

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 30, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:14 a.m. on Wednesday, May 30, 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 Dennis Nolan
Senator Valerie Wiener
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)
Senator Terry Care (Excused)

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John S. Michela, Deputy Attorney General, Office of the Attorney General
P.K. O'Neill, Chief, Records and Technology Division, Central Repository for
Nevada Records of Criminal History, Department of Public Safety
Cotter C. Conway, Washoe County Public Defender
Jason M. Frierson, Clark County Public Defender's Office

CHAIR AMODEI:

The hearing is opened on Assembly Bill (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)

SENATOR HORSFORD:

In reference to page 39, section 46, subsection 2 of A.B. 579, constituents in my district asked:

- What was the need for the provision?
- How can an individual remove his name from the Nevada Sex Offender Registry if it is put there in error?

JOHN S. MICHELA (Deputy Attorney General, Office of the Attorney General):
Section 46, subsection 2 of A.B. 579 defines a person who commits a consensual sexual act against an individual at least 13 years of age when the offender is not more than four years older than the victim as not committing a sexual offense. This comes from two sources. The main source is from the Adam Walsh Child Protection and Safety Act of 2006, which defines it as not a sexual offense.

During the sex offender summit, held October 2005 with local law enforcement agencies, there was concern regarding a situation in which an 18-year-old convicted of statutory sexual seduction against a 15-year-old married the victim, was married for a significant amount of time, had a family but was still subject to the stigma of being on the Nevada Sex Offender Registry and community notification, as well as having their children subject to that stigma. That concern is also reflected in the federal Adam Walsh Act.

A person listed on the Nevada Sex Offender Registry who believes he does not belong there can have his name removed by contacting the Registry and explaining the reason. The Registry will look into the matter; if they feel competent in their analysis of the law's response to that individual, they will either remove him from the Registry or explain why he should remain on it.

If the Registry does not feel competent in its legal analysis, the request is forwarded to the Registry's counsel for analysis. The counsel will contact the individual directly or the Registry will respond after it confers with counsel. The

individual will then be removed from the Registry or receive an explanation as to the reason he must remain on it.

SENATOR HORSFORD:

Is a record kept of individuals who request or petition to remove their name from the Nevada Sex Offender Registry if it is there due to an error? Is there also a record kept of the reason their name must remain on the Nevada Sex Offender Registry?

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

Files are kept on all former and current sex offenders. There are over 12,000 files. When a person is removed from the Nevada Sex Offender Registry, the file is inactive and no longer tracked.

SENATOR HORSFORD:

Is the Central Repository for Nevada Records of Criminal History required to keep a separate log of complaints or petitions of individuals who have requested their names be removed from the Registry because they feel they are on it erroneously? Does the log also indicate which names have been removed and which names have remained and the reason they have remained?

MR. O'NEILL:

There is no such log.

SENATOR HORSFORD:

What is the appeal process for individuals who have requested their name be removed from the Nevada Sex Offender Registry and the Central Repository does not agree?

MR. O'NEILL:

Let me explain how an individual is put on the Nevada Sex Offender Registry. The Nevada Sex Offender Registry is based on a person voluntarily going to their local law enforcement office and reporting that as a convicted sex offender, he is there to register. If an individual comes from out of state and is unsure whether or not to register, local agencies have them fill out the registry and forward the information to the Central Repository. The Central Repository then does an evaluation, which includes their tier level assessment before their name goes on the site or is included in the Registry.

Individuals usually argue they are improperly tiered. There is an appeal process including a reassessment hearing which is part of the Open Meeting Law and conducted monthly. There are usually 8 to 12 hearings a month. The individual can go to the court process if they still feel their issue needs to be readdressed. I have never heard of an individual voluntarily registering as a sex offender who was not a sex offender. That would be an anomaly rather than the norm. Normally, an individual argues their tier assessment is incorrect and their name does not belong in the file.

SENATOR HORSFORD:

There is confusion among the general public as to whether this law refers to offenders, advocates of offenders or family members of offenders. The question comes up frequently. Due to new laws being enacted for registration of offenders, residency requirements and where sex offenders are allowed to congregate, it is important to understand what tier they belong to in order to avoid a serious violation if they are not in compliance. Therefore, I will take it upon myself to accept your invitation to visit the Central Repository to educate myself in order to explain to my constituents who brought their concerns to me.

CHAIR AMODEI:

If any Committee members wish to request a Committee bill draft request for the 2009 Legislative Session before the end of this Legislative Session, we will meet at the Bar on the Senate Floor for that purpose.

SENATOR NOLAN MOVED TO DO PASS A.B. 579.

SENATOR HORSFORD SECONDED THE MOTION.

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

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CHAIR AMODEI:

The hearing is opened on 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)

The Committee heard A.B. 416 and A.B. 510. One of the major tenets of A.B. 416 was the creation of an oversight committee for the Department of Corrections. A committee already created under A.B. 508 was renamed.

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

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

BRAD WILKINSON (Chief Deputy Legislative Counsel):
It was renamed the Advisory Commission on the Administration of Justice.

CHAIR AMODEI:

Assembly Bill 508 had some specific charges, one of which was operations of the Department of Corrections, which had a broad brush. That committee may be an appropriate venue for corrections-related issues on operations. Conferring with some of our colleagues on the Assembly Committee on Ways and Means, it is my understanding the need for two committees is unapparent with the attendant cost, time and so forth. Therefore, the issue is whether we have a committee that has Legislators and other stakeholders involved in that process.

Unless the Committee has an objection, we will consider adding to that committee's charge specifically based on the testimony in A.B. 416 and other bills—other than only operations in general.

SENATOR WIENER:

One concern was an open meeting provision.

CHAIR AMODEI:

A Nevada Supreme Court case is pending on the State Board of Parole Commissioners and open meetings. Since the Advisory Commission on the Administration of Justice (ACAJ) will be making recommendations to the 2009 Legislative Session, perhaps it would be advisable to let them evaluate whatever is done by the Nevada Supreme Court and return to this Committee. I would have no objection to open meeting applicability to whatever they do. The ACAJ can get their arms around costs and policy considerations and bring it back next

session, depending on the decision of the Nevada Supreme Court. Are there any other additions?

Mr. Wilkinson, one of the items discussed was timekeeping calculation, whether an individual gets credit and whether a day is a day or two-thirds of day. Unless there is an objection from the Committee, I would like to add a charge to consider the timekeeping system.

SENATOR WIENER:

There are two parts—good-time credits and the manner in which timekeeping is determined.

CHAIR AMODEI:

Mr. Wilkinson, please make sure we address the manner in which a day is determined.

Testimony indicated the State Board of Parole Commissioners was considering whether or not an appeal was under way in determining whether or not to grant parole in terms of factors. Do you want to deal with it directly or not deal with it at all? I am concerned if the right to appeal is exercised as a factor in parole. If they are not doing it, there is no problem. What are your thoughts?

SENATOR MCGINNESS:

I am not sure that should preclude offenders from probation if they have the constitutional right to an appeal. Perhaps it should be an informational item but not preclude them.

MR. WILKINSON:

The current status of the law does not address it. It is not listed as a factor to be considered. That was included for reference as a change in section 23 of A.B. 416 on page 8, lines 17 through 20. That proposal would have specifically said the State Board of Parole Commissioners could not consider it.

CHAIR AMODEI:

Is there any objection to including that in A.B. 510? Let the record reflect a negative response to that question.

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CHAIR AMODEI:

Sections 26 through 34 of A.B. 416 are enhancements. In A.B. 63, we attempted to create language that would require the sentencing judge to indicate the reason he used the discretion.

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)

The language we proposed for A.B. 416 turned out to violate the U.S. Supreme Court *Apprendi v. New Jersey*, 530 U.S. 466 (2000), ruling, which is cited in the recent Nevada Supreme Court ruling *O'Neill v. State*, 123 Nev. Adv. Op. No. 2, 153 P.3d 38 (2007). The ruling does not violate *Apprendi*; it requires submitting many factors for sentencing to the jury, which was not our intent.

Assemblyman William Horne, Assembly District No. 34, submitted language from Jason M. Frierson, Clark County Public Defender's Office.

SENATOR WIENER:

What crimes were not included in the new penalty of one to ten years on enhancements? Have they been captured by the proposal to revise?

MR. WILKINSON:

There are no crimes specifically excluded; it applies to everything.

CHAIR AMODEI:

Assembly Bill 63 dealt with weapons enhancement and the penalty was 1 to 20 years. Is the weapons enhancement penalty in sections 26 through 34 of A.B. 416 from one to ten years?

MR. WILKINSON:

Yes.

CHAIR AMODEI:

First of all, we must decide whether or not we want to back the weapons enhancement penalty down to 10 years or leave it at 1 to 20 years as in A.B. 63. Does the Committee have any thoughts on that aspect?

SENATOR WIENER:

That is the reason I asked whether some would be excluded. Section after section being excluded is reduced from the original up to 100-percent enhancement; one to ten years still gives discretion and parameters for discretion. If we back it down, it would be the one outside the box. Is that correct?

CHAIR AMODEI:

We want to get discretionary language to apply to whatever we do in the ballpark. Then, if Committee members want to go through the list of what is reduced wholesale and deal with it on a case-by-case basis, I do not mind giving more time to do it. Perhaps Ms. Eissmann can prepare a one-page comparison indicating which enhancements are proposed for a one-to-ten-year penalty and what it was before.

For A.B. 63 purposes, I like 1 to 20 years with the right language. Assemblyman Horne does not like either Mr. Frierson's or the Committee's amendments. Mr. Wilkinson, please read the one-line suggestion from Assemblyman Horne.

MR. WILKINSON:

The proposed change would say, "The court shall state on the record the reasons for the length of the additional sentence imposed by the court."

CHAIR AMODEI:

Stating the reasons on the record is a great start. We do not want to violate *Apprendi*. I do not know whether we need to reference including but not limited to. There have been suggestions regarding a presentence report and facts found in the trial on the merits.

I would like Messrs. Conway and Frierson to beef it up a little without getting close to *Apprendi*.

COTTER C. CONWAY (Washoe County Public Defender):

The *O'Neill* case from the Nevada Supreme Court on the *Apprendi* issue talks about what they believe a district court can consider in an enhancement statute; in that case, it was the habitual criminal. It says a district court may consider facts such as a defendant's criminal history, mitigation evidence, victim impact

statements and the like. Those are examples the Nevada Supreme Court considered that did not offend the *Apprendi* statute.

JASON M. FRIERSON (Clark County Public Defender's Office):

I am familiar with the case. There may be some nuances because it dealt with habitual versus simply a sentencing under an enhancement. Creating a list of factors for the court to include in their rationale would not be problematic.

CHAIR AMODEI:

I do not want to use factors if that is a bad thing to say. However, it is Wednesday and we are under time constraints. If we are going to do this, we want to flesh it out rather than just saying tell us why.

MR. FRIERSON:

We can come up with something today.

CHAIR AMODEI:

I am not admonishing you and Mr. Conway, but this will not go out with one sentence.

MR. FRIERSON:

We can come up with language to submit today.

CHAIR AMODEI:

Pending receipt of the language and Committee review of the one through ten years accepting the weapons enhancement, we will be looking for amend and do pass A.B. 510 with the provisions discussed in A.B. 416 and A.B. 510.

Is there discussion in a work session sense on what is in A.B. 510? If there is no objection from the Committee and it does not break a rule, I have asked the name of Assemblyman Harvey J. Munford, Assembly District No. 6, to be put on A.B. 510.

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There being no further business to come before the Committee, the hearing is adjourned at 9:41 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____