MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
June 6, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:17 a.m. on Monday, June 6, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits if applicable, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Karyn Werner, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Carol Sala, Administrator, Aging and Disability Services Division, Department of Health and Human Services
Keith Munro, Assistant Attorney General, Office of the Attorney General
Heather D. Procter, Deputy Attorney General, Special Prosecutions Unit, Bureau of Criminal Justice, Office of the Attorney General
Kristin Erickson, representing Nevada District Attorneys Association
Tammy Riggs, Freeman & Riggs, LLP, Reno, Nevada
Tierra Jones, representing the Clark County Office of the Public Defender
Jeff Mohlenkamp, Deputy Director, Support Services, Nevada Department of Corrections
Mark Woods, Deputy Chief, Headquarters and Northern Command, Division of Parole and Probation, Department of Public Safety

Chairman Horne:
Good morning. This is the final day of the regular legislative session. We have a couple of bills that we are going to hear this morning, Senate Bill 347 (2nd Reprint) and Senate Bill 72 (1st Reprint). We will start with Senator Denis's bill, Senate Bill 347 (2nd Reprint).

Senate Bill 347 (2nd Reprint): Authorizes the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services to administer oaths, take testimony and issue subpoenas under certain circumstances. (BDR15-1075)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:
This bill should not take very long. The reason it came about originally was that some of the people who look into elder abuse fraud for Aging and Disability Services Division, Department of Health and Human Services, were trying to investigate to establish probable cause. They were having a hard time getting

records from the banks, especially from the credit unions. It was a vicious circle because the investigators would go to the police to try to get the records, but the police would say they could not because law enforcement did not have probable cause. Then, the investigators would say they needed the police to get the records, so the investigators could establish probable cause. Originally, we were going to do much more than what the bill does, but then we changed it to give the police's power to the people in Aging and Disability Services. However, that was not going to work because Aging and Disability Services did not need to have a police officer on their staff to do this. It does not happen that often.

We ended up with what you have before you. We added section 6. Basically, Aging and Disability Services currently has administrative subpoena power available in the office. This bill would put into statute what is applied. It gives the investigators the ability to get the information and, if not, they can go to court to get it. That is what the bill does. I have someone here from the Aging and Disability Services Division.

Chairman Horne:
Are there any questions from the Committee for Senator Denis?

Assemblyman McArthur:
If they have administrative subpoena power, and it looks like this is for records, why do you need this bill?

Senator Denis:
They can obtain records but, by having it in statute, it gives them more ability to get the information. They now have implied power, so by putting it in statute it says, "If you do not provide these records, we are going to go to court."

Assemblyman McArthur:
I do not understand; you either have subpoena power or you do not.

Senator Denis:
I can have the Department speak to that.

Carol Sala, Administrator, Aging and Disability Services Division, Department of Health and Human Services:
Within our Division we have Elder Protective Services workers who investigate abuse, neglect, exploitation, and isolation. The exploitation is the important part. We have an elder rights attorney within our Division and, in statute, she is the one who has the subpoena power for records. This bill was brought

forward because there are several ways we can obtain the bank records. Last session, there was a statute change that made it so that banks would have to give us the records; however, we are still having some difficulty getting them. During an investigation for exploitation, timeliness is critical for getting those records. This would give us additional ability to acquire those records faster.

Assemblyman McArthur:
Are you still going to have the administrative subpoena power only?

Carol Sala:
That is correct.

Assemblyman McArthur:
The thing that bothers me is that it sounded like you said you were having trouble getting subpoenas, so this looks like a way around it. It seemed that the police did not have probable cause, so you are trying to do it without them. That is the problem with police departments when you need more information for probable cause. This looks like a way around it. I want to make sure we are really not doing that.

Senator Denis:
That is not what I meant. What I actually meant was that they needed to get the records; not the subpoena, the records. This will help them to get the records.

Assemblyman Sherwood:
The part that gives me pause is, does this become a fishing expedition? What is the scope of the subpoena? You are looking for exploitation. You have the records. You see something. There was no probable cause on that something else, but you have the records so they are "in trouble" for something else that had nothing to do with the original reason for going after the records. It is worrisome when you give a nonlegal entity that subpoena power.

Carol Sala:
Statute requires our Elder Protective Services staff to investigate any allegation of abuse, neglect, exploitation, or isolation. This bill has to do with exploitation. When we get a report of alleged exploitation, the social worker goes into the bank and asks for the bank records specific to that client. We, for the most part, are able to get those, but there are times when the banks balk at giving us the records even though it says in statute that we are required to investigate. When there is a delay in getting those records, it can mean lots of money further exploited from that senior citizen's account. Once we get those records,

or evidence, and we can show there is probable cause, we turn it over to law enforcement. We do not go out and start looking for exploitation by going to banks and asking for records on people. We have to be responding to a report of elder abuse.

Assemblyman Sherwood:
And it is a legitimate threshold?

Carol Sala:
Yes. The statute is very specific on the investigation process.

Chairman Horne:
Can you please expand on that, Ms. Sala. Your department gets a complaint of suspicion of exploitation that someone may be taking advantage of a senior fiscally. Is that complaint the threshold for you to seek information, bank records, or other things that you would not normally be able to seek without a subpoena?

Carol Sala:
That is correct. We are required by law to initiate an investigation on any report that comes in. We investigate whatever specific allegation there is, whether it is abuse, self-neglect, neglect, or exploitation, as in this case. We start an investigation. We talk to the victim and he or she can give us records, or the victim may be hesitant to do that. We can then go to the bank and ask for those records. Usually, the banks will give us the records.

Last session, there were changes to statute so that bank employees are required to have training on elder abuse, to identify potential exploitation, and to report it to us. The way the statute is written is that the report can come into us under Aging and Disability Services Division, Department of Health and Human Services, or go to a law enforcement agency. At that point, we are required to start an investigation.

Chairman Horne:
These investigations are not just for bank records. While investigating elder abuse, what other areas do your investigations take you to?

Carol Sala:
There are several areas where we investigate: abuse, neglect, exploitation, and isolation. Usually, the report comes in on something specific. It will say, "So-and-so is being abused by her neighbor," or whatever. Or that someone coming into the house could be getting her to withdraw her money. That would be exploitation. We start the investigation on whatever the specific

allegation is. You could go out and meet with the victim and see that there are some unexplained injuries, and then it turns into abuse. The statute is very explicit on the four types of elder abuse that Elder Protective Services investigates: abuse, neglect, exploitation, and isolation. An example of isolation is when a family member keeps the senior from talking to anyone else.

Chairman Horne:
You mentioned physical abuse. You talk to a potential victim, but she does not want to speak to you. You see signs that she may have been abused, so you might ask to see her medical records, but she says, "No, I am fine and you do not need to see my medical records." Would you seek a subpoena for her medical records?

Carol Sala:
No. The process starts with the victim. We then talk to other people, such as home health workers that may be coming in. We ask them if they have seen anything that warrants possible abuse. It is a whole assessment process done by licensed social workers to look at the entire makeup of the support system for that person. It could be that the home health agency aid could be the potential abuser. First, you identify what the allegation is, who the possible perpetrators are, and then you interview those people who are around the person, whether neighbors or family. There are times when a senior may be afraid to speak up and say that his son is hitting him, or his daughter is locking him in the closet. You look at the big picture, not just the person. You can contact doctors. You usually get permission from the victim, but you also have to look at the mental capacity of the victim. Is he able to give you consent? It is a whole process that I cannot "cookie cutter" for each case.

Chairman Horne:
I understand that. I have concern about documentation. The evidence that you obtain through a subpoena, other than one for probable cause, can be used in a criminal prosecution. It is different from using this solely for civil purposes. When it could possibly be used as evidence in a criminal prosecution, it gives me pause.

Carol Sala:
That is understandable.

Assemblyman Brooks:
You get an anonymous complaint that there is an elderly woman being abused by someone who lives across the street from her. You talk to that individual, who is 80 years old, and she says she is fine. She says that she has an arrangement with the lady across the street to come over to help her from

time to time. Does this give you the authority to still look into her bank account and records to see if the allegation is true?

Carol Sala:
We would further investigate, in the sense of questioning the victim, to find out what the relationship with the neighbor across the street is. Is this someone who comes over to remind her to take her medications every day, or is she someone who drives her around and takes her to the bank? There is a whole investigation process. We do not jump from one point to the next, but we do look at the entire realm of what is going on with this senior. Is there a support system? Are there children who are also involved? We can bring them into the conversation. The grown child may say that he or she noticed weird activity with his or her mother's bank account, or that Mrs. Smith across the street only does this and this. I understand the concern as far as the potential of far reaching arms getting into people's business, but it is an investigatory process. The whole intent is to protect the senior who is considered to be in one of the most vulnerable populations. If part of the investigation leads to concern of exploitation, we would pursue that. We do not cut it off and say we are only here to investigate the abuse.

Assemblyman Brooks:
I know of an older lady who recently lost her husband. She still lived in her home, and a friend of hers lived across the street. The friend would come over and cook for the elderly lady and do other things for her, like taking her to the bank. When she passed, the lady left her home to the neighbor. Is that something that would be considered exploitation? How would you deal with something like that? In particular, if the woman who passed away and left the home to her friend had children who were estranged, but seemed to want to come back into her life towards the end, how would you deal with a situation like that, and how far would you probe?

Carol Sala:
In the realm of the investigation, one of the things that we look at is competency. We get a lot of calls that people, for instance grown sons and daughters, do not like the decisions that the parent is making. However, if that person is competent, she has a right to make choices that you or I might not agree with. We have to look at the competency of the client, and the potential victim. That may involve bringing in a doctor to do a competency evaluation, or taking that person in to do the competency evaluation.

In the situation that you are addressing, if that senior, during the course of our investigation, was not incompetent and is making choices that the children may not like, that person still has the right to make those decisions. Once someone dies, we cannot go on with the investigation. Our process ends at that time.

Assemblyman Brooks:
Would you consider her aggrieved, having just lost her husband during that year? Would you consider that in your competency decision?

Carol Sala:
Competency is actually a medical determination. A person can be depressed and feel vulnerable, and a neighbor comes in and fills a hole in his life. That is different from being declared incompetent so that you can no longer make financial or medical decisions. There are levels of guardianship and competency. Being declared incompetent is completely different from being sad because of a life event. You can be vulnerable because of that, but again, it is different from competency.

Assemblyman Ohrenschall:
You have the scenario that Assemblyman Brooks talked about. You have a senior citizen who has a neighbor who comes over and cooks for her. Maybe she has a relative that lives in another state who is concerned that the neighbor might be taking advantage of the senior, so he calls to make a report. Do you go through a deputy attorney general to get a subpoena through the courts to investigate? What is the procedure now? Can you give me a timeline on how long it takes?

Carol Sala:
When we get a report, we are mandated by law to initiate an investigation within three working days. We do not need a subpoena or ruling to initiate that investigation. We begin by going out to see the victim, and by calling the reporting party back to get additional information. The subpoena power comes in when we get to the point that we need to get bank records to see what is occurring, if the allegation is exploitation. We always start the investigation with talking to the senior citizen. There are times when we deal with competency. The senior may tell you not to talk to her son or niece any longer. We would have to do what the senior requests. We do not need to have a subpoena to initiate the investigation.

What this bill proposes is subpoena power to get records that will further the investigation, or when we get to the point that there appears to be a criminal act. It gives us what we need to give to the police, so they can act on it.

They will not act on hearsay. Law enforcement needs documentation that something has occurred.

Assemblyman Ohrenschall:
Under Mr. Brooks' scenario, a far-off relative calls about the kindly neighbor. You investigate, and you think the kindly neighbor may be somehow getting money out of the senior's bank account. At that point, do you turn it over to the local police for that jurisdiction and ask them to begin an investigation? What happens now? I am trying to figure out what the hurdles are that you are trying to overcome with this bill.

Carol Sala:
We do not turn it over to the police at that point. We would then go to the bank and ask for the records.

Assemblyman Ohrenschall:
Without a subpoena?

Carol Sala:
Without a subpoena. For the most part, the banks will allow us to get the records. There were some changes to statute last session that strengthened our ability to obtain the records. We actually have a couple of different ways to do that now. I do not remember the statute number that strengthened that. Our elder rights attorney, Sally Ramm, does have administrative subpoena power now.

What this bill would do is strengthen our subpoena power. To be clear, this bill was brought forth by Senator Denis at the request of some of the credit union fraud folks. Last session, the changes were huge and got us past some huge barriers, and has enabled us to get the records most of the time.

Assemblyman Ohrenschall:
For the most part, are you able to get the bank records now without going to court for a subpoena?

Carol Sala:
That is correct.

Chairman Horne:
Are there any other questions from the Committee for Senator Denis or Ms. Sala? I see none. Senator Denis, is there an order that you want people to testify in?

Senator Denis:
I do not have anyone else.

Chairman Horne:
Is there anyone here wishing to testify in favor of Senate Bill 347 (2nd Reprint)? I see no one. Is there anyone here wishing to testify in opposition to Senate Bill 347 (2nd Reprint)? [There was no one.] Is there anyone in the neutral position? I see no one. Would you like to make any final comments, Senator Denis?

Senator Denis:
I have appreciated the opportunity to talk about this issue. Elder abuse is unfortunate, and it is unfortunate that we have to talk about this for people who are truly vulnerable. Hopefully, we have brought something here that can be a tool for finding people who abuse these individuals. Thank you.

Chairman Horne:
Thank you. We will probably recess today and come back to process this later. We will see what we can do. We will close the hearing on S.B. 347 (R2).

We will open the hearing on Senate Bill 72 (1st Reprint).

Senate Bill 72 (1st Reprint): Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

Keith Munro, Assistant Attorney General, Office of the Attorney General:
The Office of the Attorney General submitted Senate Bill 72 (1st Reprint) in response to some comments made by the Chair of the Assembly Committee on Judiciary during the interim. The issue deals with being convicted of driving under the influence (DUI) and causing substantial bodily harm or death. There was an issue of whether, on the sentence of 2 to 5 years, someone had to serve two years in prison, the mandatory minimum that was imposed by the court.

There was a newspaper article in the *Reno Gazette-Journal.* In the article, Chairman Horne said that he had reviewed the law and the Nevada Supreme Court decision and agrees with former Chief Justice Rose that lawmakers intended prison time when they set up the punishment for drunk driving cases involving death or serious bodily injury. We came forward with S.B. 72 (R1) to determine what the policy is for the State of Nevada; what was set by the Legislature. We thought the law was pretty clear that the Legislature intended prison time and that, when someone was driving under

the influence and caused death or substantial bodily harm, he had to serve the minimum amount of time in prison.

This bill made it out of the Senate Committee on Judiciary unanimously, but the Nevada Supreme Court, in the interim last week, entered an opinion that said the Legislature intended that, when you are convicted of driving under the influence and you cause death or substantial bodily injury, your prison time can be served on house arrest. We do not think that is what the Legislature intended when it passed that law, but the decision is the choice of the Legislature and that is why we are here with S.B. 72 (R1), and we hope it receives favorable consideration.

Chairman Horne:
Are there any questions from the Committee for Mr. Munro?

Assemblyman Segerblom:
Do you know the difference in cost between house arrest and being in prison?

Keith Munro:
No.

Chairman Horne:
Are there any other questions from the Committee? I see none. Do you have any comments for the record, Ms. Procter?

Heather D. Procter, Deputy Attorney General, Special Prosecutions Unit, Bureau of Criminal Justice, Office of the Attorney General:
I would go with that.

Assemblyman Hansen:
Are there currently any cases of people who were supposed to be in prison who are on house arrest? If so, have there been any issues with them committing additional crimes while on house arrest?

Keith Munro:
I am not aware of any issues where someone has committed a new crime while on house arrest, but certainly there is that potential.

Assemblyman Hansen:
Are there people right now that should be in prison for two years who have been given house arrest?

Keith Munro:
As I mentioned, the Nevada Supreme Court has entered an opinion and has said that this legislative body intended that, when a person drives under the influence and someone dies or is substantially injured, the driver can get out of prison on house arrest at the discretion of the director.

Chairman Horne:
There are people who are on house arrest who commit various types of crimes, not just DUI offenders. There are others who have violated those conditions and are taken back into custody and their sentences imposed. I think Mr. Frierson would agree with that.

Assemblyman Frierson:
Mr. Munro, of course you are aware of the Nevada Serious Offender Program in Clark County. I do not know if this is regarding that program where individuals have an opportunity to be released early because they participate in a program designed to prevent them from obtaining new DUIs. Do you know to what extent this bill would impact that program?

Keith Munro:
This legislation would not affect any existing program. Anyone who serves the minimum amount of time can still take part in any program that is available. The question is, did the Legislature intend a minimum amount of prison time for this type of offense?

Assemblyman Frierson:
Maybe the better question is, do you know about the Nevada Serious Offender Program?

Keith Munro:
I am aware of it, but I do not know all of the specifics.

Assemblyman Frierson:
It is my understanding, and maybe someone else can elaborate, that part of the Nevada Serious Offender Program incorporates house arrest and an anklet so the offenders are tested on a regular basis to ensure they are not continuing to drink. There would be no motivation to participate in the program if they went to prison. They could go to prison and get out, and they would have been out anyway. That is why I was asking if this would essentially end the Nevada Serious Offender Program. It may have ended already. I know we have made some cuts, but I do not know to what extent. If you do not know, that is fine. The point of the Nevada Serious Offender Program is, in exchange for getting out on house arrest and getting counseling, the community is safer

because there is less chance of reoffending. I was wondering if there had been any communication with the program to find out if this would end it.

Keith Munro:
I think I would disagree with the premise. There are programs that are available now, even though the Nevada Serious Offender Program may have been eliminated. The system can still allow a person to be tested, to be on house arrest, and have an ankle bracelet. The question before you today is, do you want to have a minimum amount of time served in prison prior to taking part in those programs?

Assemblyman Frierson:
I think we are going back and forth. This would end the program as I understand it as far as the motivation to participate in it, which is fine. It is a policy decision. I think it is moot if we got rid of the program already. If we are not funding the program anyway, it is certainly moot. We do not want folks getting out early who are not safer by virtue of participating in a program. If the program is still there, I think it might cause some challenges to the motivation to participate in the program.

Chairman Horne:
For clarification, does this apply to just those DUI offenders?

Keith Munro:
This bill applies to anyone convicted pursuant to *Nevada Revised Statutes* (NRS) 484C.430, which is a specific statute.

Chairman Horne:
The DUI statute.

Keith Munro:
This is intended to apply to those cases where there is death or substantial bodily harm, not just a regular DUI offense. The way I read the law was that the Legislature intended to place those types of offenders in a different kind of category. When you kill someone, or cause substantial bodily injury, that is different from a regular DUI.

Chairman Horne:
During the interim, that is the way I read the statute, too. I believe the intent was that they serve two years incarcerated, not on house arrest. I see no other questions.

Is there anyone else here to testify in favor of Senate Bill 72 (1st Reprint)?

Kristin Erickson, representing Nevada District Attorneys Association:
We are in support of S.B. 72 (R1) for the reasons stated by Mr. Munro. In addition, for the simple reason that it would be nice to be able to tell a victim, "Two years means two years."

Chairman Horne:
Are there any questions for Ms. Erickson? I see none. Is there anyone else here to testify in favor of S.B. 72 (R1)? In Las Vegas? I see none, so we will move to the opposition.

Tammy Riggs, Freeman & Riggs, LLP, Reno, Nevada:
We successfully challenged the Office of the Attorney General's interpretation of this law in the Nevada Supreme Court. The Supreme Court obviously held in our favor a couple of weeks ago. Mr. Chairman, if you do not mind, I would like to answer some of the questions that went unanswered by Mr. Munro.

Mr. Segerblom, $1.3 million per biennium would be added if this bill passes. That is by the Nevada Department of Corrections' (NDOC) own calculations in their fiscal note. In my opinion, it will be more than that because the fiscal note does not include the cost of mandatory treatment that is required under the 305 Program.

To Mr. Hansen, eight people were brought back into custody after NDOC, after their counsel, the Attorney General, misinterpreted this statute. In the case of our client, Jessica Winkle, she was held one year in excess of what Nevada law allowed. Those other seven people are being processed out, and that does not include the people who have been held to be ineligible for that program against Nevada law. At least eight people were brought back in unnecessarily.

To Mr. Frierson, I am very familiar with the Nevada Serious Offender Program in Las Vegas. I do not know if the Legislature has removed funding for that, but you bring up a great point. That program was an unmitigated, unqualified success in, not only reducing DUI recidivism, but in saving millions and millions of dollars for Clark County to remove those people from the NDOC system. By the way, those people paid for their own treatment and their own house arrest. It basically transfers the cost of DUI offender management to the people who are actually offending.

I would like to begin my actual comments by saying that the errors in drafting in this particular bill are probably going to cause due process challenges beyond belief in the next couple of years. It is not hyperbole to say that this is a

train wreck of a drafting effort by whoever drafted this bill. First of all, I want to bring your attention to NRS 209.392, section 1, page 2, commencing at line 3, which is the house arrest program, the residential confinement program that applies to all offenders except DUI offenders. When you go over to the next page, at line 33, the entire section that was added is going to be meaningless because NRS 209.392 does not apply to DUI offenders. This is the first mistake in drafting.

Why is this bill being considered? In all the times, in all the Committee meetings that I have appeared, I have yet to hear Mr. Munro, or anyone in support of this bill, answer the question why are we doing this. The Assembly Bill No. 305 of the 66th Session program is an unqualified success. At one point in Nevada, it was estimated to reduce DUI recidivism, which is repeat DUI behavior, down to 2 percent. That was in the 1995 legislative notes. Two percent recidivism, and that is compared to 33 to 50 percent nationwide for people who serve incarceration only. The Legislature invoked this program 20 years ago not only to save money and to transfer the cost of DUI incarceration to offenders, but also to make our roads safer. This program absolutely reduces recidivism. The section that the Attorney General's Office is requesting, on page 6, applies to NRS 484C.430 offenders, as Mr. Munro explained. It only applies to DUI offenders who have caused substantial bodily harm. Who it does not apply to are DUI homicide offenders. This bill allows a second-time DUI offender, who has killed someone while driving drunk, out of prison a year prior to their minimum sentence. Also, a DUI third offender is still eligible for the program one year prior to his minimum sentence. If someone gets a sentence of 1 to 6 years in a DUI case, he is immediately eligible for the 305 Program under this draft. I believe that is a good thing. However, the NDOC and the Attorney General's Office, who support this amendment, are saying that a minimum must be a minimum. Why only for offenders with a DUI causing substantial bodily harm? Why not homicide offenders? That is what is going to open this particular interpretation for a due process challenge. It is inconsistent all the way through.

I want to talk about residential confinement. When people think about residential confinement, they think about Lindsay Lohan with an ankle bracelet out partying. That is not what residential confinement under the 305 Program is about. I want to clarify something else that Mr. Munro alluded to. People in the 305 Program, who have been convicted of DUI causing substantial bodily harm, have been sentenced to two-years imprisonment. They are only eligible for this program after they have served a full year. What happens in the second year is that they are supervised every second of every day that they are out on house arrest. They have an ankle bracelet. Every day they have to blow into an Intoxilyzer that is installed in their homes. They are not allowed to

drive, but they must work. They must transfer the funds they make working to either restitution for the victims, or back to the program. They pay for their own incarceration, and they pay back their victims. If those people had been incarcerated for that year, they would not be doing any of that. They would be sitting in the prison. Why is that? Since 2007, the Department of Corrections has removed the intense treatment programs that A.B. No. 305 of the 66th Session absolutely requires. The money is not there, and the program is no longer there, so those people are not getting treatment. What does that mean for you and me? It means that those offenders who will be removed from this program under this new law would be more dangerous, and more likely to recidivate by every standard and study out there. Prison does not rehabilitate. The supervised, intensive treatment that the Nevada Legislature imposed 20 years ago allows people to go on and not hurt the rest of us.

Ms. Erickson said that it would be nice for judges to know that two years means two years. Again, the Nevada Supreme Court said that type of residential confinement does equal imprisonment. They are doing two years and now the judges know that residential confinement is out there. I do not know what everyone missed for the last 20 years because this has been in place for that long. Now that it has been publicized, the judges know that these offenders are out there and are eligible for house arrest after one year. What happens? If the judge believes a person deserves to be in prison for two years, he can sentence that person to 3 years knowing that the last year he will be eligible for residential confinement.

This legislation is simply not necessary. It is not necessary, it is expensive, and it will absolutely, by every measure, result in more deaths on Nevada roads. I could not be more adamant about it.

Chairman Horne:
For clarification, Ms. Erickson said she would like to tell the victim that two years means two years, not the judge.

Tammy Riggs:
This legislation does not honor victims because it makes all of our roads unsafe. It is not tougher on DUI because it allows people who have been imprisoned to sit in prison, not get treatment, and be unsafe when they are released.

Chairman Horne:
Are there any questions for Ms. Riggs? I see none.

Tierra Jones, representing the Clark County Office of the Public Defender:
I agree with all the comments stated by Ms. Riggs. There are a couple of things that I want to add. I do not want there to be any confusion that DUI sentencing is treated differently from other sentencing when it is being handed down by a judge. The judge still has the mandatory minimums and maximums that he can impose. That leaves the judge with the discretion to determine what that minimum number is. There is no guarantee that the minimum number is 2 years. That is something that is left to the district court judge who is pronouncing the sentence. When that judge has all of the facts in front of him, has read the presentence investigation report, listened to the arguments by counsel, listened to any statements that the defendant may have made, as well as the victim's statement at sentencing, he determines what that minimum number is going to be based upon the information that he has. The judge also understands that the offender will be eligible for parole just like any other crime. The judge has determined to leave that to the discretion of the State Board of Parole Commissioners, which watches over him while he is in custody. The Board has all of the prison records, whether he programmed or wasted his time, or if he got any type of education. The Parole Board has all of those tools in front of it to determine whether someone should be released. We believe that those decisions should be left to the district court judge and the Parole Board and not be treated differently from any other crime in the statutes.

To follow up on the comments made by Assemblyman Segerblom, the offender does have to pay to be on house arrest. House arrest has a daily cost to the offender. The offender pays part and so does the state. House arrest is a monitoring system. It is a system that monitors where the offender goes. There is also another type of bracelet called a Secure Continuous Remote Alcohol Monitor (SCRAM) device, which monitors any type of alcohol that enters the offender's system at any time. If someone violates the terms of his house arrest, that person will be remanded back into custody and would likely have to serve the remainder of his sentence.

To follow up on Mr. Frierson's comments about the Serious Offender Program, I am not sure whether the funding has been cut in this legislative session, but programs such as this and the 305 Program provide incentives for the offender to do programs while they are in custody in order to be released at the earlier date, knowing that they would still have to be on house arrest.

Chairman Horne:
Are there any questions for Ms. Jones?

Assemblyman Hansen:
Is it your argument that the legislative intent of the original legislation that the Nevada Supreme Court reviewed was not to make an individual who had been caught in a DUI situation with death or severe bodily harm serve 2 full years?

Tammy Riggs:
What the Supreme Court found is that the Legislature qualified the two-year requirement by imposing the 305 Program, and by saying that the last year equals imprisonment even though it is served on residential confinement. There is no conflict with the statute because the Legislature determined that the second year also equals imprisonment. People think that offenders have it easy during the second year when nothing can be further from the truth. They are intensely monitored. They go through intense programs, and they pay their own way.

Assemblyman Hansen:
I would like to have the Legal Division and the Chair address that. It sounds like they have been involved in this a little bit. If that was the intent, this bill is unnecessary. However, if in fact the intent was to make sure they did serve two years in prison, that is something we need to address.

Tammy Riggs:
If all criminal statutes were interpreted to say that the minimum means the minimum, that would get rid of every house arrest program that we have because all of our criminal statutes include a minimum and a maximum. All residential confinement programs allow for some form of alternative incarceration for part of that minimum sentence. Interpreting the criminal statutes in the way that you are would invalidate all alternative incarceration programs under NRS Chapter 209.

Chairman Horne:
Are there any other questions? I see none. Is there anyone else who would like to testify in opposition to S.B. 72 (R1)? [There were none.] Is there anyone in the neutral position?

Mr. Mohlenkamp, I know you are here for a different bill, but since we are at the neutral position, was the fiscal note on this heard in the Senate Committee on Finance?

Jeff Mohlenkamp, Deputy Director, Support Services, Nevada Department of Corrections:
I believe it was. I was not present at the hearing. For the record, to qualify, our fiscal note was reduced substantially. The initial fiscal note was a large one

as mentioned in the previous testimony. However, that was assuming full cost for incarceration, including staff cost and all of the other costs necessary. When we looked at the totality of the bills, we found that the fiscal note could be reduced substantially to the marginal costs only: the additional costs of housing, medical, hospitalizations, food, et cetera. As a result, the fiscal note is about $100,000 for the next biennium. I do not have it in front of me since I was not planning on testifying on this bill.

Chairman Horne:
About 90 percent of it was chopped off.

Jeff Mohlenkamp:
A good majority of it was because most of our costs are staff and facility maintenance costs.

Chairman Horne:
Are there any questions?

Assemblyman Segerblom:
Is there a normal cost per inmate per year?

Jeff Mohlenkamp:
There is. The cost of incarceration, when you average all of our costs over the number of inmates that we incarcerate, is approximately $22,000 per year, including all levels of custody. However, when we add or subtract a small number of inmates, which we are talking about here, the only thing that is in play is the marginal costs. Unless we can close a facility, or have to open a new facility, we do not have to add staffing. We do not have to add all of the additional costs. The utilities are already there. We only look at the marginalized cost as part of our inmate driven calculations when we add or subtract a nominal number of inmates. That is what we are looking at here. When we first started looking at the bills, we were not sure of the totality of the bills that were out there, how much of an increase or decrease there might be, and whether it allows us to open or close facilities. In this case, the number is fairly nominal and will not require us to staff new facilities.

Chairman Horne:
Is there anyone else? Thank you for the clarification. Is there anyone else who would like to testify in the neutral position? I see no one. I will give Mr. Munro an opportunity to make a brief closing.

Keith Munro:
Senate Finance found the fiscal note on this bill to be negligible. I think it was under $100,000. I believe it was about $75,000.

I listened closely to Tierra Jones from the Clark County Public Defender's Office testify because she negated everything that Tammy Riggs had to say. Here is why.

Tierra emphasized that the minimum does not have to be two years. The minimum can be three or five years. The question is whether the Legislature intended for the minimum in these serious cases to be two years in prison, and the rest of your minimum to be served in a program. It does not do away with all prison programming. Mr. Frierson, you can still have programming if you receive a minimum sentence more than two years.

Ms. Riggs also said something that I do not think is supported by the Supreme Court decision, but I will leave it to Mr. Anthony to clarify during a work session. She said that you have to serve one year in prison, and the second year can be in residential confinement. I do not read the Supreme Court opinion that way. The way I read it is within one year of release. If you have a four year sentence, and you have served two years, you still have to serve a certain period of time on residential confinement. You have to serve the minimum. The way I read the opinion is that you could be home on house arrest at three months, six months, or nine months. If you look at the articles that have been in the papers, if you drive drunk and kill someone or cause substantial bodily harm, you could be home playing ping pong within three months. The Legislature has to make the decision if that is the right policy for the State of Nevada, or should an offender have to serve a minimum amount of time in prison. If he gets a minimum of four years, he can still have time on residential confinement and get programming. The question is, when you do something as heinous as this, should you serve a minimal amount of time in prison? We brought this bill because we read the newspaper and follow what is going on out there. We saw this happen and read what was happening. You said that we need to have the Legislature look at this, so we said, "We are coming." We read the bill and the law the same way you did. That concludes my remarks.

Chairman Horne:
As I said, I did read it the way you read it. I did say it should come to the Legislature, which is where it is, and the Supreme Court says that my interpretation is incorrect. I have not read that opinion. If someone can get me a copy of that opinion so I can read their rationale, I would appreciate it.

Assemblyman Sherwood:
If this bill were to pass, and part of the dilemma for us is that we see so many cases that it is just a slap on the wrist if you are a celebrity or a politician, you do not have to actually do anything. We are struggling here with saying that we have to get tough on DUIs. If this bill passes, what would it do to the discretion of the judge?

Keith Munro:
It would not do anything to the discretion of the judge because every sentence has a minimum and a maximum number of years to be served. He would impose a sentence. Ms. Erickson was correct from the perspective that it would let the victims know what is going on. When someone is convicted of a DUI and, as Ms. Jones said, we would know that there would be a minimum of two years in prison for this. It would really take away the discretion of the Director of NDOC, who was for a period of time letting people out to go home on house arrest at three months, six months, or eight months, after they had killed someone or caused substantial bodily harm. It would limit the discretion of the NDOC, but it would let everyone know what the status of the law is. This body, the legislative body, determines what the punishments for crimes are going to be. This is your chance to step up and say we think it should be two years in prison. If you choose that it should not be two years, that is your decision and we will live with it.

Assemblyman Sherwood:
So, right now it could be two years, but only six months in prison. The offender goes to prison, but if he is not the right fit for prison, he will do the rest of the two-year term on house arrest.

Keith Munro:
That is correct.

Assemblyman Sherwood:
And that is how you finish your term?

Keith Munro:
That is correct.

Assemblyman Frierson:
I want to clarify that I opened a door with the Nevada Serious Offender Program. In theory, I think it is related, but I do not think this bill impacts that specifically. Serious bodily harm and death are excluded. In practice, a judge may impose a sentence of a minimum of 24 months and a maximum of 60 months, 24 to 60, but will often say, "Defendant, I will give you a 2 to 5, or

I will give you a 4 to 10 and a program. You can just do your 2 to 5 and get out the same as when you went in, or I will give you a greater sentence and an opportunity to participate in one of these programs to better yourself." Along the lines of Mr. Sherwood's question, if this bill passed, would that not be at least a disincentive for a judge to give those types of parameters? There is going to be a minimum with no flexibility either way.

Keith Munro:
No, I do not think so, and for this reason: As you just pointed out, let us say it is a 2 to 5 year sentence. You have to serve at least the two before you can get out. Any credits you receive or programs that you complete come off the five-year sentence. You are assuming that you are automatically going to get out in two years, but it is not automatic. You have to behave yourself in prison, participate in a program, and try to bring your five year sentence all the way down to two years before you can get out after two.

Assemblyman Frierson:
I do not think you addressed the alternative, which is the 4 to 10 years. What I am getting at is that, in my experience, the judges are aware of the options and take that into consideration when imposing a sentence. When they have more egregious cases, they give a larger sentence, or exposure to a larger sentence. Conversely, they give less exposure if they believe it is a case that is less egregious. Do you believe that this would change their exercise of discretion in that regard?

Keith Munro:
I have not researched the particulars of what you are saying. I think the premise of what you are saying is not fundamentally correct from this perspective. Once someone is sentenced to the Department of Corrections, that person is in the care and custody of the Director of the Department of Corrections. I do not think a district court judge can order the Department to do anything as far as programming. I believe it is up to the discretion of the Director. The Department would probably follow the recommendation of the judge. I may be wrong about this, but I do not believe the judge can direct the NDOC on what programs an inmate must be put in.

Chairman Horne:
Are there any other questions?

Assemblywoman Diaz:
I was wondering if there are a lot of cases where DUI offenders who have involuntarily killed someone or caused substantial bodily harm are getting out of prison after only three or six months? I would like to know if there are

large numbers of them, so we really need this change in statute, or are the judges using their discretion adequately?

I also want to make the comment that we have been talking about two years means two years, but I think once a person unintentionally kills someone or causes substantial harm, it is a consequence that he is going to have to live with the rest of his life. I do not think that killing someone or causing harm is something that a person is going to be calm about. I think he lives with it for the rest of his life, whether he is in a correctional facility or at home serving house arrest. He has that to live with for the rest of his life, and I do not think that is something we should take lightly.

Keith Munro:
That is your opinion and you are certainly entitled to it. The Legislature passes laws pursuant to the opinions of legislators. I do not think there are a lot of cases. I think that is why the Department of Corrections, when they took a closer look at this, brought the fiscal note down almost 95 percent. I think it is a policy decision that affects serious cases, and it is one the Legislature has to make on how it wants offenders to serve their time.

Chairman Horne:
I see no other questions. We are going to close the hearing on S.B. 72 (R1). We will stand in a brief recess [at 10:27 a.m.].

I will bring the Assembly Committee on Judiciary back to order [at 10:28 a.m.]. The bill that we will look at is Senate Bill 265 (1st Reprint). Mr. Ziegler, would you refresh our memories on Senate Bill 265 (1st Reprint)?

Senate Bill 265 (1st Reprint): Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 265 (1st Reprint) was heard yesterday. It was sponsored by Senator Parks. In section 1 of the bill, for offenses that are committed after July 1, 2012, if the court imposes consecutive sentences, the court must pronounce the minimum and maximum aggregate terms of imprisonment unless the defendant is sentenced to life without parole, or death. In section 2, it provides that good time credits must be deducted from the maximum aggregated term as applicable and as regards eligibility for parole. That basic concept is repeated a number of times in the bill in sections 3, 4, 5, 6, 7, and 8. If a prisoner is sentenced to consecutive terms that have been aggregated, the State Board of Parole Commissioners is not required to consider parole until the

person has served the minimum aggregate term. Good time credits may be earned only to the extent that credits would otherwise be earned if the sentences were not aggregated. A prisoner who is serving nonaggregated consecutive terms may request, in writing, to have his or her sentences aggregated. There are other provisions in the bill, but I think that is the main area.

Chairman Horne:
I am still not completely comfortable with the bill itself. One of the things that gives me concern is the provision on accrual of good time credits. Typically, if you get consecutive sentences, your good time credits will go onto the term on which you are serving. Once you are paroled, you term out that first term. You can earn credits on the next term when you get to it. If you aggregate the sentences, the good time credits are not accrued toward the aggregate. They are accrued as if you are serving consecutive sentences. That seems problematic to me. Does anyone else have any comments or concerns with the bill? Is anyone in support?

Assemblyman Segerblom:
I did not understand Ms. Jones' testimony, but aggregating seemed to be voluntary. You can decide to do it or not. I hope there is a reason to voluntarily accept it. Maybe the advice that they get is not sufficient enough to allow them to make an informed decision. I like that it is voluntary.

Chairman Horne:
Mr. Anthony, is it correct that the entire program is voluntary, and the inmates would get to decide whether to aggregate their sentences? Judges do not aggregate sentences. They give you consecutive sentences or concurrent sentences. Concurrent is not considered aggregated. You are serving the terms at the same time, and you are eligible for parole after two years. If they are consecutive, you have to serve the first 2 to 5 years before you serve the next 2 to 5 years.

Assemblyman Segerblom:
Once you are in prison, would you have the option to aggregate the consecutive sentences?

Nick Anthony, Committee Counsel:
Yes. I believe that is regarding someone under an existing sentence. They can currently opt in.

Assemblyman Segerblom:
Are you saying in the future judges would aggregate the sentences when they are convicted?

Nick Anthony:
That is my understanding.

Assemblyman Frierson:
Mr. Anthony, I hate to put you on the spot, but I am confused still about the practical result of the aggregation. It does not change consecutive to concurrent, so what is the outcome of the aggregation? I am trying to figure out what the point is.

Nick Anthony:
I believe the testimony from Ms. Bisbee was to combine such sentences. Currently, a person serving a sentence might have consecutive sentences. He is paroled from one sentence to a future sentence, the victims get notice, and there has to be a parole hearing. There is no way the person is getting out; they are just being paroled to their next sentence. This bill would combine those two into one so that, at a future date, there would only be one potential parole hearing.

Assemblyman Frierson:
With that rationale, the Department would not have to go through a hearing for no reason the first time around. It also deals with the back end, which is irrelevant in the practical sense as far as the time that is taken off the back end when you aggregate the sentences. If there are two consecutive sentences, there is no point in a parole hearing after the first one. Even if they parole, they are not going to get out. This would make it so there is no justification for having the first one. They would wait until after the consecutive sentence is served before they would have a hearing.

Assemblyman Brooks:
As an example, there were four consecutive 4 to 10 year terms, and when you aggregate, it will be 16 to 40 years. Of course, the crux of the program is for inmates not to go to parole hearings until release is a possibility. The minimum sentence is 16 years, and at that point, he would have a better chance of actually getting out. I made the point that there is no guarantee that an inmate would get out at the minimum of 16 years even if he aggregates. She agreed that it was not a guarantee; it was just the minimum.

There was one other thing that she stated that concerned me. If you aggregate to 16 to 40 years, if you are fortunate enough to get out in 16 years, your

probation lasts longer. They want to be able to monitor the individual based on the 40 years. Maybe someone can clarify that piece for me. I do not understand why we would keep them on probation that much longer.

Chairman Horne:
We have a Parole and Probation Officer in the back.

Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:
Regarding your question, they would be on parole longer, but it is still their sentence. We have several parolees whom we will literally supervise for their entire lives. On that piece, it really does not affect the Division very much. We just have more people for a longer period of time. As far as fiscally, it does not have a negative impact on the Division.

Assemblyman Brooks:
I appreciate the information, but my question is, if you do not aggregate and you finally get out, is your probation based off a percentage of the 10-year term? If you aggregate and get out at 16 years, which is probably when you would have gotten out anyway, your probation is based off the latter term of 40 years. I do not understand why there is that disparity. Why cannot there be a shorter probation time?

Mark Woods:
What you are referring to is the good time credits that inmates earn. That would be a question for NDOC since they are the ones who give us the good time credits. Mr. Mohlenkamp will be able to help out on that one.

Jeff Mohlenkamp, Deputy Director, Support Services, Nevada Department of Corrections:
What you are referring to is correct. I think it is simpler to do it with two 2 to 5 year sentences. If you look at that, if you have consecutive 2 to 5's, if they serve the full 2 years on the first sentence, they would parole to the next sentence. While they are serving that next sentence, they are on parole for the first sentence. If they get out, they have served another two. Now they are only going to parole for two years. Under a 4 to 10 if you aggregate the two sentences, and you parole at the end of the minimum four years, you are going to be on parole for six years. It can double the time that you are on parole based on my estimation. That depends on when you get out. If you do not get out at the earliest point in time, it might not double it. That is the factor that you are talking about, and that is my analysis.

Assemblyman Brooks:
Basically, if you aggregate, you do not use the two years after you go to the first parole hearing. You do not utilize the next two years as credit toward probation while you are actually still in prison.

Jeff Mohlenkamp:
Once an inmate paroles, if he has a consecutive sentence, while he is serving the other sentence, he is also serving his parole time. He serves a portion of his parole while incarcerated, as opposed to being under the jurisdiction of the Division of Parole and Probation.

Assemblyman Brooks:
It seems to me that most people would not want to opt in to this because their parole time will be increased.

Jeff Mohlenkamp:
Our analysis concludes that there will probably be very few people opting in.

Assemblyman Brooks:
But it is voluntary, correct?

Jeff Mohlenkamp:
Only for those inmates with sentences prior to 2012. For anyone after that date, the sentences are going to be aggregated. That is the way I read the bill. You have legal counsel, but my read on the bill is that it is only optional for those people with existing sentences prior to that time.

Assemblyman Brooks:
Then I need a point of clarification. After 2012, it will not be optional? Will it all be aggregated?

Chairman Horne:
You also mentioned that it depends when they are paroled. If it is on the early end of the sentence, the formulary will change. Commissioner Bisbee says there is a 63 percent parole grant rate. I think that includes those who are being paroled to their next sentence, not just those who are being released into the community. That would change that number.

Assemblyman Sherwood:
This would actually be more discouraging for the inmate, not that we should be too concerned if he has to wait 16 years for a parole hearing. As I understand this, it would obliterate consecutive terms, correct? And it would make parole more difficult, longer, and more expensive. I am leaning towards a "No" on this

bill. We already have consecutive and concurrent and we know what those mean. Aggregate muddies the water.

Assemblyman Ohrenschall:
I am having trouble understanding the bill. If someone had five or six 20-to-life sentences consecutively, under this bill when aggregating becomes nonelective, he would go before the Parole Board only when he has served the minimums on all of those sentences, thus he would lessen his chance of being turned down, let us say on the first sentence being paroled to the second. Am I understanding that correctly? Theoretically, the overall time might be less as opposed to going before the Parole Board once he has met the minimum on each sentence to try to be paroled to the next consecutive. Would he just go before the Parole Board once? Would that lessen the chance that he would get turned down? Would he spend more time waiting until he could be paroled to the next second or third consecutive sentence?

Jeff Mohlenkamp:
We have analyzed this and, quite honestly, there are a lot of different scenarios and we cannot tell you definitively whether this will increase or decrease incarceration time. You can see it going either way. I think the Parole Board Commissioner has testified that she believes it will result in a reduction of overall incarceration time, but we have not been able to conclude that in our analysis. There are a lot of variables that come into play. As the Chairman indicated, whether the parole rate will remain consistent in the low 60s or not is something that will factor into it. We could not determine that.

Assemblyman Ohrenschall:
Do you see this as potentially increasing incarceration time as opposed to the way the system is now for someone who has consecutive sentences?

Jeff Mohlenkamp:
If, as the Chairman indicated, there is a propensity for the approval rate to go down when the Parole Board sees someone when he is going to parole to the streets as opposed to paroling to another consecutive sentence, then there is a potential that it could increase incarceration time. I cannot determine that. That would be the scenario that would provide for that in my opinion.

Assemblyman Hammond:
The way I read this bill, I am uncomfortable with it. It does not seem like it is necessary. Every scenario will be different for each prisoner. You are talking about good time credits, how they act, their sentence, et cetera. I cannot see how we can determine by looking at this bill whether criminals in general are

going to be getting out sooner or later. I think it is determined by the particular incarcerated criminal.

The thing that I would also like to bring up is that you are eligible for this program now on a voluntary basis, so can they participate now and aggregate their sentences without this bill?

Jeff Mohlenkamp:
No. Our system does not provide for an aggregation of consecutive sentences. In fact, I know this bill is before you without a fiscal note, but if it is to go forward, we would have extensive programming changes that would be necessary. We have attached a $100,000 fiscal note to this bill, and I understand that it has come to you without the fiscal note attached. I am here to also tell you that the Department would have to make significant revisions to our computer system in order to accommodate what is planned in the bill. Without the money it would be very difficult; we would be back at the Legislature asking for funding.

Chairman Horne:
It does not seem that the soup is there.

Assemblyman Frierson:
I may be personally confused. I did not think I was, but we have been talking about consecutive and concurrent sentences and a lot of stuff that I do not see this bill having anything to do with. My reading of the bill was merely that if you have consecutive sentences, you are up for parole before you start to serve your next sentence, and that would relieve the Department from having a parole hearing every time when there is no way of your getting out anyway. It would allow the Department to have fewer hearings before parole would actually be a consideration. I did not really read it as significantly impacting the actual sentence or the amount of time that someone serves one way or the other. To the extent that it affects consecutive or concurrent sentences, I did not read it to have anything to do with that at all. Of course, it is a policy consideration at the will of the Committee.

Chairman Horne:
I do not think it would have any impact on concurrent sentences because they are being served at the same time. It is the consecutive sentences that would be affected. If a judge convicts you and gives you consecutive sentences, and we will use 4 to 10 again, that is an 8 to 20. You could parole, if you are eligible, the first sentence at 4 years and the next at 8, and get out with 2 years of parole after you paroled on your second. Is that correct under the current system?

Jeff Mohlenkamp:
I would have to write that down. I have only done this a few times.

Chairman Horne:
There are two 4 to 10 years today. You parole on the first 4 to 10, and you start serving your next 4 to 10. Let us say you parole in 4 years. When you parole and are released to the streets, your time on parole will be two years. No, that would be six years. Under the other plan, if you consolidate them and aggregate them, you will not go before the Board for about 8 years. That would leave 12 years remaining for parole. Is that correct?

Jeff Mohlenkamp:
That is exactly correct. If you serve the minimum on that, you are going to double your time on parole.

Senator David R. Parks, Clark County Senatorial District No. 7:
I think one of the issues is, and I know this gets complicated, if you had an individual who had consecutive sentences, and this only deals with consecutive sentences, and he had two 2 to 5 years, that individual would have to serve the first sentence on the 2 to 5. After two years, if he had a parole hearing, but was dumped for another year, he has to continue serving the third year of his first sentence before he can go for another parole hearing on the first count before he can start serving his second count. That is where the opportunity for a savings of time comes in. When you look at the maximum time, as long as he is on good behavior, he is earning credits to reduce that maximum. In effect, as far as parole goes, he will not be serving the entire number of years because he will continue while he is on parole to earn good time credits toward it. If he had other credits that he accrued, that would reduce it, too.

With regard to the fiscal note, this bill did go to Senate Finance and we did ask for a fiscal note. I inquired a few days ago and was told that the Department of Corrections never provided a fiscal note for how they came up with what was originally $50,000, then a $100,000 estimate to update the Nevada Offender Tracking Information System (NOTIS). The NOTIS, as I understand, is a proprietary software and any changes that are done would have to be done by the owner of the software. We agree that there has definitely got to be a fiscal cost to amend and change the software. What it is, we do not know.

Assemblyman Brooks:
There must be an additional fiscal note if we are increasing the years of probation for each of these individuals. Under the new aggregate, if all these offenders are on probation or parole, they must check in with someone.

The caseloads will increase, so besides the software, the manpower increase would increase the state's financial burden as well.

Senator Parks:
There certainly would be an additional cost for parole for these individuals. One of the important things is that we like to have people under community supervision. It keeps them from reoffending. In the long run, the issue is to help them change their ways, and to remain a nonoffending individual. How much longer will that be? Being on parole is significantly less expensive than serving time in prison. While we can come up with a lot of different hypothetical cases, in the long run it is not an easy number to quantify. We are talking about individuals who are serving consecutive sentences as opposed to those who are serving concurrent sentences, and then there is the larger group of individuals who are serving only one sentence.

Assemblyman Segerblom:
Are you saying that the Parole Board is less likely to grant parole if it knows there is only going to be one or two years of parole for that person? If this gives them the possibility of more parole hearings, will the Parole Board let the offender out earlier?

Senator Parks:
I do not think that is the case. I think the most ideal situation is to have a released inmate under some type of community supervision. It appears that is the best scenario for keeping an individual from reoffending. We have a lot of inmates who serve their full time, are released to the streets, and do not get any supervision at all. I have been told, and I do not have the numbers to substantiate that, there is a higher level of recidivism when that situation occurs.

Assemblyman Segerblom:
Is part of this law to allow additional parole for these consecutive sentence people?

Senator Parks:
Yes. That is what would occur. I think there is also another section, section 1, I think, that changes the format in which the judges would provide their sentences. There is certainly some level of inconsistency at this time in sentencing. The judges think they are doing one thing, but when the offender gets to prison, he finds out how differently it has been interpreted.

Chairman Horne:
Until we gain some comfort on this, I am going to bring it back to Committee. We are going to recess, so we can come back later today to give you time to mull this over. We have a little bit more time. Has everyone had a chance to consider Senate Bill 72 (1st Reprint)? I see we need more time, so we can try this again this afternoon.

Senate Bill 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)
[This bill was not heard.]

If there is no public comment, we are in recess [at 10:59 a.m.] until the call of the Chair.

[The meeting was reconvened at 9:34 p.m.]

The meeting is now adjourned [at 9:35 p.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: June 6, 2011 **Time of Meeting: 9:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster