

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 31, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:16 a.m. on Thursday, May 31, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)
Senator Terry Care (Excused)

STAFF MEMBERS PRESENT:

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

CHAIR AMODEI:

The work session is opened on Assembly Bill (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)

CHAIR AMODEI:

The Committee previously discussed the Open Meeting Law situation and in concept provided some charges to the Committee on criminal justice. The purpose of today's work session is to consider the enhancement language in

A.B. 416 that revises the enhancement and provides discretion to sentencing judges.

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

The staff prepared a mock-up amendment in the context of A.B. 63 which set a range of 1 to 20 years for the enhancement.

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 mock-up amendment (Exhibit C) requires sentencing judges to be more communicative regarding their discretion and provides the following language:

In determining the length of the additional penalty imposed, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

There is also cleanup language that says the enhancement cannot exceed the term for the underlying crime.

Sections taken out of A.B. 416 (Exhibit D) talked about a one- to ten-year range as an enhancement of various incendiary crimes which are committed:

- With a deadly weapon or tear gas;
- With a handgun containing a metal-penetrating bullet;
- By adult with assistance of a child;
- On school property, at school-sponsored activity or on a school bus;
- In violation of an order for protection or to restrict conduct;
- Against older or vulnerable people;

- As hate crimes;
- To promote gang activities; and
- As an act of terrorism.

I informed Assemblyman David R. Parks the Committee has no objection to returning some discretion to sentencing judges in the context of the mock-up amendment. Rather than a 1- to 10-year range, we will do 1 to 20 years which covers all ranges up through Category B felonies, with underlying language the sentence cannot be enhanced more than the maximum. Therefore, judges' discretion will be the full range of the underlying sentence subject to the findings.

Even though it is 1 to 20 years, if the underlying crime has a maximum sentence of 10 years, then the maximum potential enhancement is 10 years. The 1- to 20-year range allows a range similar to the underlying crime.

What are the Committee members' thoughts on the discretionary piece or changing the A.B. 416 provisions from a range of 1 to 10 years to 1 to 20 years to cover Category B through Category E felonies?

SENATOR MCGINNESS:

I am comfortable the language will give judges more discretion. I was in the Legislature when the truth-in-sentencing law was passed and I do not want to see it unraveled. Part of the reason the truth-in-sentencing law passed was due to egregious cases that caused the public to demand it. I hope judges will use their discretion to help the correctional system make more realistic sentences for some offenders.

SENATOR WASHINGTON:

I support 1 to 20 years. We heard testimony on A.B. 416 and A.B. 510 from individuals whose loved ones have been incarcerated and subject to the State Board of Parole Commissioners. When we worked on truth in sentencing, we heard testimony from victims who were themselves violated or lost loved ones to heinous and devastating crimes. At that time, crime was the No. 1 issue. We created legislation that allowed judges discretion but never gave forthright answers to victims as to the length of time perpetrators would be incarcerated depending upon good time credits and time spent in local or county jail before transport to prison based on the judge's sentencing.

I also do not want to see truth in sentencing unraveled. Although I do not want to go as far as The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court, suggests, the mock-up amendment is a well thought-out compromise that will give resolution to those who are incarcerated in the context of the crime does not fit the punishment and/or certain crimes should be enhanced. I support the amendment with some reservation. If it does not work, future Legislators will look at it again and make adjustments as needed.

CHAIR AMODEI:

There is a proposed amendment by Flo Jones ([Exhibit E](#)) relating to section 5, subsection 8 of A.B. 510. I have not studied it as much as Ms. Jones; therefore, my ability to digest it at the moment is not sufficient. I request the Committee to talk with Assemblyman Parks and Assemblyman Harvey J. Munford and if it is agreed this amendment should be put in the bill, we will amend it on the Senate Floor.

BRAD WILKINSON (Chief Deputy Legislative Counsel):

There are amendments that change the enhancements in sections 26 through 34 of A.B. 416. Changes with respect to the Advisory Commission on the Administration of Justice would have that body look at issues relating to the Open Meeting Law and the system of calculation of credits against sentences. A provision in A.B. 416 stated that the Parole Board would not consider the fact that a person had appealed his conviction.

CHAIR AMODEI:

I also asked the staff to determine whether it would be possible to add Assemblyman Munford's name to a committee bill. The answer was a name cannot be added to a committee bill. Our heart was in the right place, Assemblyman Munford, and perhaps we can change that rule at a later time.

MR. WILKINSON:

Section 24 of A.B. 416 is the provision which stated if the State Board of Parole Commissioners denied a mandatory release, the reasons for denial would be provided in writing to the prisoner.

CHAIR AMODEI:

What is the pleasure of the Committee with respect to A.B. 510?

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SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 510.

SENATOR HORSFORD SECONDED THE MOTION.

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

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CHAIR AMODEI:

Is anybody interested in serving on the guardianship conference committee with Senator Care? Receiving a negative answer, I will assign people to the committee.

The work session is opened on Senate Bill (S.B.) 303.

[SENATE BILL 303 \(1st Reprint\)](#): Amends the Charter of the City of North Las Vegas concerning the qualifications of municipal judges prospectively contingent upon voter approval. (BDR S-80)

CHAIR AMODEI:

Senate Bill 303 says a justice of the peace must be a lawyer. The Assembly added election language indicating in the general election on November 4, 2008, a question must be placed on the ballot which asks the people of North Las Vegas to vote on whether they want justices of the peace to be lawyers.

SENATOR HORSFORD:

I would like to serve on that committee because it is in my district.

CHAIR AMODEI:

If we concur, a conference committee would not be unnecessary.

SENATOR HORSFORD:

I would move to not concur and be assigned to the conference committee.

SENATOR HORSFORD MOVED TO NOT CONCUR WITH AMENDMENT
NO. 836 TO S.B. 303.

SENATOR WIENER SECONDED THE MOTION.

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

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CHAIR AMODEI:

I conferred with Assemblyman Bernie Anderson and we decided not to do first or second conference committees on Judiciary bills. I assign Senator Horsford chair of the conference committee. There will be no second conference; therefore, whatever you do is done.

The work session is opened on S.B. 542.

SENATE BILL 542 (2nd Reprint): Revises provisions governing exemptions from execution by creditors. (BDR 2-1364)

CHAIR AMODEI:

Senate Bill 542 was the Governor's homestead bill; however, it no longer has anything to do with homestead and has security deposits relating to landlord/tenant, which were nowhere in the bill. I would entertain a motion to not concur with S.B. 542 to enable us to engage in some sort of hearing process on the Governor's homestead bill, which is now for landlord/tenant issues.

SENATOR WIENER MOVED TO NOT CONCUR WITH AMENDMENT
NOS. 838 AND 1026 TO S.B. 542.

SENATOR HORSFORD SECONDED THE MOTION.

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

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CHAIR AMODEI:

The work session is now opened on A.B. 521.

ASSEMBLY BILL 521 (3rd Reprint): Revises provisions relating to various crimes. (BDR 15-500)

CHAIR AMODEI:

Assembly Bill 521 was the Attorney General's bill that had to do with fraud. It now has the fix to the retail bill and the provision regarding pregnant women and driving under the influence. They asked whether or not we want to recede from those amendments.

SENATOR WASHINGTON MOVED TO NOT RECEDE FROM AMENDMENT NOS. 784 AND 1021 TO A.B. 521.

SENATOR WIENER SECONDED THE MOTION.

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

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CHAIR AMODEI:

Does any member of the Committee desire to serve on this conference committee? Senator Care is assigned to serve on this conference committee.

SENATOR WIENER:

I will serve on the conference committee.

CHAIR AMODEI:

The other two members will be assigned.

The work session is opened on A.B. 50.

ASSEMBLY BILL 50 (2nd Reprint): Makes various changes to provisions relating to peace officers. (BDR 23-146)

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CHAIR AMODEI:

Assembly Bill 50 has to do with peace officers, release of home address and so forth. The Assembly refused to concur with our amendment that asked them to provide for a method of service in exchange for the inability to release personal information. I talked with Assemblyman Marcus Conklin who would like the opportunity to work out something that would not attempt to make these individuals immune from civil service. I would entertain a motion not to recede.

SENATOR WASHINGTON MOVED TO NOT RECEDE FROM AMENDMENT NO. 759 TO A.B. 50.

SENATOR WIENER SECONDED THE MOTION.

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

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CHAIR AMODEI:

Senator Wiener, would you like to serve on this conference committee? The Chair will also serve and Senator Care will be assigned to serve on this conference committee.

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There being no further business to come before the Committee, the work session is adjourned at 9:31 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____