MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fourth Session
May 28, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:25 a.m. on Monday, May 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

Tonja Brown
Esther Smith
James W. McCuin

Cotter C. Conway, Washoe County Public Defender
Jason M. Frierson, Clark County Public Defender's Office
Michele Gochenour
Don Holmes
Donald Hinton, Spartacus Project Redress, Inc.
Ken Neil
David Haney
Mark Woods, Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety
Don Helling, Warden, Northern Nevada Correctional Center, Carson City, Department of Corrections
Consuelo F. McCuin
Marnita Y. Smith
Sean Gamble, The Rogich Communications Group
Flo Jones
Rich Lamb
Raymond J. Flynn, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Evelyn Murphy
Cindy Haney
Constance Kosuda
Katy O'Leary
Staci Palovich/Harsh
Pat Hines
Joseph A. Turco, American Civil Liberties Union of Nevada
Patti Edgin

CHAIR AMODEI:
We will continue our hearing on Assembly Bill (A.B.) 416.

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

TONJA BROWN:
I support A.B. 416. It has been surprising to Legislators to learn Nevada is one of three states where deoxyribonucleic acid (DNA) testing only applies to inmates who have received the death penalty. I am asking that a genetic marker analysis testing be conducted by an independent forensic laboratory outside the state at the petitioner's request. If the court finds in favor of the petitioner, the Department of Corrections (DOC) incurs all costs.

I want to add that a petitioner may request and pay for an independent forensic laboratory outside the state at the petitioner's request and cost. If an inmate is willing to incur all costs, they should grant DNA testing. There would be no fiscal impact to the state unless a judge grants their request and the county would incur the costs. The Nevada DOC would incur the costs of DNA testing in death penalty convictions. Also, I would like to add …

CHAIR AMODEI:
Ms. Brown, is this your testimony? You are giving us specific information.

MS. BROWN:
I provided this testimony last week and you were sent a copy.

CHAIR AMODEI:
We already have that information?

MS. BROWN:
Yes, you have it. Also, every parolee must have supervision of a minimum of six months. No one should leave prison on an expired sentence. This will reduce recidivism.

I would like to go to the Open Meeting Law. The Nevada Supreme Court determined the State Board of Parole Commissioners does not meet the definition of a quasi-judicial body; yet the Parole Board still claims they are quasi-judicial. They do not even meet the test of due process. Each meeting of the Parole Board should allow any citizen who is behaving properly an opportunity to speak; three minutes is the normal time used for most open meetings. They should also be required to have a written record for each meeting. An inmate must be present for the parole hearing to respond and participate in the question-and-answer portion of the Parole Board decision making. Parole Boards have been known to make mistakes. It is

important to adopt procedures preserving the appearance of fairness, thus gaining the confidence of inmates in their decision process. Their treatment in parole hearings will enhance the chance for rehabilitation by avoiding negative reactions.

What will the cost to Nevada taxpayers be when the Parole Board violations of *Nevada Revised Statute* (NRS) 241 concerning Open Meeting Laws are taken on appeal all the way to the U.S. Supreme Court? Accuracy and fairness are essential in proceedings which impinge directly on personal liberty. The interest of both society and criminal offenders are best served when fairness and accuracy are assured at all stages of sentencing and correctional process.

If the Legislature leaves Carson City without applying the Open Meeting Law to the Parole Board Commissioners, the practice of darkness will be alive and well and will follow this Legislature's decisions for years to come. This is one fiscal impact that must not be overlooked. The only foreseeable reason to have no records is that the Commissioners can give any reason; we have no way to check and the reasons change if they are questioned. With no records, we have no checks and balances and they answer to no one.

CHAIR AMODEI:
If I asked you to give me your top three priorities in A.B. 416 to put into A.B. 510, what would they be?

MS. BROWN:
It would be an advisory oversight commission, the Open Meeting Law and the DNA testing is important but so are the credits.

ESTHER SMITH:
I have been a resident of Las Vegas for 54 years. My husband is in the Southern Nevada Correctional Center. There have been changes. I was told everything is being taken away such as televisions, computers and things they can use to learn something, gym and stuff they need for exercises. That is not fair for the inmates. Incompetent prisoners needing treatment should be in an institution where they can get help. Do not put him behind bars and give him bad treatment. That is not doing anything for the inmates.

I do not think that institution is run correctly. They have pickers and choosers. They do not do as good to the inmates that other states do. If one inmate gets into a problem, lock that inmate down or do whatever is necessary. Do not do the whole prisoner system that way.

JAMES W. MCCUIN:
I am retired from the army and support A.B. 416 and A.B. 510.

ASSEMBLY BILL 510 (2nd Reprint): Makes various changes concerning credits earned by offenders and the incarceration and supervision of offenders. (BDR 16-1377)

COTTER C. CONWAY (Washoe County Public Defender):
I specifically support A.B. 416 to the provisions involving putting some discretion back with the judges in sections 26 through 34. With regard to those, my concern has been this, we testified before this Committee on A.B. 63 and we know some of the concerns there. What I am proposing today is very briefly …

ASSEMBLY BILL 63 (2nd Reprint): Revises provisions governing the additional penalty for the use of certain weapons in the commission of crime. (BDR 15-151)

CHAIR AMODEI:
Let me stop you there because apparently what I said on the Senate Floor has left some people with some confusion. This Committee passed out A.B. 63 and supported the return of discretion to sentencing judges. We had some language drafted which was circulated. Before it got to a vote, there were concerns raised by members of the Judiciary regarding that language's application to a fairly recent U.S. Supreme Court case and possible unintended consequences. This is the part where I did not make myself clear. I said we support the concept, but we want another week to work on language which will accomplish the objective without creating the unintended consequences.

If anybody thinks that anything I just said means we are somehow trying to kill A.B. 63, you are incorrect. I would like to thank these two gentlemen for taking up the task of a proposed amendment which accomplished what we want. If anybody leaves the room in the Grant Sawyer Building or the room here in Carson City thinking that A.B. 63 is dead—although I thought I made it clear

earlier, it is not. We are going to put its language into A.B. 510 which accomplishes the objective and does not create unintended consequences. Thank you for your efforts, Mr. Conway, and please proceed.

MR. CONWAY:
I understood what you said on the Senate Floor. In an effort to propose something to meet your concerns, I have submitted language to you (Exhibit C).

JASON M. FRIERSON (Clark County Public Defender's Office):
I would only like to add that I have spoken with R. Ben Graham of the Nevada District Attorneys Association and Assemblyman William Horne. There was language provided to Assemblyman Horne as a result of those discussions to resolve the concerns in A.B. 510 as well as A.B. 63 with respect to the U.S. Supreme Court case of *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

SENATOR CARE:
Are you inclined to give courts discretion to determine the enhancement we have had in statute for several decades?

MR. CONWAY:
I drafted this proposed amendment based on a statute that had survived *Apprendi* out of New York.

MR. FRIERSON:
I will provide you with language that came from discussions last week. Originally, it was worded in a way that appeared to make the enhancement discretionary. We changed that to make it clear the enhancement is required by law so we do not have to have a judge explain why the enhancement is being applied as opposed to explain the level of the enhancement.

MICHELE GOCHENOUR:
I support A.B. 416 and A.B. 510.

DON HOLMES:
I support A.B. 416 and A.B. 510.

DONALD HINTON (Spartacus Project Redress, Inc.):
Since Howard Skolnik, Director, Department of Corrections, has taken over the prison system, it has gotten worse. Infractions written up are not always true and it does not look like Mr. Skolnik is going to approach that problem.

Whole time for people, whether the infractions they are written up for are true or not, sometimes goes into years, and it does not look like Mr. Skolnik is going to approach that problem. At High Desert State Prison, they have removed the books and televisions and almost all reading material, anything to pass the time in the cell blocks. We definitely need that oversight committee.

CHAIR AMODEI:
Let me ask you the same question I asked Ms. Brown. If you could prioritize three things out of A.B. 416, what would be your top three priorities?

MR. HINTON:
The oversight committee would be No. 1; No. 2 is the money that DOC assesses on their kangaroo fines and perhaps the Open Meeting Law.

KEN NEIL:
I am a 30-year businessman in Las Vegas and have a son who has done 22 years in prison. The oversight committee is necessary. There are things that go on that you need to know about.

DAVID HANEY:
I absolutely support A.B. 416 and A.B. 510.

MS. SMITH:
I forgot to say I support A.B. 416 and A.B. 510, and I think we should go into the Parole Board system because our parole members are very rude to the inmates. They do not give them a chance to talk; they say things inappropriate to them and give them a bad spirit on parole date.

CHAIR AMODEI:
Assemblyman David Parks, we will conclude our testimony on A.B. 416 with you and then you can introduce A.B. 510.

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):
I am Chair of the Assembly Select Committee on Corrections, Parole and Probation (P&P). I am confused because I have not had any communication that A.B. 416 is in the least dead. I know section 25 seems to have problems with members in the Assembly, but I would like to emphatically say that without A.B. 416, we are going to have severe budget problems.

Sections 26 through 34 are provisions dealing with an issue partially contained in A.B. 63. This is where major savings will be accomplished, and I would hope to see A.B. 416 out of the Assembly Committee on Ways and Means within the next day. While all the other sections are vitally important, sections 26 through 34 are especially important from a budgetary perspective.

CHAIR AMODEI:
What is your impression of the chance of the proposed advisory commission coming out of Ways and Means?

ASSEMBLYMAN PARKS:
I have not heard. I am only one vote. My confusion is in the fact I have not received feedback from my fellow committee members in Ways and Means on what they like or do not like about the bill. I have to admit I am in the dark.

SENATOR WASHINGTON:
I have a question regarding the advisory commission. I am looking at the membership list. Was there any consideration given to the fact that some of the work could be incorporated by the prison interim committee?

ASSEMBLYMAN PARKS:
Are you talking about the interim committee on prison industries?

SENATOR WASHINGTON:
They are different?

ASSEMBLYMAN PARKS:
There are job descriptions about duties they are statutorily required to perform.

SENATOR WASHINGTON:
I was trying to find another avenue just in case you got bogged down in the Assembly Ways and Means Committee. Will you still have the interim committee on prison industries? Maybe through drafting or some language we can assign those duties.

ASSEMBLYMAN PARKS:
That would probably require some form of an adjustment or a change to the scope of duties of which they are required to adhere.

SENATOR WASHINGTON:
We have both served on that, have we not?

ASSEMBLYMAN PARKS:
No, I have not been on that committee. The thinking of the Select Committee was in part relative to the work accomplished in A.B. 508 would be more into the area of sentencing requirements, but the proposal within A.B. 416 would be to look at issues of concern that you heard this morning. The members attending this hearing from the Grant Sawyer Building have brought up that the Policy Advisory Commission on Corrections in A.B. 416 would look at those particular issues whereas the Advisory Commission on Sentencing would look more strictly at the judicial end of the work.

ASSEMBLY BILL 508 (3rd Reprint): Makes various changes to provisions concerning the Advisory Commission on Sentencing. (BDR 14-1378)

CHAIR AMODEI:
Sections 1 through 6 of A.B. 416 are about the Commission; section 25 is the Open Meeting Law and sections 26 through the end are the various things dealing with sentencing.

ASSEMBLYMAN PARKS:
Yes, you are correct. I would only add that section 21 is also in A.B. 510. The other important section would be section 24 of A.B. 416, which requires certain prisoners not previously released on parole be released 18 months, instead of the current 12 months, prior to the end of their maximum term.

The other part of section 24 that seems to be important to the individuals who have spoken this morning is that a reason for denial must be written every time somebody gets dumped. Most inmates get their notice and do not know why they were not granted parole.

SENATOR WASHINGTON:
In section 25, subsection 6, which is the Open Meeting Law portion of the bill, deals with discretion for the Board to have closed meetings if necessary to protect the identity of a minor, etc. Is that discretion limited to those circumstances within that section?

ASSEMBLYMAN PARKS:
Subsection 6 on page 11 says the Board may hold closed meetings in considering a prisoner for parole when necessary. Yes, there are times when testimony from a witness, especially a victim of crime, could be taken separately because there certainly is a fear factor that continues for many years. We do not want this to be an uncomfortable situation any more than what it already is for those individuals. Whatever the Board does, the important thing is they need to make a notation of it and include it in their findings.

SENATOR WASHINGTON:
How do you envision this working? Who would they notify that the hearing will be either opened or closed?

ASSEMBLYMAN PARKS:
I do not know the exact specifics, but I know they currently do activities along that line at this time.

SENATOR WASHINGTON:
Subsection 8 on page 12 says that the prisoners provide all information which the Board will rely upon considering whether to grant parole. That information sometimes discloses graphic information, such as details of the event. Would photos or graphic information be provided to the prisoner as well?

ASSEMBLYMAN PARKS:
Normally, documents are not provided to the inmate, but the inmate at least has the opportunity to look at those documents. I have heard time and again where an inmate meets with a caseworker, goes through the folder with the documents that are supposed to be submitted to the Parole Board and then

finds out afterwards that the documents never ended up in the folders provided to the Parole Board. These documents include information on good time credits or maybe letters from a member of the clergy supporting the inmate's request for parole. This bill is an attempt to let the inmates know exactly what is in the folder provided to the Parole Commissioners.

Certain offenders may earn a reduction of their sentence through good behavior, educational attainment or by successfully completing an alcohol or drug treatment program. Probationers become eligible for good behavior credits. Assembly Bill 510 increases the deductions from the sentence for a parolee who is current with any restitution and fees to defray the cost of his supervision. The bill also provides for retroactive application of credits to certain offenders. The Director of the DOC must not assign certain convicted sex offenders or offenders convicted of violent felonies to minimum security facilities. The Director must adopt standards making persons ineligible for a program of residential confinement if they are a felony sex offender Category A or a Category B felon or convicted of violent felonies. Parolees or probationers who violate conditions of their parole or probation, respectively, may be placed in certain community or minimum security correction facilities for no more than six months. An offender convicted of a violent felony within the immediate preceding year is ineligible to participate in certain programs of community reentry. The bill becomes effective July 1.

CHAIR AMODEI:
When we are talking about employment and education or rehabilitation, we changed from "established" to "demonstrated." Is that just wordsmithing or is there a different standard? The existing statute in section 3, page 5, says established a willingness or established a position of employment and the change will be to demonstrate a willingness or ability to establish. How do you administrate that?

ASSEMBLYMAN PARKS:
We have made it less specific. Sometimes "established" means there is definable documentation supporting the requirements.

CHAIR AMODEI:
Can you help us understand the demonstrated a willingness or ability to enroll in a program or rehabilitation as opposed to having actually enrolled?

MARK WOODS (Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety):
It is easier for an inmate to let us know they will be able to get a job versus actually having the job before they are paroled. It is rare someone will be guaranteed a job while they are still inside prison.

CHAIR AMODEI:
What about the rehabilitation or education stuff?

MR. WOODS:
It is the same thing. Many inmates are able to get rehabilitation when a bed or position is available, and they do not have control over that. They are willing to enter it as soon as possible.

CHAIR AMODEI:
Therefore, if we approve the change, there are resource issues. They must demonstrate a willingness to enroll in a program as opposed to enrolling. If we do not want the change, we should get rid of it as opposed to saying "demonstrating a willingness."

MR. WOODS:
I can appreciate what you are saying, but if inmates plan to get an education and come out between school sessions, they are not going to be enrolled as they have to go to the educational facility and enroll in person.

CHAIR AMODEI:
What would happen if an inmate comes out between sessions and there is no enrollment? We are not going to revoke them for that are we?

MR. WOODS:
No, unless they choose to purposely stay away from trying to enroll.

CHAIR AMODEI:
Section 3 on page 5 gets rid of "complete successfully the remainder of the program of treatment." I understand the context that forfeits credits. When we get rid of the requirements in section 3, can someone just connect the dots on how that is taking us to the greater good? Also, in section, 7.5, page 11, we have deleted paragraph (f) saying "has not made an effort in good faith to participate in or to complete educational or vocational program or any program of treatment, as ordered by the Director." Why is that being removed?

DON HELLING (Warden, Northern Nevada Correctional Center, Carson City, Department of Corrections):
The requirement was that a person must have a job prior to being released to residential confinement, which is a difficult standard to meet by many offenders. This change will give them more latitude on who can be sent out. Obviously, they will have to have some other resources available while they look for a job, maybe additional family support.

CHAIR AMODEI:
We have in section 7.5, subsection 3, paragraph (c) "has, within the immediately preceding 5 years, been convicted of any crime involving the use or threatened use of force or violence." Can you summarize the discussion for me that led from changing five to one?

ASSEMBLYMAN PARKS:
That came about as a result of testimony and discussions relative to allow inmates the opportunity to avail themselves of these programs.

CHAIR AMODEI:
Was there any statistical basis for the selection of one year? I know we wanted to make it shorter but was there any discussion of substance on selecting the shorter period of time that led to 1 year as opposed to 18 months or two years or whatever?

ASSEMBLYMAN PARKS:
There has been previous discussion of backing that down. The first discussion was that we reduce it to three years; subsequently—apparently from data provided by DOC, the final recommendation was to drop it down to one year.

MR. HELLING:
Just because inmates are eligible does not mean or imply that we will put them out on residential confinement. There would be other factors to consider. Even if they meet all these minimum criteria, there might be some other reason the Department might decide an inmate is not an appropriate candidate.

SENATOR HORSFORD:
I have questions about whether some of this needs to be developed through regulation by P&P because this is pretty broad language. I have concerns about how it will be administered and if it will be administered consistently and equally. If it is not implemented through regulation, who is held accountable if it is not followed?

MR. WOODS:
Parole and Probation is not responsible for the timekeeping of a parolee or inmate. We advise the prison system whether a parolee is complying with the rules. We have never been involved with good time credits.

MR. HELLING:
The DOC has administrative regulations detailing the criteria set forth which will have to be revised and modified. The Department supports this bill as amended, but a couple of caveats need to be added. There are issues about the amount of meritorious time an inmate can earn toward the end of the sentence. There are other statutory requirements about notification. For example, the Department likes to notify victims 30 days in advance of a release. Sometimes, these offenders get meritorious credits at the end of their sentence and all of a sudden they get released the next day. That is an issue, especially with sex offenders. The Department is having difficulty meeting that requirement. Therefore, the Department is considering allowing inmates to take classes but not give them credits.

The Department is caught between the old and new systems and still working on algorithms for the sentence structure of the old system to transfer to the new system. Applying credits to minimum sentencing only gives the Department 30 days. We are depending upon a vendor, and they have had problems in calculating the regular sentence structure; now we are adding additional things, such as minimum sentencing and retroactive credits. We will do what we have to, but it is a huge amount of work.

Another unintended consequence is we will see the education level of inmates coming to prison drop drastically because currently, they often falsify presentence investigation reports (PSI) to make them look good by saying they have a high school diploma. When they go before a judge, they might falsify in the other direction so they can get credits to maximize the least amount of time they will serve.

The Department does not know the total impact or the number of inmates. The Department does not determine who gets released. The Parole Board does. There is no way to predict what another agency is going to do.

MR. HINTON:
I would like the Committee to ascertain from Mr. Helling if he would give us the name of just one inmate who has been released within one day. This Committee is entitled to hear the truth, not rhetoric. I do not know where they are getting this stuff, but I will tell you, you should have heard the moans and groans that came up from here in Las Vegas when he was testifying. They know for a fact it is not true.

MS. SMITH:
He said inmates should have a job. Thousands of inmates are 60, 70 or 80 years old, in bad health and cannot get a job. We can hardly find jobs for those who are 25 or 30 years old. The health of older inmates will not let them get a job so what can we do about that?

CONSUELO F. MCCUIN:
Of all the parolees to come out of prisons, sex offenders are the hardest to place because there are many debits put in front of them. They cannot be within so many feet of a school, cannot be in a neighborhood and this, that and the other. My solution to all of this is provide more money for more parole officers. We have 300 to 400 parolees to 2 to 3 parole officers. Additional officers would better control where they are going, who they are seeing and what they are doing. I am not criticizing the job parole officers are doing. Mr. Helling has only been in his job for a month or two so he has not had time to get his fingers wet and see what is really under programs. He should not be in charge.

MARNITA Y. SMITH:
I am representing Kevin Smith, ID No. 14527. The best resource available to you is the inmate. The inmate knows his time. If he does not, then working with the counselors who work with DOC can move this process along. It should not be a long, drawn-out process because of computer programming. It would be cost-efficient to find out who needs to be released based upon the outline of A.B. 510.

We have supporters for incarcerated family members. We have asked, in writing, for time-management information. I wrote a letter in August 2006 on behalf of my husband. I have not received a response. I wrote another letter in February since I found out there is time that cannot be accounted for that the judge has credited. The system is failing the inmates.

An inmate is sentenced to serve time for his or her punishment. The punishment should not continue beyond the designated release date based on the discretion of one individual. It seems like some of the inmates' rights are violated before they are even released.

In Nevada, a felon cannot get a gaming card and if they do not have a strong work history for the past ten years, they are not going to get a job even though we have industry that is open for individuals who may lack education.

We are carrying the burdens of our loved ones on our backs. Send them home so we can continue to support them.

MS. BROWN:
For the record, I have a copy of the checklist the Parole Board uses (Exhibit D). I have submitted United States District Court, District of Nevada *Nolan Klein v. Don Helling, et. al.* (Exhibit E, original is on file in the Research Library).

CHAIR AMODEI:
How does your testimony relate to A.B. 510?

MS. BROWN:
It relates to A.B. 510 because this is why we need the oversight committee.

CHAIR AMODEI:
Which is in A.B. 416.

MS. BROWN:
But I am asking that A.B. 416 be moved over into A.B. 510 along with the DNA testing. I would like to add more.

CHAIR AMODEI:
I already heard that.

MS. BROWN:
I would like to add more to my submitted testimony because this is going to trial. During the discovery process, court proceedings and deposition, it was learned that DOC decided the attorney, Treva J. Hearne, was not allowed to see her client because she was married to an ex-felon. However, Ms. Hearne is not married and her ex-husband is a prominent practicing attorney in Missouri. The person they were referring to was an ex-felon who had killed his child. Mr. Hearne from Missouri has contacted the Attorney General's Office and the Governor and requested an apology. This has not been done. There is pending legal action. We need an oversight committee so things like this do not happen. Also, the cost is enormous to taxpayers. The American Civil Liberties Union has received in excess of $300,000 in legal fees. If we had an oversight committee, things like this would not happen. We are tired of paying for inappropriate behavior and their retaliation against inmates, family members and now attorneys.

I am also asking the Parole Board not consider whether the prisoner has appealed the judgment of imprisonment for which the prisoner is being considered for parole. This goes hand in hand with the DNA request. I will tell you this, it is an unwritten policy of the Parole Board that if you have an appeal pending in either state or federal court, you will not be released to the street. So, if a person is maintaining their innocence and appealing their conviction, they will never see the street. If the DNA is available, it would definitely help those people who are fighting for justice to prove their innocence.

CHAIR AMODEI:
We are considering A.B. 510. We already had the hearing on A.B. 416. I asked you what your top priorities are and we know that one of the top priorities is the oversight board. If you have testimony on A.B. 510 that you have not already provided in the context of A.B. 416, please come forward and give that testimony.

SEAN GAMBLE (The Rogich Communications Group):
Assemblyman Harvey J. Munford requested that I speak on his behalf. He asked that I bring forward his three components of A.B. 416 to amend into A.B. 510. The components include the Open Meeting Law, the policy advisory commission, which is the oversight committee, and the inmate merit credits (Exhibit F). He is trying to address overcrowding and allow release of inmates sooner, if they qualify. He feels there are many incarcerated for petty crimes and they can be released. He says 80 percent of the women inmates are in for nonviolent crimes.

CHAIR AMODEI:
We are hearing these bills in anticipation of something coming from the Assembly Committee on Way and Means. There is a rule that says it actually has to pass out of the House of origin before we can do anything with it. In anticipation of one of them passing, we are conducting these hearings to afford you an opportunity to do what you are doing now as opposed to trying to do something on the floor and on the run.

I am not familiar with the open meeting stuff because, traditionally, that jurisdiction is with the Senate Committee on Government Affairs. For that component, I would appreciate brief information in writing within the next couple days on the status of an open meeting with respect to the Parole Board now. Summarize the proposals to change it and make members of the Committee on Government Affairs know that is something we are looking at in case they want to have input or a hearing if appropriate.

FLO JONES:
The Open Meeting Law, NRS 241, is applicable to the Parole Board, which it was, is and has always been. Between 2001 and 2003, they wrote it out of their manual when they revised it. For some reason, they took the authority to drop the language.

CHAIR AMODEI:
If it turns out that your conclusion is the Parole Board is subject to the provisions of the Open Meeting Law, then we do not need to change the law because we should be following it. We will request an opinion from Legislative Counsel.

SENATOR WIENER:
I had requested staff to provide information about how many times we have requested Legislative Commission to provide regulatory changes, updates and revisions. According to staff, it has been six years. If there is an overlap or interactivity required between the *Nevada Administrative Code* and regulations, I would sure like some clarification.

CHAIR AMODEI:
If regulations have changed and they have not come through the NRS 233B process, we would like to know that.

SENATOR WIENER:
Can they do things through Administrative Code that do not require some marriage to the regulatory process?

CHAIR AMODEI:
Is your testimony in the context of open meetings?

MS. JONES:
Yes, NRS 213.130, subsection 8 has been on the books for a long time; it clearly would not be interrupted by NRS 241, which is applicable to all commissions of our state. It does protect, with exact language, the victim's identity during a parole hearing. It also gives the Parole Board the authority to close a session to protect this identity. What it does not allow is the misuse or disallowment of the provisions of the Open Meeting Law—NRS 241—which is what I believe is happening.

SENATOR CARE:
I would like to introduce Hayden Courtney who is with me today who is 11 years old; he is up here for a couple of days doing a report for his school on the Legislature.

MS. JONES:
I want to touch on inmate credits. Fourteen years ago, a day was considered a 24-hour period of time. Somewhere along the line, the DOC developed a formula which they claim how easy it makes their lives. It works in only one specific situation when an inmate gets all of his credits for good time, is able to work and gets all of his work time. For any other situation, the formula is wrong and cheats inmates and taxpayers because we are paying for people to be in longer.

The DOC even puts on inmates' sheets that a day and a merit credit—which is only worth two-thirds of a day—are synonymous. The last time I counted, they are not. To only get two-thirds of a day when you thought you earned a day of good time defeats morale. It also affects education credits. If we allow the DOC to continue to maintain the two-thirds reduction, we are defeating our own purposes.

CHAIR AMODEI:
Where is that language?

MS. JONES:
It is explained in my handout (Exhibit G). These changes will help inmate morale, discourage lawsuits and even stop some of the unrest we have in a situation with so much idle time.

I never heard someone from DOC speak to the fact that the PSI reports could be falsified; however, I must say that has bothered me for many years. We have people writing the presentencing investigation reports who in many cases are overworked, not qualified and certainly are not sworn to tell the truth. Sometimes, those PSI stories look like they are fictional and the inmates do not have an opportunity—nor do their families—to correct any information. I speak of this from a very personal experience. About 26 years ago, information existing in a PSI report was not accurate and we were unable to check it.

I would like to ask that the folks who do PSI reports be sworn, just like anyone who testifies before a parole hearing must under the laws of perjury. I have no problem with victims being able to speak in private. I have every problem with victims being able to embellish—not that their emotion is not a very important factor—the facts of the case.

RICH LAMB:
I approve what Ms. Jones says about A.B. 416 and A.B. 510 and have submitted a handout (Exhibit H).

RAYMOND J. FLYNN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
Originally, we had major concerns with A.B. 510, but as amended, it will address our needs and I have confirmed that with Director Skolnik.

EVELYN MURPHY:
I am speaking first regarding a proposed amendment to A.B. 510 (Exhibit I) which adds to NRS 193 that the sentencing judge shall have discretion to determine what the enhancement penalty shall be from one to ten years. This Amendment also deletes doubling the enhancement penalty. This is to be applied retroactively.

The other thing I would speak to is credits and the importance of them being properly credited. I have long been involved with reentry programs and have spoken to groups of inmates regarding reentry and street readiness programs. Inmates should be given opportunities for education because it is proved that the greater education they have, the less likely they are to reoffend. There are many inmates who are looking to change their way of life. Availing them—while they are incarcerated—to further education, speaking abilities, vocational programs, etc. will help reduce the prison population in the future by having them ready and giving them the opportunity to earn credits. While I do not know the exact figures, at Warm Springs Correctional Center, there are 64 jobs available for an excess of 300 inmates. These inmates want the opportunity and are willing to participate in whatever necessary to improve their chances for success and reduce recidivism.

CHAIR AMODEI:
On the enhancement you testified to, are you in favor of the enhancements being changed in the context that they appear in A.B. 510?

MS. MURPHY:
That is correct.

CINDY HANEY:
My son, incarcerated at High Desert State Prison, is Jeremy Naylor, ID No. 86930. He has continually been in all the education programs trying to earn good credits. I have been calling time-management keepers continuously to make sure his credits have been applied properly. I was just told he was to get 90 meritorious credits which would equal 9 days for every 15 credits. What got

on his books is 30 days of meritorious credits which only moved up his good time by 18 days when he was expecting 54 days. This is a continual problem. Time management is not getting the proper time reported.

I am also in favor of changing the enhancement penalty. My son is also in there on an enhancement charge. He got sentenced double. There are many changes that need to be made.

MR. HINTON:
I am disappointed that A.B. 416 may not get out of Committee which is unconscionable.

CHAIR AMODEI:
Whether A.B. 416 travels or does not travel, the important thing is the policy considerations relevant to this issue. Whether they have a number A.B. 416 or a number A.B. 510 or whatever number, the important thing is that the policy is addressed or attempted to be addressed. I suggest you watch the policy and not necessarily the bill.

MR. HINTON:
I had made an amendment to A.B. 416, but I do not have the paperwork with me. I believe it was on NRS 209.246 where the institution was permitted some years ago by the Legislature to take money from family, friends, and loved ones who send money in to support their families in prison. Would you accept my mailing it to you as an amendment to A.B. 510?

CHAIR AMODEI:
If you would deliver it to the staff in the Grant Sawyer Building, they will fax it to Brad Wilkinson, Chief Deputy Legislative Counsel, today.

MR. HINTON:
It will be a chore, but I will try and get it done.

MS. MCCUIN:
I support A.B. 510. I concur with everything Flo Jones said. The priority for me is the oversight committee, time credits and enhancements, in that order.

CONSTANCE KOSUDA:
I am concerned that if everything the advocates have testified to is true, specifically that P&P has been violating the Open Meeting Law for at least six years, then some sanctions need to be included for an agency such as P&P. This should not be allowed to happen forever with impunity. We support these bills completely.

ESTHER SMITH:
I support an inmate who is my husband. Why do they not remove the section of the parole program that when an inmate spends 25 or 30 years in prison and comes out on parole, the family pays a parole office to turn in papers once a month? That is another $35 or $40 that he can use to live. Once he does his time, he should be free to go and do whatever he is supposed to do and not pay for it.

CHAIR AMODEI:
On your way out, if you want to give staff the specific question you just posed, they will direct it to Linda J. Eissmann, Committee Policy Analyst, and she will provide a brief answer to you.

KATY O'LEARY:
I am a registered nurse here on behalf of a friend who is in Ely State Prison. My eyes have been opened about the status of prisoners. I am here today to support A.B. 510 and A.B. 416 to transform the prison system to something that can work for the prisoners and their families.

My friend has told me a lot of stories about things that happen. He was up for parole in three months and was attacked by a group of people with a knife. He was put in solitary nine months ago and he is still there. Something is wrong with that picture.

All institutional paroles to consecutive prison sentences should be made by Nevada DOC Offender Management Division. An inmate should be considered for release if he has served the mandatory minimum or bottom number of his sentence less the statutory good time credit days. He should have no additional criminal convictions occurring during the instant term being served. The statutory good time credit day should have the value of a 24-hour period of time and not anything less. Parole Board hearings will be held only for inmates being considered for possible release to the streets. Anyone with no possible release

should not have a parole hearing. This is an incredibly positive savings to the Nevada state budget.

STACI PALOVICH/HARSH:
I will read my written testimony into the record (Exhibit J).

PAT HINES:
I am from Yerington. Credits given erroneously for many years have been visibly overlooked by this Committee and other legislative committees. It is specifically listed in our NRS that one credit is equal to one day's time in prison. I cannot understand how a government department can make this kind of error which is punishment for the people earning credits. If you or I broke an NRS, we would have some kind of punishment. To make this bill only retroactive back to 2000 or 2001 is a disgrace.

Judges need more discretion. They certainly do in comparison to what the Parole Board had without any monitoring, supervision or even approval of their own standards and guidelines.

I just received paperwork on a young man who had his parole hearing denied on May 8 and received the notice on May 22. It is highly unusual for an inmate to get notice within two weeks. Sometimes, decisions are not made for five or six weeks after the inmate's hearing. The paperwork I received said his parole decision was done on May 9. If they can make a decision the day after, they can certainly do their deliberations—if this body decides to make that a law—before the day of the parole hearing and give that decision out the day of the hearing. I would like to see that included and some of these discretions removed.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):
I will speak to a couple of policy issues in both A.B. 416 and A.B. 510. It took me awhile to understand the *Apprendi* problem. The discretions we are talking about had nothing to do with whether enhancements are granted because that is a jury decision. The discretion we are talking about is giving judges a range between one and ten years for enhancements rather than automatically doubling the sentence. Judges will have to explain the reasons for their decisions.

CHAIR AMODEI:
Hearings have taken place over the years where victims have felt just as passionately that a sentence did not do justice. To paint a 360-degree historical picture, we now are going back to this precipice and reexamining our value judgments—the Truth in Sentencing in the mid-1990s was that people testified they did not want the parole folks to have any discretion. Now we are hearing one size does not fit all so we are reexamining those policies.

MR. TURCO:
I know how difficult judges' jobs are and this does require them to do a little bit more homework, although we have proposed adding an appellate layer and a district. The ACLU supports an oversight committee and would ask that Dr. Richard L. Siegel or someone from our organization be included as a civil rights advocate.

Regarding credits, I cannot tell you how many letters and phone calls our office has received. If we did not change any law, Mr. Chair, if we just did the math, we could release I do not know how many hundreds of people today. I have not followed every single complaint to its conclusion, but enormous numbers of people are calling and writing the ACLU saying their credits are being added incorrectly. Is it because they cannot do math, is it deliberate or is it a lack of oversight? I do not know the answer. There are things we could and should do right now without changing any law. I wanted to make that observation; it is anecdotal, but it is significant.

Open meetings are my final policy issue. I get the sense that maybe DOC is a little paranoid. Every other agency and department struggles with open meetings. Nobody is demanding every single thing be wide open. Advocates, sponsors and people who care want some kind of cooperation. I am personally appealing to DOC to give us something more than what we have. Inmates come back into our society, they are one of us and it is all our responsibility to do these things right.

PATTI EDGIN:
I would like to address some of the issues about the Parole Board that have come up today, especially the Open Meeting Law. One of the comments you made earlier about one of the sections on A.B. 510 was whether an inmate had established a willingness to get employment or educational programs. I would let you know, and you may be aware of this, some of the reentry programs

such as Casa Grande Transitional Center have the men and women working so they are able to establish the ability to maintain a job; they are responsible, able to pay restitution and are financially responsible. They are able to demonstrate those skills and abilities. Yet when they come up for parole, they are not always approved for parole even though they have already established they are able to fulfill many of the requirements to make them eligible for parole.

My son is at Casa Grande and is successful in that program. He came up for parole and was not allowed to attend his Parole Board hearing. As a family, we were only allowed to provide letters for the Board to review. Whether they actually read the letters, we do not know. I understand these parole hearings are quick, but the inmate is not even allowed to participate in his own Parole Board hearing. That is not right. Decisions are being made about their lives. They have a right to be at the hearing where things are being discussed and decisions are being made for their lives. Because the Board does not document their meetings, there are no notes, agenda or record other than their decision.

My son's probability score was excellent. He had a score of -3 which means he is going to be successful if approved for parole. He is already working and has established he is a successful person. Not only did they deny his parole, they denied it for two years. The Parole Board needs to be accountable for their decisions. Please do not let them continue to meet in secret, make decisions behind people's backs and not be accountable.

MS. BROWN:
I call the Committee's attention to page 7, Item 15 of Exhibit G while you deliberate. The Parole Board has too much discretion. I will provide an example of an inmate who was recently released after serving additional time for a parole violation. He had been released and was productive and working. He had a girlfriend who was into drugs and visited his home. He called his parole officer repeatedly, but the officer never showed up. He left the situation because he did not want to go to jail, but in doing so, he committed an infraction by cutting off his ankle bracelet. Because of this infraction, it cost him nine additional years in prison. His parole officer testified at his parole hearing, took responsibility and verified the inmate's attempts to contact him. The inmate did not have the proper code because they are changed often. Had the parole officer received the calls, he would have removed the inmate from the situation. Because the inmate had cut off his ankle bracelet, he was returned to prison for nine years. Every time he appeared before the Parole Board, it was a dump.

CHAIR AMODEI:
We will close the hearings on A.B. 510 and A.B. 416. We are adjourned at 11:56 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: