

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
May 24, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:19 a.m. on Thursday, May 24, 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 Mike McGinness  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**COMMITTEE MEMBERS ABSENT:**

Senator Maurice E. Washington, Vice Chair (Excused)  
Senator Dennis Nolan (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Kathy McClain, Assembly District No. 15  
Assemblyman David R. Parks, Assembly District No. 41

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Nancy K. Ford, Administrator, Division of Welfare and Supportive Services,  
Department of Health and Human Services  
John S. Michela, Deputy Attorney General, Office of the Attorney General  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association

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P. K. O'Neill, Chief, Records and Technology Division, Central Repository for  
Nevada Records of Criminal History, Department of Public Safety

Patricia A. Hines

Randal Munn, First Assistant Attorney General and Legislative Liaison, Office of  
the Attorney General

The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court

Howard Skolnik, Director, Carson City, Department of Corrections

Chair Amodei opened the hearing on Assembly Bill (A.B.) 596.

**ASSEMBLY BILL 596 (2nd Reprint)**: Makes certain changes to provisions  
concerning obligations of support for a child. (BDR 11-1411)

NANCY K. FORD (Administrator, Division of Welfare and Supportive Services,  
Department of Health and Human Services):

I have submitted my written prepared testimony ([Exhibit C](#)). Section 1 of  
Assembly Bill 596 remedies a ruling by the Nevada Supreme Court in which it  
was determined that a certain statute only meant for a period between  
separation and divorce; however, in fact, it actually meant when parents do not  
reside together, child support could be attached.

Sections 2 and 3 of A.B. 596 address issues presented in the Deficit Reduction  
Act of 2005, enacted by the United State Congress. Section 2 addresses  
medical support. Under the Deficit Reduction Act, medical support can now be  
collected from either parent, custodial or noncustodial. It also defines medical  
support. Section 3 is more controversial. The Deficit Reduction Act requires  
assessment of an annual \$25 fee in every case in which \$500 of child support  
has been collected and the party for whom it has been collected has never  
received public assistance.

[Exhibit C](#), section 3 outlines four ways to collect the \$25 annual assessment.  
Assembly Bill 596 presents it as collected from the custodial parent, which is  
the most economical way. It has no fiscal effect on the state because it can be  
taken out of child support collections. The other three methods are collecting  
from the noncustodial parent, the applicant for services or the state can pay. All  
three of those options have a fiscal impact on the state and require the General  
Fund to fill those obligations. Therefore, A.B. 596 has the money coming from  
the custodial parent, as a deduction from child support, once \$500 has been  
collected in child support in cases in which there has never been public

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assistance. Our anticipated liabilities are approximately \$750,000 a year and the state's share is approximately \$495,000 a year.

CHAIR AMODEI:

Was A.B. 596 sent to the Assembly Committee on Ways and Means?

MS. FORD:

The Assembly amended A.B. 596 to have the noncustodial parent pay the fee, which created a fiscal impact. It went to the Assembly Committee on Ways and Means where it was re-amended back to the custodial parent as introduced in the original bill. There is a sunset provision; therefore, if Congress should repeal this particular provision of the Deficit Reduction Act, A.B. 596 would also sunset.

SENATOR CARE MOVED TO DO PASS A.B. 596.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

The hearing is opened on A.B. 579.

**ASSEMBLY BILL 579 (2nd Reprint)**: Makes certain changes to provisions relating to sex offenders and certain offenders convicted of a crime against a child. (BDR 14-499)

JOHN S. MICHELA (Deputy Attorney General, Office of the Attorney General):  
I will read my prepared testimony ([Exhibit D](#)).

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):  
The Nevada Sheriffs' and Chiefs' Association brought A.B. 574 and realized it duplicated A.B. 579; therefore, A.B. 574 was withdrawn.

**ASSEMBLY BILL 574**: Makes certain changes to provisions relating to sex offenders and certain offenders convicted of a crime against a child. (BDR 14-328)

Assembly Bill 574 was the result of a meeting of investigators throughout the state involved in monitoring and tracking sex offenders. There was a lot of concern about it. The Adam Walsh Child Protection and Safety Act came from the federal government which met our requirements for tracking, monitoring and tiering systems; therefore, we support A.B. 579 as it came out of the Assembly.

P. K. O'NEILL (Chief, Records and Technology Division, Central Repository for Nevada Records of Criminal History, Department of Public Safety):

We support A.B. 579. The attached fiscal note ([Exhibit E](#)) has been addressed in the Governor's recommended budget and approved by the money committees in the Legislature. Additional personnel were requested to address our increasing workload of sex offenders. We receive approximately 1,000 additional offenders each year. We currently track approximately 6,000 inactive sex offenders; active means they are registered and tracked. They may be in custody, out of state, in hospitals or in some other capacity of a controlled nature; however, they are still tracked.

SENATOR MCGINNESS:

Are the proposed increases covered in your budget?

MR. O'NEILL:

Yes.

SENATOR HORSFORD:

Although I support A.B. 579, I am working with Mr. Wilkinson to obtain additional information regarding registration of sex offenders in general. I request not moving on this bill until I have an opportunity to review more closely the information coming from the Legal Division of the Legislative Counsel Bureau. I need to be comfortable with all aspects and understand exactly how I will vote.

CHAIR AMODEI:

Due to the time frame and with the support of the Committee, I would prefer to move A.B. 579 with a proviso that you reserve the right to amend it later.

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SENATOR HORSFORD:

I respect that, Mr. Chair. I do not want to delay or not support the bill's provisions; however, if there are other issues to be addressed, I would hope there would first be a discussion within the Committee, not on the Senate Floor.

CHAIR AMODEI:

We will meet tomorrow morning at the Bar on the Senate Floor to take a motion on A.B. 579. Mr. Wilkinson, will Senator Horsford have his requested information by that time?

BRAD WILKINSON (Chief Deputy Legislative Counsel):  
I will take care of it.

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

I am Chair of the Assembly Select Committee on Corrections, Parole and Probation and support A.B. 579.

CHAIR AMODEI:

Would you confer with Senator Horsford to ascertain whether his concerns were covered by your Committee?

ASSEMBLYMAN PARKS:

We have been attempting to meet for several days; I will contact him as soon as possible.

PATRICIA A. HINES:

I will read my prepared testimony ([Exhibit F](#)) in opposition to A.B. 579. I appreciate Senator Horsford's comments because some areas need more review and information before a decision is made on this bill.

CHAIR AMODEI:

The hearing is closed on A.B. 579 and opened on A.B. 226.

**[ASSEMBLY BILL 226 \(2nd Reprint\)](#)**: Makes various changes relating to crimes against older persons. (BDR 18-162)

ASSEMBLYWOMAN KATHY MCCLAIN (Assembly District No. 15):

I will read my prepared testimony ([Exhibit G](#)) in support of A.B. 226. The original bill mandated certain positions in the Attorney General's Office. We met

with the Attorney General's Office and they agreed if certain positions were not mandated, they would work with existing staff which would help get A.B. 226 going, even on a limited basis at the present time.

RANDAL MUNN (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

On behalf of Attorney General Catherine Cortez Masto, we want to express our support for A.B. 226. The protection of our seniors is one of the highest priorities of the Attorney General. We see a growing need as the population shifts to baby boomers entering that aging stage. We take this area of the law seriously and support any enhancements that will bring necessary resources. We are reevaluating the priorities of our Office and this will be one of them.

SENATOR WIENER MOVED TO DO PASS A.B. 226.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

I would like to report that A.B. 579 is exempt; therefore, the Committee does not have to act on it by tomorrow. Senator Horsford, obtain the information needed to make you comfortable and the Committee will act on A.B. 579 by Monday or Tuesday next week. If you feel it would be better to convene the Committee rather than meet at the Bar on the Senate Floor, please let me know; otherwise, we will meet at the Bar.

The hearing is opened on A.B. 508.

**ASSEMBLY BILL 508 (2nd Reprint)**: Makes various changes to provisions concerning the Advisory Commission on Sentencing. (BDR 14-1378)

LINDA J. EISSMANN (Committee Policy Analyst):

I forwarded some questions to the Fiscal Division of the Legislative Counsel Bureau and have not yet heard from them. With regard to the sentencing specifics in A.B. 510, the bill is in the Assembly Committee on Ways and

Means and has not yet reached the Senate. The question was whether the sentencing specifics in A.B. 510 came from this Committee; the answer was no. Senator Wiener asked about three bills that were working together and Mr. Wilkinson indicated they were A.B. 416, A.B. 508 and A.B. 510.

**ASSEMBLY BILL 416 (1st Reprint)**: Makes various changes to provisions concerning the Department of Corrections. (BDR 16-190)

**ASSEMBLY BILL 510 (1st Reprint)**: Makes various changes concerning credits earned by offenders and the incarceration and supervision of offenders. (BDR 16-1377)

One of the questions was what types of assessment would be done on people with good time credits? The answer is if it is the maximum sentence, there would be no assessment because the inmate's sentence is shortened; but if it comes off the minimum sentence, it affects the inmate's parole eligibility date so they would be able to apply to the State Board of Parole Commissioners for parole.

Another question was to what felonies, if any, will good time credits be applied? The answer is all of them, which is current law and has not been changed by A.B. 510.

Those are all the answers to the questions asked. I will update the Committee when I receive further answers from the Fiscal Division of the Legislative Counsel Bureau.

CHAIR AMODEI:

Is A.B. 510 the only other bill that is in play from a policy perspective?

MS. EISSMANN:

Assembly Bill 510 and A.B. 416 are both in the Assembly Committee on Ways and Means.

CHAIR AMODEI:

Do we need to schedule a hearing on them? Receiving an affirmative answer, please notice a meeting for 9 a.m. tomorrow on A.B. 510 and A.B. 416.

ASSEMBLYMAN PARKS:

I am testifying as Chair of the Assembly Select Committee on Corrections, Parole and Probation. Assembly Bill 508 reestablishes the Advisory Commission on Sentencing (ACOS) and makes a number of revisions, particularly regarding the membership. The bill also expands the duties of the ACOS to include evaluating effectiveness and efficiency of the Department of Corrections and the State Board of Parole Commissioners, evaluating effectiveness of specialty court programs and evaluating policies and practices concerning presentence investigations and reports made by the Division of Parole and Probation. We also appropriated \$50,000 from the General Fund to the ACOS to enter into a contract with consulting services if necessary.

CHAIR AMODEI:

Page 4, lines 31 through 34 of A.B. 508 contain language directed at the specialty court aspect. Is the purpose of that language to get a little more information in dealing with controlled substances?

ASSEMBLYMAN PARKS:

Yes, that would be part of it.

CHAIR AMODEI:

As I read A.B. 508, it is all prospective in the way it is presently structured, which means we want to make changes to the ACOS, get members to begin meeting, move forward, look at specific areas and return with recommendations. Is that generally your impression as well?

ASSEMBLYMAN PARKS:

Yes, it is.

THE HONORABLE JAMES W. HARDESTY (Associate Justice, Nevada Supreme Court):  
When I last testified before this Committee, I mentioned the urgency of having the ACOS retooled, redirected, its membership altered and a date scheduled. This Commission has been in statute for a long time but has not met in six years. I urged the ACOS to examine the entire criminal justice system from top to bottom and make extensive recommendations to this body in 2009. I also urged deadlines be put in the bill for appointment of people and mandating the requirement of meetings so they do not ignore that responsibility.



I wanted the ACOS to make recommendations to the Legislature by fall, which precipitated my suggestion for a special session to deal with the criminal justice system by fall of 2007. The women's prison will be at capacity by August 1 and the remainder of the prison system will be at capacity by November. Many of the recommendations I would anticipate from the ACOS would provide guidance on how to deal with both the front and back end of the criminal justice system as well as the prison overcrowding problem.

Nevertheless, A.B. 508 sets in place a requirement that recommendations be provided by September 2008 in advance of the budgeting process so budgets can be prepared with those recommendations in mind for the 2009 Legislative Session. Assembly Bill 508 contains a comprehensive list of representatives. We added individuals who should be part of the ACOS but were not on it before. All stakeholders who should be involved in the process were added—everyone from victim advocates to inmate advocates. A good comprehensive Commission will need a Chair who will direct the future of what will be accomplished. A great deal can come from this ACOS to help guide the Legislature in 2009.

SENATOR MCGINNESS:

Page 5, line 26, section 3, subsection 4 of A.B. 508 makes it appear to be a full-time commission and a huge undertaking.

JUSTICE HARDESTY:

Unquestionably, there have been questions raised about the State Board of Parole Commissioners and the Department of Corrections during the course of the prison overcrowding debate and discussion during this Legislative Session. I do not know whether those issues have priority over some other issues. Frankly, I do not view this question as something on which you will receive extensive recommendations, but you may. The point of A.B. 508 was to put in a potpourri of issues on which the ACOS will establish priorities and reasonable efforts will have to be made within time constraints to deal with these subjects. This statute is intended to survive 2009 as an ongoing process.

SENATOR HORSFORD:

I want to thank Justice Hardesty for his leadership on these issues and spending time to craft a plan to move forward. Without his involvement, we would not have moved as far as we have this Legislative Session.

In earlier testimony, Justice Hardesty requested planning or a report by fall of 2007. Does the language of the bill set time lines or dates for the ACOS to complete its work in advance of the 2009 Legislative Session? If there was a crisis prior to the 2009 Legislative Session, would anything prevent the ACOS from having information, data and/or analysis available to the Legislators in the event a special session is called?

JUSTICE HARDESTY:

Assembly Bill 508 does not set a deadline, but there is nothing to prohibit the ACOS from making recommendations the day it meets. I do not know if I will be on the ACOS, which is subject to the decision of the Chief Justice of the Nevada Supreme Court. I hope the momentum beginning this Legislative Session will be such that the members of the ACOS will carry on from the moment they are appointed. If I am on the ACOS, I hope over the interim it will set a specific agenda and attack issues. As soon as the issues are attacked, reports would be submitted then and there. Most assuredly, there is a crisis that must be examined the first time the ACOS meets.

SENATOR HORSFORD:

Page 4, section 3, subsection 2 of A.B. 508 talks about manufacturing and distribution of controlled substances as an area on which to evaluate effectiveness and/or fiscal impact. Was there discussion in general drug treatment program services that a large number of people in corrections are addicted to drugs or have substance abuse problems? The reentry piece is where I am going with this. Should there be some mention of reviewing the effectiveness of substance abuse treatment to ensure addicts do not return to the prison system?

JUSTICE HARDESTY:

That issue is covered. The list of subjects in the bill should not be viewed as exclusive; they are suggested topics. The ACOS knows exactly what needs to be done and it will be broader than the listed topics. Unfortunately, a detailed outline has not been provided; however, there have been informal discussions with some of you regarding outlines of provisions, which include drug treatment and use within the prison.

If A.B. 510 is considered favorably by the Assembly Committee on Ways and Means and this Committee, it will effectuate a release mechanism and a staged, planned, careful and responsible review of drug treatment inside and going

forward outside the prison setting. Those issues are discussed and contemplated both with the ACOS's study and the bill coming to you if approved by the Assembly Committee on Ways and Means.

CHAIR AMODEI:

You used the word crisis when referring to men's and women's prisons. Should we consider setting deadlines for work done by the ACOS based upon prison population? Does your definition of crisis precipitate federal court action? What is the potential crisis based on prison population?

JUSTICE HARDESTY:

The Director of the Department of Corrections could expand on this point. Many subjects are included when I refer to a crisis. There is a risk of federal court taking control and supervision of the prison system. I consider within the category of crisis a prison population so confined and restrained it causes inhumane treatment of inmates, risk to Department of Corrections' officers and inmates as well as riots. The consequences of overcrowded conditions places people who should not be mixed together in confinement settings; unfortunately, due to inappropriate housing, they must be together.

People talk about crisis in the context of federal judges taking over control of the system and the Attorney General's Office involved in litigation. I am more concerned about the human crisis and risk of injury to occupants of the prison system. Empanelment of the ACOS will not be completed for approximately 60 to 120 days after the end of this Legislative Session and it is not even required to meet.

I am not critical. Assemblyman Parks has done a tremendous job and his time and dedication have been incredible. The point I am trying to make is, "You have to get on with it."

CHAIR AMODEI:

Do you want us to strengthen the time line?

JUSTICE HARDESTY:

A couple of days ago, the Committee made comments about being policy makers. Make policy!

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CHAIR AMODEI:

What is your recommendation for that policy?

JUSTICE HARDESTY:

I do not understand the mechanism of appointing Legislators to a commission.

CHAIR AMODEI:

We do not, either—but that said, when do you want them appointed?

JUSTICE HARDESTY:

The ACOS should be formed within the next 30 days and there is no reason the members cannot meet 30 days after that. I have a full caseload and am one of the busiest Nevada Supreme Court justices sitting on one of the busiest supreme courts in the United States. We are prepared to make our time available to make this happen. This is an important issue which has priority. Why wait 120 days?

CHAIR AMODEI:

Does the Committee object to an amendment that would appoint Legislators to the ACOS within 30 days and the first meeting held within 30 days after the appointments?

SENATOR HORSFORD:

I am currently the appointed legislative representative for the minority side of the Senate. I am willing to continue to serve in that capacity and ready to meet anytime the ACOS is called.

CHAIR AMODEI:

Mr. Wilkinson, please e-mail Committee members as to the process and copy Assemblyman Parks, Justice Hardesty and Director Howard Skolnik on legislative procedure for filling the other appointments.

JUSTICE HARDESTY:

In fairness to Assemblyman Parks, he is in the same quandary. How are Legislators assigned? What is the time process? I suggest the time process on this issue should be ignored. I heard other rules are ignored on occasion and perhaps you could fudge on this one.

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CHAIR AMODEI:

We will not fudge—we will put it in the statute and the Assembly will concur. Is that correct, Assemblyman Parks?

ASSEMBLYMAN PARKS:

Yes, most definitely.

CHAIR AMODEI:

Do you want deadlines for action on specific items?

JUSTICE HARDESTY:

That is not advisable. There will be talented people on the ACOS who know the issues and will face up to them quickly.

CHAIR AMODEI:

As presently structured, do you think A.B. 508 has the ability to handle a crisis that requires a special session? Is there flexibility in the bill for the ACOS to go into overdrive in preparation for that? Is there anything that prohibits them from meeting? The budget issue would not be in the purview of the Legislature.

JUSTICE HARDESTY:

There is nothing in A.B. 508 that would prohibit the ACOS from pointing out a serious issue and bringing it to the attention of the Governor, the public, the Legislature, the Legislative Counsel Bureau and the Interim Finance Committee.

CHAIR AMODEI:

Who are the individuals assigned to the ACOS so far?

SENATOR HORSFORD:

Assigned members of the ACOS are Senator Washington, Assemblywoman Francis Allen, Assemblywoman Susan Gerhardt and I.

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

We support A.B. 508. Prison crowding is beyond anybody's imagination or projection. We moved women into the Casa Grande Transitional Housing Facility to provide some relief. Currently, 23 women are there; we can go as high as 50 if we get qualified women who meet the criteria, which will buy some time. The crisis will not be quite as serious by January 2008, which is the date

pre-engineered buildings will start to come online and provide 480 beds. This will not solve the problem but will provide safety for the staff.

CHAIR AMODEI:

Page 5, line 34, section 3, subsection 4, paragraph (c) of A.B. 508 says "Policies for the operation of the Department of Corrections." That is global.

MR. SKOLNIK:

It is global and also constitutionally given to the Board of State Prison Commissioners; therefore, I am not sure how it would work out. I am not an attorney.

CHAIR AMODEI:

My assumption is they are policies relating to sentencing in which you are involved.

MR. SKOLNIK:

Sentencing does not fall under the purview of the Department of Corrections in any capacity, nor does release or parole. We simply take what we get and do the best we can.

CHAIR AMODEI:

Do you recall how that particular piece got in A.B. 508? Was it in drafting?

ASSEMBLYMAN PARKS:

I have no specific memory as to where and how that line got into A.B. 508. I agree it has a rather global perspective. We wanted to give the ACOS as much flexibility as possible. In our marching orders to the bill drafters, they took it quite literally.

CHAIR AMODEI:

Section 3, subsection 4, paragraph (e) of A.B. 508 says "Other related matters," which ties in with Justice Hardesty's comments. Anything that is appropriate in a sentencing context is probably under that. From time to time, the Department of Corrections reaches the top of the list for front-page news, which is all fair game. I wonder whether it is fair game in the context of the ACOS.

MR. SKOLNIK:

There have been a number of bills submitted and processed during the course of this Legislative Session dealing with whether the Department of Corrections operates effectively. Personally, I find some of them offensive. The Department of Corrections operates effectively, particularly given resources provided by the Legislature. I am comfortable that we can stand the scrutiny of anyone who wants to take a look at how we work with what we have. My guess would be after their visit, we would be provided another 300 to 400 staff.

SENATOR WIENER:

Due to the global approach, the ACOS is an advisory commission that is putting all the pieces together and perhaps making recommendations specific to the Department of Corrections, Division of Parole and Probation, and so forth. This is the one player in this theatre with the entire picture in front of them to advise those who make decisions to carry out policy as well as the Legislature. In terms of the nature of the components listed, I am comfortable with it. The bigger picture, the greater counsel we will have in putting the pieces together.

CHAIR AMODEI:

I do not disagree. Clearly, the Department of Corrections has a part to play; the statement policies for the operation deals with a lot of things that are not related to sentencing. I will leave it in. If there is a problem with the operations of the Department of Corrections, generally this is not where it is taken. It goes to someplace more appropriate. This is about cradle-to-grave sentencing and the part the Department of Corrections plays.

MR. SKOLNIK:

I recommend counsel take a look at that particular sentence because the policy for the Department of Corrections is not established by the Department but by the Board of Prison Commissioners, which is a constitutionally established body to do that. I am not certain what conflicts might arise from this language. Be that as it may, because it is advisory, we have no problem with it.

CHAIR AMODEI:

I understand that. Following Senator Wiener's comments, perhaps it could be focused a little more so the Department of Corrections is clearly a player and within the purview of the ACOS's mission, which is broad-ranging, and policies that impact sentencing considerations for operation of the Department of Corrections.

JUSTICE HARDESTY:

We picked up the statute because it was on the books and called the Advisory Sentencing Commission. Senator Wiener is correct—this Commission was intended to have a much broader base. It is really the advisory commission on the criminal justice system. If we retool the commission, we should rename it because that is its intent.

CHAIR AMODEI:

I have no objection to the Committee considering renaming the commission.

JUSTICE HARDESTY:

I urge you to consider it.

CHAIR AMODEI:

Section 1 of A.B. 508 is the standard panoply of subpoena power. What was the discussion?

JUSTICE HARDESTY:

I requested it. Occasionally people are not responsive to advisory commissions. I felt having subpoena power would strengthen the ability of the ACOS to obtain accurate and correct information. Its use might never occur, but you never know.

CHAIR AMODEI:

Mr. Wilkinson, is the cite to *Nevada Revised Statute* 176 the standard subpoena statute? If the ACOS decides at their first meeting they want to issue a subpoena, is this a cite to the section that says majority, or can the Chair do it? I ask the question in the context of timing.

JUSTICE HARDESTY:

It requires a majority of the ACOS.

CHAIR AMODEI:

There would have to be an ACOS meeting to issue a subpoena.

MR. SKOLNIK:

The Department of Corrections is comfortable with it because of the makeup of the ACOS. We feel sensible and appropriate decisions will be made.



CHAIR AMODEI:

We are looking for a proposed amendment regarding renaming the commission, the time frame for appointment and a deadline for the first meeting.

MR. WILKINSON:

Senator Horsford mentioned that the legislative members, as the ACOS currently exists in statute, are already appointed. At the present time, section 5 of A.B. 508 provides that a meeting must be held no later than October 1. There is also a provision that says new members and non-legislative members must be appointed within 60 days after the appointment of Legislators. Of course, the Legislators are already currently appointed; therefore, I am not sure how that is supposed to occur. I am not sure what the current makeup of the ACOS is with respect to non-legislative members.

CHAIR AMODEI:

Please find out how that occurs. I suggest non-legislative members be appointed 30 days after passage and approval of A.B. 508; then change the first meeting date to July 15, which keeps it on a 30-30 schedule or faster. I assume members currently appointed will keep their appointments. New members need to be appointed within 30 days of passage and approval of A.B. 508. Am I in the right neighborhood on that?

MR. WILKINSON:

Yes.

CHAIR AMODEI:

We need to know the appointing authority for selecting new members.

MR. WILKINSON:

That is set forth in A.B. 508. The effective date is July 1; therefore, we will have to play with the dates for the first meeting.

CHAIR AMODEI:

The time frame will have to be changed for the ACOS to meet in the summer and not the fall. Do you want to do a conceptual amendment or would you prefer to vote on the Senate Floor after you see the amendment?

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 508.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE  
ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

When the amendment is ready, it will be distributed to the Committee. If there are any red flags, we will attempt to fix them on the Senate Floor.

Please update us on the retroactive good time credit issue in the context of what is being discussed in the money committees on release, timing of release, logistics of release and coordination of release.

JUSTICE HARDESTY:

First, for sentencings that occur on or after July 1, good time credits would be increased on minimums and maximums for individuals in all categories with an emphasis on increased good time credits for those who seek rehabilitation, additional educational opportunities and the like. With respect to retroactivity of good time credits, the basic concept is those good time credits would be granted retroactive to July 1, 2000, but only on the minimums, not on the maximums.

There is an important reason for that. It allows an inmate who has performed well in prison the opportunity to seek parole sooner. That individual would then be screened by the State Board of Parole Commissioners. The Nevada Mental Health Institute will also screen individuals with mental health issues. Drug and specialty courts will weigh in on it as well.

When the State Board of Parole Commissioners hears the case, a plan can be put in place with respect to release of the inmate. There will be no chaotic release of a large group of inmates; in fact, there will be no release of inmates except through the process of review by the State Board of Pardons Commissioners. It would require a careful, staged review and not all inmates would qualify.

Applying good time credits retroactive to July 1, 2001, on minimums only, inmates who have performed well in the prison system will be allowed to seek parole earlier. The system will have the ability to react to those increased requests. Staging release and providing subsequent supervision by probation officers, increasing the number of probation officers and providing supervision for individuals with Specialty or Mental Health Court will all be part of the process.

CHAIR AMODEI:

Are there enough resources allocated to staging applications and increasing the Division of Parole and Probation, or can it be done with existing resources?

MR. SKOLNIK:

Department of Corrections budget closings included 50 percent of the inmate-driven costs anticipated to be reduced and placed in the Interim Finance Committee for distribution as appropriate based on what happens to the prison population. If inmates get out and the numbers come down, the money would become available for the Division of Parole and Probation, programs and even diversionary programs. If not, we could go after the money to put it back into the budget if the prison population stays the same. Therefore, a provision is there assuming what is proposed actually works.

SENATOR HORSFORD:

Was there any discussion regarding the capacity of the State Board of Parole Commissioners? Was there discussion about expanding the State Board of Parole Commissioners or creating a new board to handle this process? There have been questions about the existing State Board of Parole Commissioners process, and we are adding more to what is already a challenged Commission.

MR. SKOLNIK:

It was put on the record as a concern by the State Board of Parole Commissioners. There was no clear-cut decision at this point as to how it would best be handled. Although the assumption is we could conceivably have as many as 1,200 inmates who would qualify for parole earlier under the good time credit retroactivity, it does not mean they will all be reviewed at once. Much will depend on existing legislation regarding the Nevada Open Meeting Law and other things that will impact the State Board of Parole Commissioners. I am unsure how it will play out when everything is said and done. There is a lot of

pressure on the State Board of Parole Commissioners and more coming. At this point, I am not aware of any packaged solution to that pressure.

ASSEMBLYMAN PARKS:

When the State Board of Parole Commissioners' budget was closed, funding was put in for additional individuals to be temporary parole commissioners, which is already provided in statute; therefore, funding was increased to a certain extent. If it is decided they must comply with the Open Meeting Law, it will present additional costs. It would be handled by the Interim Finance Committee by calling an early meeting immediately upon finding out that is the case.

CHAIR AMODEI:

From a resource perspective, there is recognition this may create a bulge in the snake up front; therefore, we retained flexibility through the Interim Finance Committee to meet it as it materializes.

JUSTICE HARDESTY:

Senator Horsford's comment is well-taken on that point. I would not want anyone to have the illusion there will not be a terrible bottleneck at the State Board of Parole Commissioners. Hopefully, they can deal with these temporary measures. The State Board of Parole Commissioners' response to the review of almost 450 files on the deportation of undocumented immigrants was incredible; however, that pace cannot be maintained over the course of the next year. I hope things will return somewhat to normal after the first year. There will have to be a request for assistance from the Interim Finance Committee right out of the chute.

The Department of Corrections estimates 1,200 inmates would qualify for these requests. There are no legal obligations as to when the requests must be heard. Clearly, depending upon decisions by our court, the State Board of Parole Commissioners could face serious staffing concerns. This returns to the issue that the pressure on the system is now, not a year from now. I hope the Legislature sets aside enough money with the Interim Finance Committee, not just with the savings worked out through the Department of Corrections budget but more to anticipate these kinds of issues.

CHAIR AMODEI:

Testimony today indicates additional funding has been provided in budget closings to the Division of Parole and Probation and a mechanism is anticipated to be created. Should anything else in that context be done before the Legislature adjourns?

MR. SKOLNIK:

The only issue that has not been discussed is the impact on the Department of Corrections should there be open meeting requirements for the State Board of Parole Commissioners. We will be physically challenged to provide the separation of victims from family members of the offenders as well as from the additional people who show up for hearings. There will be scheduling issues because it is an open meeting, which means inmates must be noticed. There will be challenges that currently do not have to be addressed and have not been included in the discussions.

CHAIR AMODEI:

Where are the open meeting provisions?

MR. SKOLNIK:

Open meeting provisions are in A.B. 416.

[ASSEMBLY BILL 416 \(1st Reprint\)](#): Makes various changes to provisions concerning the Department of Corrections. (BDR 16-190)

CHAIR AMODEI:

Open meetings are traditionally with the Senate Committee on Government Affairs; is A.B. 416 a Senate Committee on Judiciary bill?

MR. SKOLNIK:

Assembly Bill 416 came through the Assembly Committee on Ways and Means and is still there.

CHAIR AMODEI:

Did it go to the Assembly Committee on Judiciary before it went to the Assembly Committee on Ways and Means? Mr. Wilkinson indicates it did; therefore, we will talk about it tomorrow when we pre-hear A.B. 416.

SENATOR HORSFORD:

Assemblyman Parks, I understand another 2,000 inmates under supervision would also be available for retroactive good time credits and ultimately be discharged. What is the impact of that and have any additional funds been provided to the Division of Parole and Probation to address their assessment, review or whatever they do to move the offenders?

ASSEMBLYMAN PARKS:

We hope funding that might be required for those large numbers would come out of a contingency fund of approximately \$3 million to take care of the bulge in the python's stomach. I defer to the Director of the Department of Corrections relative to the numbers.

JUSTICE HARDESTY:

My understanding is good time credits will relieve some of the pressure on the Division of Parole and Probation's staff commitments. Good time credits will be afforded those who are currently being supervised. Additional officers have also been added.

SENATOR HORSFORD:

I respect that; however, with all the new officers and convictions, it will not be a drop, just an initial shift, then hold steady. There is a large caseload now, particularly in probation. Research from The Council of State Governments said it needs to be improved. I am concerned if additional resources are not provided, 50 percent will be coming back to prison.

MR. SKOLNIK:

Discussions to date indicate retroactive time credits will be applied, not only to parole but also probation. Those individuals will expire; therefore, whether there are resources to transition them is not part of the issue. They will have completed their sentences and be back in the community as citizens who will either do well or not. Three social workers have been added to the Division of Parole and Probation budget to assist with the transition that came as a result of these discussions.

SENATOR HORSFORD:

When discharge is complete, two-thirds of those released will come to certain communities and zip codes that I represent in Clark County, and Senators Mathews and Washington represent a large portion of those

communities in northern Nevada. Other than the Division of Parole and Probation and the Department of Corrections, what community resources can effectively help those individuals reenter the community, obtain employment and housing and do what they need to do in order to not commit another crime and return to the system? What is the answer to that piece of the puzzle?

MR. SKOLNIK:

The Going Home Prepared program has continued to be funded. Hopefully, it will have a northern Nevada component added during the course of the next biennium. We worked with a number of community agencies in that program to provide assistance to offenders in the community. The problem is—if all those organizations devote their energy to our released population—it still would not be enough. That is the reality across the board. The infrastructure in Nevada has not kept up with state growth, which includes community organizations.

JUSTICE HARDESTY:

There is a big hole at the moment, which is an issue that needs to be addressed. We need to be mindful of the fact these individuals have been under supervision and performed well. They only receive good time credits if they perform well. People are not discharged if they have not performed well on probation and parole. In fairness to them, they earned the right to be discharged and proceed as citizens. An important aspect of this is to reach out to the faith-based community. Other people have expressed interest in this issue and want to make a contribution in these areas. I hope the retooled ACOS can begin coordinating some of these activities with groups that are not government-related but want to help make the transition happen.

SENATOR WIENER:

We do not want to overlook juvenile justice in diverting and preventing juveniles from getting into the system. Professionals from juvenile justice testified several times on their part of this puzzle. Approximately 60 percent of my first four Legislative Sessions was spent on juvenile justice. How would that be incorporated into what you are doing? It is a front-end piece that should not get lost.

JUSTICE HARDESTY:

I suggest a technical amendment to add that topic to those listed in A.B. 508. You are correct it is an important piece that should be addressed. I am sure the

members of the ACOS would be cognizant of juvenile justice, but adding it emphasizes the point.

CHAIR AMODEI:

Mr. Wilkinson, if there is no objection to adding that technical amendment by the maker and seconder of the motion, please put it under the correct paragraph in A.B. 508.

ASSEMBLYMAN PARKS:

A number of appropriation bills still in play, both in the Senate Committee on Finance and Assembly Committee on Ways and Means, may appropriate funding to support therapy programs and/or help released inmates to find employment as well as seek treatment the Legislature neglected to fund for their confinement in prison.

CHAIR AMODEI:

When good time credits are enacted on minimums for individuals who performed well in prison, the record should reflect that the Legislature discussed and expressed concern about discharged inmates being allowed back into the community. The record should also reflect the inmates earned their release, they were screened and a value judgment was made in terms of resources available to them after release. We want to avoid a public misconception that the Legislature passed a law and "let 'em all out."

MR. SKOLNIK:

To put everyone more at ease, Nevada has one of the highest rates of release of parolees of over 50 percent in the nation as well as one of the lowest rates of recidivism of 26 percent, as defined by a return to the Department of Corrections within three years of release. In spite of all its failings and issues, the system does a good job of judging who will succeed. Individuals out on parole will probably succeed anyway; therefore, allowing them to come off supervision early will not have a significant impact in the community.

SENATOR WIENER:

The Council of State Governments briefings indicated Nevada had done well in those areas; however, we learned we are failing on the probation side. Will that be a priority?



JUSTICE HARDESTY:

There are caseload issues. The intensity of supervision and the ability to address issues quicker will make a difference in responding to supervision concerns. There is need for additional staff and reduction of caseloads. It is a key component of what the ACOS must accomplish. In the process, plans will be developed for those who are paroled with supervision; there will be more intensive supervision for a number of them. Part of the process is not just having an inmate come out of prison and report to a probation officer. There are many other issues; assistance in finding employment and housing, mental health and drug treatment are all key components. An attempt has been made to identify financial needs. I anticipate more financial needs and hope reserves in the Interim Finance Committee will be enough; however, I have no confidence in that respect. The Legislature can only do what can be done with funds provided.

SENATOR WIENER:

Another concern was the history on inappropriate management of technical violators. An option might be to utilize Casa Grande, which currently provides space for overload rather than a hard bed in the Department of Corrections.

JUSTICE HARDESTY:

That component is in A.B. 510. We suggested not only what might be characterized as a technical violation but, more importantly, what might be characterized as a drug offender who just does not get it. Giving the sentencing judge the ability to restrain the individual's liberty for two, three or six months without revoking him and sending him to prison are part of A.B. 510. It would be an enormous tool for a sentencing judge. Rather than revoking him, the individual could be placed in Casa Grande or some other confinement. He would still be employed and continue to be tested; however, he would not get to go home and watch television. He must stay where the judge places him. This would make a huge difference in getting his attention about the need to address his problem.

Many times, a sentencing judge will over-sentence a defendant. The judge will say, "To get your attention, instead of 24 to 60 days, I will sentence you 48 to 96 days. Now the sword of Damocles is over your head and I know that will make you perform as a drug addict in drug or diversion court." The reality is he will violate probably six times the first week. If the individual is violated and the only option to the sentencing judge is to revoke—guess what happens?—we

now put the defendant in for a longer sentence. Give me another option as a judge. Let me restrain his liberty for four or six months while he continues to work; do not let him have the freedom and give him a taste of prison without putting him in prison.

CHAIR AMODEI:

Mr. Wilkinson, please provide the Committee members the mock-up of A.B. 510.

JUSTICE HARDESTY:

Changes will be made to A.B. 510 today.

CHAIR AMODEI:

Tomorrow, we can do the same thing with those two measures. You sensitized us to the open meeting issue; therefore, please let us know if there are any other policy issues that need to be highlighted. It has been helpful to have you here to discuss these matters.

JUSTICE HARDESTY:

I am not sure the Assembly Committee on Ways and Means can finish their work on A.B. 510 today. You might consider holding your hearing next Monday or Tuesday because there are many permutations to this. I saw the mock-up of A.B. 510 about an hour ago and already know a section is missing.

CHAIR AMODEI:

We need to start narrowing the issue for the bites we can chew.

JUSTICE HARDESTY:

I have a conflict tomorrow morning; however, if you schedule a hearing for Monday, I will be able to attend.

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CHAIR AMODEI:

We will probably start the discussion tomorrow and finish it Monday.

There being no further business to come before the Committee, the hearing is adjourned at 10:38 a.m.

RESPECTFULLY SUBMITTED:

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Barbara Moss,  
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

DATE: \_\_\_\_\_