ACOS under?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

It is Assembly Bill (A.B.) 508.

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

CHAIR AMODEI:

Where is that bill now?

MR. WILKINSON:

It is in the Assembly Ways and Means Committee.

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CHAIR AMODEI:

We will take a look at A.B. 508 in the event it comes to our Committee.

MR. WILKINSON:

I am not aware of any other bill of its kind out there that addresses this issue.

CHAIR AMODEI:

Take a look to see if anything germane is on our radar for this. Senator Wiener, this is if you have any meeting requirements in mind.

We will now move to the work session document ([Exhibit D](#), original is on file in the Research Library) and start with A.B. 92.

ASSEMBLY BILL 92: Revises provisions governing genetic marker testing of certain convicted persons. (BDR 14-805)

CHAIR AMODEI:

The Committee wanted some time to review some of the American Civil Liberties Union (ACLU) amendments. Yesterday, we went with Category D and above felonies that will provide specimens. The issues from the ACLU were to ensure private information is used only for law enforcement in exculpatory evidence. Are there any thoughts on this?

SENATOR WASHINGTON:

I had an opportunity to speak to law enforcement and there are a couple of issues. Yesterday, we considered Category D and those above. It was indicated to me that they would prefer to include the Category E felons. Those that commit Category E felonies have a tendency to progress in category and eventually commit the more heinous Category B and Category A offenses.

Category D and E specimens aid in prosecution of crimes. It is important that we go back to the Category E discussion and allow them to use these specimens.

CHAIR AMODEI:

Is there anyone on the Committee who wants to reconsider the Category E through Category A offenses?

SENATOR WASHINGTON MOVED TO RECONSIDER THE AMENDMENT TO A.B. 92 OFFERED BY SENATOR HORSFORD ELIMINATING CATEGORY E FELONIES FROM GENERIC MARKER TESTING.

SENATOR NOLAN SECONDED THE MOTION.

CHAIR AMODEI:

Is there any discussion?

SENATOR HORSFORD:

On the record, I asked law enforcement whether other states that have used and tested Category E specimens had any of these cases brought forward, and no information was provided. It seems to be anecdotal to say that Category E people will become more serious offenders. Without proof, this is unacceptable. It does not get to the intent of focusing on the more violent and habitual offenders. I am opposing this motion. We asked for information and never received the requested material.

CHAIR AMODEI:

Ms. Eissmann will you check the proponents of the bill that Senator Horsford is referring to and find out if they have any intention on responding to his requests? I would like you to check with the National Conference of State Legislatures or any national organizations that may have this information. If a member of the Committee has requested information and has received none, this is unacceptable. Is there further discussion?

SENATOR CARE:

I agree with Senator Horsford. Additionally, we had this discussion yesterday and my opinion remains the same.

SENATOR NOLAN:

I also agree with Senator Horsford; however, we are dealing with people who once convicted of a Category E felony, have a deoxyribonucleic acid (DNA) sample taken and entered into a database. The only use for the DNA is to run it against other samples while investigating a serious crime.

Testimony has said that the DNA hits that solve the crime are remote possibilities. It is not that the individuals are doing something offensive; it is

that one in a million chance of solving a crime in which an individual may have been involved.

SENATOR CARE:

Is it not a step away to say that those who commit and are convicted of misdemeanors ultimately will commit a Category E felony and later commit a Category C felony? It is not difficult to imagine that in the near future, there will be a bill that anyone arrested must submit to a DNA sample. I think this is the place to stop.

CHAIR AMODEI:

Senator McGinness has commented that DNA are like fingerprints. These are the fingerprints of the new millennium. Fingerprints are unique to each individual; you have to give them to work at the schools and if you get arrested.

Is there any other discussion on the motion to reconsider?

All in favor of reconsidering the limitation in A.B. 92 to Category D and above felony, please signify.

THE MOTION CARRIED. (SENATORS CARE, HORSFORD AND WIENER VOTED NO.)

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CHAIR AMODEI:

The action is reconsidered. What is the pleasure of the Committee with respect to the classes of felonies?

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 92 BY NOT ADOPTING SENATOR HORSFORD'S AMENDMENT.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE, HORSFORD AND WIENER VOTED NO.)

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CHAIR AMODEI:

The amendments suggested by the ACLU on page 3 of the work session document, [Exhibit D](#), ensure private information is used only for law enforcement and exculpatory evidence. Are there any objections to including this in the bill?

SENATOR WASHINGTON:

I have no objection based on my conversation with law enforcement, and they are already in statute.

CHAIR AMODEI:

The second point by the ACLU recommends allowing the removal of genetic material for anyone whose conviction is later overturned on appeal or other means. What is the pleasure of the Committee?

SENATOR WASHINGTON:

Based on the communications with law enforcement, this is already done by the courts.

SENATOR MCGINNESS:

This part of the amendment should not be included; it is throwing away the fingerprints.

SENATOR MCGINNESS MOVED TO NOT INCLUDE AMENDMENT BY THE ACLU TO A.B. 92 ALLOWING THE REMOVAL OF GENETIC MATERIAL FOR ANYONE WHOSE CONVICTION IS LATER OVERTURNED ON APPEAL OR OTHER MEANS.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO.)

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CHAIR AMODEI:

The next point from the ACLU provides access to exculpatory genetic material to all convicted persons, not only those on death row. There were concerns this amendment could free up everyone with a conviction to request information. Is there a motion?

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SENATOR WASHINGTON MOVED TO NOT INCLUDE AMENDMENT BY THE ACLU TO A.B. 92 PROVIDING ACCESS TO EXCULPATORY GENETIC MATERIAL TO ALL CONVICTED PERSONS.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO.)

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CHAIR AMODEI:

On A.B. 92, the amendments would be Category E through A felonies and the first bullet offered by the ACLU, page 2 [Exhibit D](#).

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 92 WITH AMENDMENT INCLUDING CATEGORY E THROUGH A FELONIES TO HAVE GENETIC MARKERS AND AMENDMENT BY THE ACLU ENSURING PRIVATE INFORMATION IS USED ONLY FOR LAW ENFORCEMENT AND EXCULPATORY EVIDENCE.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO. SENATOR CARE ABSTAINED.)

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CHAIR AMODEI:

We will move to A.B. 107. What is the status of this bill?

ASSEMBLY BILL 107 (2nd Reprint): Revises the provisions governing the possession of weapons at certain locations. (BDR 15-764)

SENATOR HORSFORD:

There is an article that ran in the *Las Vegas Review-Journal* ([Exhibit E](#)). This article does not indicate if the knife used was a two-inch blade or larger. This is the reason the bill was brought forward. I spoke to the sponsor of the bill and, as originally written, it did include a dangerous knife of two inches or more and

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higher education campuses as locations that prohibit dangerous weapons. I would ask the support of the Committee.

CHAIR AMODEI:

As it appears in its second reprint form, what does A.B. 107 do with respect to this application to higher education institutions in this state?

MR. WILKINSON:

With respect to higher education, the bill in its current form adds swords, axes, hatchets, machetes or other deadly weapons.

CHAIR AMODEI:

In this reprint, what Senator Horsford is looking for is not included in the bill, is this correct?

MR. WILKINSON:

Senator Horsford is referring to the original version of the bill where dangerous knives were included in subsection 1 as a weapon prohibited to possess or carry on property within the Nevada System of Higher Education. It also includes an activity sponsored by a private or public school. This language is included in the present version of the bill.

CHAIR AMODEI:

Is there any other discussion from the Committee?

SENATOR MCGINNESS:

When I sat on the Legislative Commission's Subcommittee to Study Sentencing and Pardons, and Parole and Probation, we talked about other deadly weapons. Pillows have been certified as deadly weapons, it depends on how you use them.

This bill has problems if we apply it to higher education dormitories and apartments. I never liked this bill; therefore, I will be voting no.

CHAIR AMODEI:

Is there a motion on this bill?

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SENATOR CARE:

The current language has a definition of dangerous knives. I would make a motion to amend and do pass.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 107 WITH THE AMENDMENT ADDING THE WORD "KNOWINGLY" TO APPLY ONLY TO THE CASE OF A DANGEROUS KNIFE.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS McGINNESS AND WASHINGTON VOTED NO.)

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CHAIR AMODEI:

We will move to A.B. 127. We have three choices: move the bill as is, use the amendment suggested on page 6 of [Exhibit D](#) or no vote. Seeing no motion, we will move on to A.B. 230.

ASSEMBLY BILL 127: Revises provisions relating to interception of wire communications. (BDR 15-1049)

ASSEMBLY BILL 230 (1st Reprint): Revises certain provisions relating to the jurisdiction of justice courts. (BDR 1-519)

CHAIR AMODEI:

The Attorney General wanted to consolidate their operational functions in one justice court. What is the pleasure of the Committee?

SENATOR WASHINGTON MOVED TO DO PASS A.B. 230.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI AND McGINNESS VOTED NO.)

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CHAIR AMODEI:

The next bill on the agenda is A.B. 359. What is the pleasure of the Committee?

ASSEMBLY BILL 359: Revises provisions governing certain statutory liens.
(BDR 9-1011)

SENATOR CARE MOVED TO DO PASS A.B. 359.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON
VOTED NO. SENATOR HORSFORD ABSTAINED.)

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CHAIR AMODEI:

The next bill is A.B. 383. Senator Care, have you been working on an amendment on this bill?

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

SENATOR CARE:

I have nothing written, but I can discuss it conceptually. I spoke with the sponsor of the bill, and I do not think the Committee had any objections with section 1.3 and section 1.5. There are questions on section 9 and section 10. The language in section 10 may mean that this bill does not take effect until the Office of the Attorney General of the U.S. has issued the final order and all avenues of appeal have been exhausted. This matter has been resolved.

CHAIR AMODEI:

Testimony came from a gentleman from the U.S. Immigration and Customs Enforcement, Department of Homeland Security. Mr. Wilkinson, can you add some information on this in reference to the United States Codes?

MR. WILKINSON:

It was discussed that the finding will be made following notice, hearing, right to appeal and any determination. Basically, it will be a final decision via the appeals process through the U.S. Attorney General's office.

SENATOR CARE:

The language in section 10, subsection 3, paragraph (a) referring to inadvertent violations will be deleted. If the Nevada Tax Commission were to determine a violation of paragraph (b) in section 10, then they shall impose an administrative fee. They would not have discretion. The Nevada Tax Commission will have to determine the fee subject to the approval of the Legislative Commission, and the Nevada Tax Commission will have the discretion to take away the business license from those who violate paragraph (b).

SENATOR WIENER:

Senator Care referred to administrative fee, did he mean administrative fine?

CHAIR AMODEI:

What is the standard to have the business license taken away? Is there a fee given in the bill?

MR. WILKINSON:

There is none specified.

CHAIR AMODEI:

Is there a general statute that sets the ceiling on a fine?

MR. WILKINSON:

The Nevada Tax Commission sets the regulations.

CHAIR AMODEI:

How does the Committee feel about discretion for fining? Does anyone care about having a limit? If there is one, is it per employee, per employer or per incident?

SENATOR CARE:

It would be per final decision.

MR. WILKINSON:

The fine is per violation.

CHAIR AMODEI:

I have concern about taking the license. We may want to set a ceiling amount for a fine.

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SENATOR WASHINGTON:

I have a problem with the license being taken; maybe we can delete that language and go with the amendment by Senator Care to allow the Nevada Tax Commission to set the fine and have the Legislative Commission review if it is acceptable.

CHAIR AMODEI:

Senator Care, what are your thoughts on taking the license and leaving the fine up to the regulatory process?

SENATOR CARE:

If these changes will move the bill, I am prepared to make a motion.

CHAIR AMODEI:

If there are no further discussions on A.B. 383, what is the pleasure of the Committee?

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 383 WITH THE PROPOSED AMENDMENT THAT AFTER FINAL RESOLUTION UPON ISSUE OF THE ORDER BY THE U.S. ATTORNEY GENERAL'S OFFICE, THE NEVADA TAX COMMISSION "SHALL" IMPOSE AN ADMINISTRATIVE FINE OR FEE.

SENATOR HORSFORD SECONDED THE MOTION.

CHAIR AMODEI:

Is there any discussion on the motion?

SENATOR WASHINGTON:

Would the fines imposed still have to be approved by the Legislative Commission?

CHAIR AMODEI:

Yes.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

Next are A.B. 521 and A.B. 421. Senator Care has done extensive work on these bills and I support his actions.

ASSEMBLY BILL 521 (1st Reprint): Revises provisions relating to the crimes of fraud and racketeering. (BDR 15-500)

ASSEMBLY BILL 421 (1st Reprint): Establishes the crime of participating in an organized retail theft ring. (BDR 15-1292)

CHAIR AMODEI:

I have been informed that due to issues not related to A.B. 421, if we amend and do pass and send it to the Assembly, it will not come back from the Assembly.

It is important that we get the policy correct and put aside our individual issues not related to the policy in these bills. I spoke with Nevada Attorney General Catherine Cortez Masto about A.B. 230 and A.B. 521. I also had conversations with Mr. Wilkinson who says these two bills deal with subject matters that are germane. I also spoke with Senator Care on these matters.

It is my intent to have Senator Care amend A.B. 421 from a prosecution point of view and incorporate it into A.B. 521. It is also my intent to ask the Committee to do pass A.B. 421 as it exists and keep it alive.

My explanation is when A.B. 521 moves over to the Assembly, if the amendment is concurred with, we will leave A.B. 421 on the desk of the Senate where it will report out before the deadline. If the amendment is not concurred with by the Assembly, we will rescind from our amendment, leaving the Attorney General's bill intact as sent by the Assembly, and we will take A.B. 421 off the desk and vote as the Assembly sent it to us.

The reasoning for this is when we adjourn the 74th Legislative Session, we send a message with A.B. 421 that this conduct is against the law in Nevada.

SENATOR CARE:

With respect to A.B. 521, the amendment will have *Nevada Revised Statute* (NRS) 598 and NRS 598A included.

The way A.B. 421 is currently drafted, a Category B felony will continue to have the 90-day period. Section 1, subsection 3, paragraph (a) discusses the amount involved in a single theft and services. All references to "services" within the bill will be eliminated. The language will remain or be altered to conform to existing language on other statutes that discuss theft where the value of the property taken determines the category of felony.

In order to be charged with a Category B felony, you have to participate in an organized retail theft ring. What does this mean? Section 1, subsection 5, paragraph (b) gives a definition. It needs to be clear a member of an organized retail theft ring is a group of people that actively, affirmatively steals or attempts to steal from one or more merchants on two or more occasions within a 90-day period. You have to actively do something, not just discuss a theft, and the "three or more persons" will remain.

The sponsor also wants to include "the person who fences the proceeds."

CHAIR AMODEI:

What is the pleasure of the Committee on A.B. 521?

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 521 TO ADOPT THE AMENDMENTS PROPOSED BY KATHLEEN DELANEY WHICH CLARIFY AUTHORITY OF THE ATTORNEY GENERAL'S OFFICE IN DECEPTIVE TRADE PRACTICES, INITIATING PROCEEDINGS AND CONFIDENTIALITY OF INVESTIGATIONS AND TO ADD THE LANGUAGE OF THE PROPOSED CHANGES TO A.B. 421.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

What is the pleasure of the Committee on A.B. 421?

SENATOR WASHINGTON MOVED TO DO PASS A.B. 421.

SENATOR MCGINNESS SECONDED THE MOTION.

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CHAIR AMODEI:
Is there any discussion?

SENATOR HORSFORD:
The conceptual amendments stated by Senator Care will not be made to A.B. 421, is this correct?

CHAIR AMODEI:
Yes. The reasoning is to place A.B. 421 as a potential vehicle to send back to the Assembly without risk of losing the policy of legality due to issues not related to retail theft in Nevada.

SENATOR HORSFORD:
I will be voting against the motion. The changes Senator Care made are substantive to clean up the bill and make it something I can support. I will be voting against the motion.

CHAIR AMODEI:
I agree with you, but they will not be evaluated on their substance in the Assembly. If the amendment to A.B. 521 is concurred, I will apologize. Are there any other comments?

SENATOR CARE:
For reasons the Committee understands, I will oppose this motion.

THE MOTION CARRIED. (SENATORS CARE, HORSFORD AND WIENER
VOTED NO.)

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CHAIR AMODEI:
We will move to A.B. 522. What is the pleasure of the Committee?

ASSEMBLY BILL 522: Provides for licensure of private professional guardians.
(BDR 13-1343)

Hearing no response, we will move on to A.B. 515.

ASSEMBLY BILL 515: Clarifying that certain judicial employees are local government employees who have the right to join or refrain from joining an employee organization. (BDR 23-1379)

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED A.B. 515 WITH AMENDMENT OFFERED BY MICHAEL LANGTON TO CLARIFY THE BILL PERTAINS TO CLASSIFIED EMPLOYEES AND INCLUDES THOSE WHO PERFORM DUTIES UNDER THE DIRECTION OF A MUNICIPAL COURT IN ADDITION TO A JUDGE OR JUSTICE OF THE PEACE.

CHAIR AMODEI:
Can someone go over the amendment?

LINDA J. EISSMANN (Committee Policy Analyst):
It adds that the employees are classified and makes reference to municipal court. A copy of this amendment is on page 39 in the work session document of Exhibit D.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS AMODEI, McGINNESS AND NOLAN VOTED NO. SENATOR WASHINGTON ABSTAINED.)

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CHAIR AMODEI:
We will hold this bill open for further discussion at my call. We will move on to A.B. 519.

ASSEMBLY BILL 519 (1st Reprint): Enacts provisions concerning the sealing of certain court documents. (BDR 1-1404)

KATHY A. HARDCASTLE (District Judge, Department 4, Eighth Judicial District):
An amendment has been worked out and offered to this Committee by the Eighth Judicial District Court and Assemblyman Bernie Anderson (Exhibit F).

SENATOR CARE:

On page 2 of [Exhibit F](#), section 2, subsection 2 says "a member of the public may file a motion." We are talking about a nonparty filing a motion. I have a series of questions and bring this up because there may be parties from out of state who wish to file the motion as opposed to a reporter. Would there be a filing fee for making an appearance, although there will be a case number? Would the petitioner have to file a fee with the court? Would there be a requirement that the parties be notified? Will there be an opportunity for the parties to file an opposition? Will there be a hearing or an appeal from the order and at what stage in the hearing will this happen? Do you have any thoughts on these issues?

DISTRICT JUDGE HARDCASTLE:

They are handled as administrative requests for access to records. We review the case and request to see if there is a way to handle the request without requiring a separate petition and filing fee to obtain access. We look at if filing a petition would defeat the purpose of obtaining the information requested. When law enforcement or a judicial district requests information, I do not require a filing of a separate petition; they are handled administratively.

I am on a commission that the Honorable A. William Maupin, Chief Justice, Nevada Supreme Court, has put together, and we have our first meeting next week. The points you raised, Senator Care, will be addressed through the Commission on how to provide access while addressing the need for the request.

SENATOR CARE:

I understand the request will be done the same way it is done now, but the proposed amendment adds the balancing test, a definition for "information concerning a public hazard" and "judicial public record" and exemptions listed in section 2, subsection 4, page 2 of [Exhibit F](#). Is this correct?

DISTRICT JUDGE HARDCASTLE:

That is the intent of the amendments.

CHAIR AMODEI:

I would like to give the business community an opportunity for input. We will take further action on this bill at the call of the Chair. It will allow all parties to

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digest the information and amendments given. Assembly Bill 519 and A.B. 515 will be at the call of the Chair.

There was testimony for A.B. 515 on separation of powers. My question concerns whether an organizing group or association separate from the Executive Branch removes the separation of powers issue.

I would like to return to a couple of bills; the first one is A.B. 92. Assemblywoman Valerie E. Weber requested to be added as a sponsor on the bill; are there any objections amongst Committee members? Mr. Wilkinson, the Committee members do not object to the addition of Ms. Weber on the bill, but if we need to rescind, prepare that for the Committee for our next meeting.

I want to return to A.B. 127 for a possible vote.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 127 WITH THE AMENDMENT TO REQUIRE NOTICE OF RECORDING
BY THE COLLECTOR TO THE PERSON BEING CALLED.

SENATOR HORSFORD SECONDED THE MOTION.

CHAIR AMODEI:

I want to keep the bill in play.

SENATOR NOLAN:

For clarification, the amendment is that if an individual is contacted by the collection company and that company gives notice that the conversation is being recorded, then they can record.

CHAIR AMODEI:

That is correct.

SENATOR MCGINNESS:

For the record, we are only looking at collection agencies?

CHAIR AMODEI:

That is correct. Is there any other discussion to the bill or the motion?

THE MOTION CARRIED. (SENATOR MCGINNESS VOTED NO.)

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CHAIR AMODEI:

I will anticipate that A.B. 519 and A.B. 515 will have no problems. We have gone over these bills extensively and they can be handled on the Senate Floor.

SENATOR WASHINGTON:

We passed out A.B. 52 dealing with domestic violence.

ASSEMBLY BILL 52 (1st Reprint): Makes various changes relating to domestic relations. (BDR 11-421)

I spoke with Assemblyman Morse Arberry Jr. concerning his constituent to make provisions for grandparents who take care of their offspring's children. I was under the impression that this issue was worked out, but Assemblyman Arberry indicated that the issue was not. They are now waiting for language from the Nevada Trial Lawyers Association that deals with those grandparents. Mr. Chair, I would like to work this out either at the bar or on the Senate Floor.

CHAIR AMODEI:

The record should reflect Senator Washington's intent to potentially amend A.B. 52 on the Senate Floor based on ongoing discussions on the provisions regarding grandparents.

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CHAIR AMODEI:

If there is nothing else to come before the Committee, we are adjourned at 10:15 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____