

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
May 28, 2007**

The subcommittee of the Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:02 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.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Mike McGinness
Senator Terry Care

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Constance Kosuda
Donald Hinton
Patricia Warren
Juli Alexander, Redress, Incorporated
Andrea Muir
David Wilkinson
Cindy Haney
Consuela F. McCuin, Prison Watchdog
Marnita Y. Smith
Sharon Samson

CHAIR AMODEI:

We will begin with Assembly Bill (A.B.) 416 and we are limiting the testimony because it is my understanding A.B. 416 will not be sent over from the

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Assembly Committee on Ways and Means. I want to devote as much time as possible to A.B. 510 which we will get and is germane for purposes of potential amendments from A.B. 416.

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

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:

I will read an e-mail from Constance Kosuda ([Exhibit C](#)) for our record.

I will defy anybody—in the three sessions that I have chaired this Committee—to point to an instance in the record where I have threatened anybody with perjury whether they are in government or out. I will not speak for other committees in other Houses, but that is not the way we do it here. I will defy you to argue with me if this is not the most transparent Committee in the entire Legislature, which is why I just said it is my understanding that A.B. 416 is not going to be processed. That may be a controversial statement, and it ultimately may be wrong, but transparency is not an issue for purposes of this Committee.

CONSTANCE KOSUDA:

Thank you, sir; I am Constance Kosuda. I was not referring to the functioning of your Committee but rather the Assembly Committee on Ways and Means and also what transpired in the A.C.R. No. 17 of the 73rd Legislative Session hearings when these things did occur. Thank you for the way you are handling the Senate Committee on Judiciary hearings.

We support A.B. 416 and A.B. 510 and specifically support amendments to A.B. 510 which would include the prison oversight committee or whatever name it receives. The Department of Corrections cannot police itself as there are substantial breakdowns. We also object—and we will be filing a Freedom of Information Act—to what we perceive to be conflicts of interest by The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court. As a member of the judiciary, Justice Hardesty, advised members of the Legislature to not pass a bill that has been under discussion for at least six to seven years

with the direction of Assemblyman David R. Parks and Assemblyman Harvey J. Munford.

DONALD HINTON:

Six or seven years ago, you and I had a history when you were on the Governor's Study Committee on Corrections; today, we find ourselves—under A.B. 416, A.B. 510 and A.B. 508—still talking about the very same thing. This has been swept under the table to the point where it is absolutely disgusting.

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

This morning, I submitted a letter ([Exhibit D](#)) which contains disturbing facts for your Committee to read. There will be no problem seeing a need for change. We have our own Guantanamo Bay right here in Nevada.

PATRICIA WARREN:

My concern over the early release of my 76-year-old husband stems from his numerous medical problems not being addressed. The attitude has been, "You are in prison, what do you expect?" or more frequently, "You are just getting old." My husband must buy items from the inmate store in addition to what the state provides just to maintain a modicum of health. My small social security check supplies the funds necessary for supplements and skin care products to provide for my husband's health issues.

Our prison system, already filled beyond capacity, is causing unrest and security concerns among staff and inmates. The situation will only become more difficult as overcrowding continues to grow.

This overflow of inmates creates a lack of openings to programs and jobs for the inmates. With no work and program credits off their sentencing, you see the domino effect of restricted yard and visiting privileges. Stress levels remain high due to this constant shifting and moving of inmates to lower levels. It is not the inmates' fault there are not enough jobs or programs available, but they are being punished by not having them.

There are daily difficulties between inmates in finding safe areas to function. The present conditions of overcrowding lead to dangerous situations and confrontations. This leads to constant arguing, restlessness and anger because

there is just not enough space or time to accommodate the needs of so many inmates. With a shortage of qualified staff and the extreme overcrowding of inmates, security for staff is now an issue of great concern. Overcrowding is becoming a health issue for staff and inmates equally with severe consequences. In 2006, the Health Division demanded a second tuberculosis (TB) test for the year when an inmate with active TB was found working in culinary. The overcrowding and close proximity of inmate containment is a veritable petri dish of optimum conditions for breeding disease.

Since inmate wellness has not been a first priority, please turn your attention to the staff; these possible diseases are taken home to their families, friends and, therefore, to the public. We need immediate relief of the overcrowded conditions. Feasible plans must be put into place for ongoing release of inmates to thwart the staggering amount of money required to keep building more and more prisons to warehouse these offenders.

I realize there are no pat answers to all of the problems incarceration creates. As a society, we need to understand the solution is not in warehousing alone. It has been estimated well over 30 percent of our prison inmate population could be released without any danger to society. Action must be taken now. We need an independent committee of qualified citizens to interact with the State Board of Parole Commissioners. This would encourage the Parole Board to stop acting as though they have judicial authority. The courts put in a low and a high on sentencing meant to make it easier for those having done good time to be paroled on their minimum time. It is not for the Parole Board to give more or less time, unless the inmate has not displayed good behavior. Alas, our Parole Board thinks it is not only a judiciary arm of the court, but that they often know better than the court.

We can continue to talk and argue and never come to an agreement. We need to stop talking and take concrete action to deal with these time-sensitive issues. If we do not, the federal government will step in and hand us a much higher price tag than we can ever get out from under.

JULI ALEXANDER (Redress, Incorporated):

As of the end of today, I will have in hand a court decision on behalf of inmate Jack McClinton. He was granted a writ of habeas corpus by the courts dated March 23, 2007 indicating the Parole Board could no longer hold this person as he actually expired his sentence in March 2006. Mr. McClinton went to the

Parole Board on April 17 with his court order and was told—and this is hearsay because I was not present—that the Parole Board did not care what the courts had ordered. He should have been released; instead, they gave him a two-year dump. In addition, after he had filed his complaint to the courts, the Parole Board apparently instituted a grievance against him, found against him and punished him for abusing the grievance process by taking away his store rights for 30 days. A short time later, the court upheld his case: therefore he was punished for no reason.

We have two other cases of the same nature we plan to file on Tuesday. Because we have stare decisis, we know those cases must win. In testimony, the Parole Board talked about they could not afford the Open Meeting Law as it would cost too much money to comply. We are wondering how much money in the Attorney General's budget is going toward defending cases that are indefensible based on the stare decisis. This unlawful imprisonment is a serious crime being committed by the Parole Board. There is no accountability in government if the Parole Board is allowed to act as a judiciary and impose additional sentences for no reason. They are willing to thumb their nose at our court system by holding somebody for an excessive number of years and also usurping the legislative process by granting itself Open Meeting Law privileges never granted to them.

We are describing a rogue agency. This type of behavior means the buck stops nowhere and any government agency does not have to answer to the other branches of government. A citizens' government exists to serve the people, and it is our duty as citizens to try and hold an errant government in check.

It has been suggested by another activist that Dorla M. Salling, Chair, State Board of Parole Commissioners, be removed from her position even though her commission does not expire until 2008. Behavior of this kind does not just verge on the criminal but appears to be quite criminal. We need Dorla M. Salling on a silver platter. As head of the Parole Board, she is responsible for their behavior which is truly criminal. If we report this behavior to an entity such as the Legislature, and let them know criminal acts are being committed by a government agency, there is federal law. Under misprision of felony, failure to take action when duly reported makes those who we report to part of the criminal setting. We are asking that somebody in Legislature get involved on the Jack McClinton, Rickey Tolton, and Melvin Ware cases because the Parole Board is completely out-of-bounds.

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CHAIR AMODEI:

Would you repeat those last three case names and ID Numbers?

MS. ALEXANDER:

They are Jack McClinton, ID Number 46873; Rickey Tolton, ID Number 78951; and Melvin Ware; Number ID Number 76234.

CHAIR AMODEI:

Will you provide any information regarding those cases to Mr. Wilkinson so he can look at them? Also, I would appreciate whatever information you have regarding someone who expired their sentence and had a court order so our legal staff can check it out. Will that be alright with you?

MS. ALEXANDER:

Absolutely, as soon as I have the court order in hand, I will fax it to Mr. Wilkinson.

ANDREA MUIR:

My concern is with the Open Meeting Law. A couple weeks ago in one of my classes, we watched a documentary called Investigative Reports: *Parole Board-Nevada* where the Parole Board conducted themselves quite professionally and admirably. It was shocking because the Board displayed behavior quite different than my junior high experience in 2004 where a few board members had an attitude towards our family and my stepfather who is incarcerated. They were quite unprofessional. They act differently in front of people who might have influence. This has been a horrible experience.

DAVID WILKINSON:

I have been made aware of some of the improprieties of A.B. 416 and the development of A.B. 510. I am here to support Assemblyman Harvey J. Munford in his quest to help reform issues related to the Open Meeting Law and the creation of a Policy Advisory Commission on Corrections.

CINDY HANEY:

I am here as a citizen of Nevada for over 20 years. My son is incarcerated at High Desert State Prison. I am strongly in agreement with A.B. 416 and A.B. 510. I was privy to the Open Meeting Law when my family was asked to leave during my son's parole hearing while the victim's family was allowed to

testify. I disagree with that action. Anyone should be allowed to stay the entire time at a public hearing. My son is also a victim because he had completed every requirement necessary for release with the minimum time served, including all of his programming and schooling. He had a total points score of 0, statistical risk assessment of re-offending at -3 points and no prior record. Not only did the Parole Board deny him, but they also expired him to expiration.

The Parole Board is not acting properly. I have written numerous letters to Assemblymen, the Governor, Senator Valerie Wiener, Senator Dennis Nolan and several other people asking assistance for this to be rectified. I strongly support Assemblyman Munford and A.B. 416 and A.B. 510.

SENATOR CARE:

What is the offense for which your son was convicted?

Ms. HANEY:

It is manslaughter with a deadly weapon. He took a plea bargain.

CONSUELO F. MCCUIN (Prison Watch Dog):

I am here to support A.B. 416 and ask you adopt A.B. 510 with all of its amendments.

MARNITA Y. SMITH:

I am here representing my husband Kevin Smith, ID No. 14527, currently incarcerated at Southern Desert Correctional Center. My husband was originally convicted of robbery in 1979. He has been in and out of prison due to parole violations. He was released, and because of an error by the court system, he was returned to prison and required to expire.

I am here to support both of these bills because my husband has done more than enough time. He has completed all required programs, but because of the Parole Board and the inaccuracy of calculating credit time served, he is being forced to stay in prison until the end of this year. He has missed his son's graduation, and he will miss his daughter's graduation in June because he has not received the proper good time credits.

Things need to be cleared up regarding inmates' good time credits. I am not alone. You have heard about other inmates in the same situation. Something needs to be done. Proper credits of inmate times are not correctly allocated.

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This is a continuing problem as you will see if you compare my husband's back number with other back numbers. In 1979, he was sentenced to 15 years for robbery. He has served in excess of 20 years. I hope it does not take another two years for good time credits to be properly applied to this inmate.

SHARON SAMSON:

If A.B. 416 does not pass this session, I ask that the proposed committee be kept alive so the 2009 Legislature can look at it again. A myriad of problems within the Department of Corrections and with the parole commissioners cannot all be changed or corrected this session. It is obvious these two rogue agencies need to be brought in line. We would appreciate active investigations on the issues we have testified to and give us something to assist with new developments coming forward for the next session.

CHAIR AMODEI:

We will adjourn at 9:26 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____