

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Sixth Session
March 2, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:05 a.m. on Wednesday, March 2, 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, 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 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:

Assemblywoman Olivia Diaz (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Keith Munro, Assistant Attorney General, Office of the Attorney General
Rex Reed, Administrator, Offender Management Division, Department of Corrections
Tierra D. Jones, representing the Office of the Clark County Public Defender
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Connie S. Bisbee, Chairman, State Board of Parole Commissioners
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Kristin Erickson, representing the Nevada District Attorneys Association
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
James "Greg" Cox, Acting Director, Department of Corrections
Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Thom Gover, Chief Deputy Attorney General, Office of the Attorney General
Anthony Aguillard, Sergeant, Identity Theft Detail, Las Vegas Metropolitan Police Department
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Carlos Hernandez, Private Citizen, Las Vegas
Jon Sasser, representing Washoe Legal Services and Legal Aid Center of Southern Nevada
Terry Johnson, Director, Department of Business and Industry

Chairman Horne:

[Roll was called.] We have three bills on the agenda and I will be taking them out of order. The first will be Assembly Bill 134. I will present that bill and Vice Chair Ohrenschall will conduct the hearing.

Assembly Bill 134: Prohibits the imposition of a sentence of life imprisonment without the possibility of parole upon a juvenile offender convicted of a non-homicide crime. (BDR 14-655)

Vice Chairman Ohrenschall:

We will open the hearing on A.B. 134.

Assemblyman William C. Horne, Clark County Assembly District No. 34:

Assembly Bill 134 prohibits the imposition of the penalty of life without the possibility of parole for offenders under the age of 18 who have been convicted of a crime, other than homicide. The United States Supreme Court in *Graham v. Florida*, 130 S.Ct. 2011 (2010) issued an order stating that juveniles could not be sentenced to life imprisonment without the possibility of parole, under prohibitions of the Eighth Amendment to the *United States Constitution*. This bill will bring Nevada's statutes in line with that U.S. Supreme Court decision. As many of you know, U.S. Supreme Court decisions become the law of the land. Theoretically, we could decide to not pass this bill, but we would not be able to impose a life sentence on any juvenile for a non-homicide crime. This bill is to bring our laws into conformity with the U.S. Supreme Court decision. Basically, these are category A crimes, such as sexual assault, sexual assault with the use of a weapon, et cetera. The sentence that we would be able to impose would be life with the possibility of parole, or a determinate sentence, 10 to 40 years, for example.

Assemblyman Sherwood:

I followed the *Graham* case very closely as it was the precedent for *Roper v. Simmons*, 543 U.S. 551 (2005). Supreme Court Justice Samuel Alito was the "conservative" judge who said there can be a life sentence for juveniles, but not the death penalty. This is important to me because Jason Sweeney was murdered in Philadelphia. It was a conspiratorial murder. Four teenagers, friends of Jason's, and his girlfriend lured him into a vacant area and viciously murdered him and took \$500. If anything warranted the death penalty, it was this case. The entire Philadelphia community followed this trial. The juveniles were convicted of first degree murder, conspiracy, et cetera. When it reached the U.S. Supreme Court, *Graham* was the basis for them not imposing the death penalty. I became very familiar with Sweeney's family. With "mercy" versus "justice," this was a time when the death penalty was warranted. Suppose the U.S. Supreme Court changes this decision in ten years,

or there are cases that would change this precedent, would you feel comfortable adding an amendment to this bill to change our statute should that happen?

Assemblyman Horne:

No, I would not. That would be sending a directive to future legislative bodies. They are entitled to make their decisions on issues that come before them. Typically, we do not pass legislation that would direct another legislative body in the future to act.

Assemblyman Frierson:

This bill reflects the opinion of the U.S. Supreme Court. It is not more stringent than the U.S. Supreme Court decision, which is technically law now. This is an effort to bring *Nevada Revised Statutes* (NRS) into compliance with a directive from the United States Supreme Court, correct?

Assemblyman Horne:

Correct. Passing this bill does not reflect an opinion on whether we support the decision or not. The Supreme Court is the law of the land. This bill is bringing the state into conformity with their decision.

Assemblyman Segerblom:

Are you aware of anyone who is currently sentenced that this will affect?

Assemblyman Horne:

I am not. We do have a number of juveniles incarcerated as adults, but I do not know whether they are sentenced to life without parole, or have other sentences.

Assemblyman Hansen:

Currently Nevada law provides that if someone less than 18 years of age commits a homicide, he is sentenced to life in prison, without the possibility of parole. This bill addresses non-homicide situations, correct?

Assemblyman Horne:

Yes. Currently, Nevada law allows for life, without the possibility of parole for juvenile offenders. This bill is directly in line with the U.S. Supreme Court Decision. If it is a non-homicide conviction, then we are not permitted to impose a sentence of life without parole.

Vice Chairman Ohrenschall:

Thank you. Would anyone else like to speak in support of A.B. 134? Anyone in opposition? Anyone neutral?

Keith Munro, Assistant Attorney General, Office of the Attorney General:

If Assemblyman Horne had not introduced this bill, our office would have, to ensure our laws remain consistent with U.S. Supreme Court decisions.

Assemblyman Sherwood:

In regards to the conformity with the U.S. Supreme Court, would you bring bills forward for conformity on all U.S. Supreme Court laws, or just when it is less stringent?

Keith Munro:

We try to ensure that our statutory laws are consistent with new decisions made by a court that has the authority to state what the law is. Usually it is with respect to a constitutional provision.

Assemblyman Sherwood:

If this changed to a higher penalty, would you then approach us and state that your Office wants to be in conformity with the higher standard now?

Keith Munro:

We try to ensure our statutes are in conformity with interpretations of a constitutional provision. If this provision changed, we would come before this Committee again, and you would need to make a decision.

Assemblyman Sherwood:

As a single issue, or as an omnibus bill?

Keith Munro:

If it was a single issue, we would come with a single bill. If there are several issues, we would come with several bills. We try to ensure that this body is informed of changes in interpretation of constitutional provisions so that our citizens know that our laws reflect the accurate state of the law.

Rex Reed, Administrator, Offender Management Division, Department of Corrections:

Regarding the question asked earlier about anyone in the system that would be affected by the Supreme Court decision, the answer is yes. We have one individual who is in prison with a life without parole sentence for a non-homicide crime.

Vice Chairman Ohrenschall:

Thank you. I would entertain a motion.

ASSEMBLYMAN FRIERSON MOVED TO DO PASS
ASSEMBLY BILL 134.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN DIAZ WAS ABSENT
FOR THE VOTE.)

[Chairman Horne reassumed the Chair.]

Chairman Horne:

The next bill on the agenda is Assembly Bill 136.

Assembly Bill 136: Revises provisions governing credits for offenders
sentenced for certain crimes. (BDR 16-634)

Tierra D. Jones, representing the Office of the Clark County Public Defender:

The purpose of this bill is to provide offenders, who are convicted of certain category B felonies, to have credits deducted from the minimum term that is imposed by the sentence until they become eligible for parole. An Assembly bill was passed in 2007 regarding category C, D, and E felonies. This would basically allow persons convicted of category B felonies that do not involve violence, or do not involve the use of a weapon, to also receive the good time credits off the minimum sentence, making them eligible for parole sooner.

Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office:

My office was able to participate in a hearing for the Advisory Commission on the Administration of Justice (ACAJ). It was attended by district attorneys, defense attorneys, and a representative from the Attorney General's Office. Dr. James Austin, who is currently conducting a statistical analysis on incarcerations, spoke at that hearing. Dr. Austin's study analyzes who we are incarcerating, how long we are incarcerating them, and why. That study is to be completed the first week of April. In the meantime, there are some interesting preliminary results. About 66 percent of the people in prison are convicted for category B felonies. That is up from 62 percent last year.

It is important to know that this bill does not actually release people from prison early. It allows them the opportunity to go before a parole board, if they have earned enough credits, a little bit early. What entitles people to these credits?

They complete rehabilitation programs, they complete education programs, or they have what is known as "exceptionally meritorious behavior." They can earn credits that would potentially get them out of prison early. From my experience in dealing with rehabilitation programs, using both a "carrot" and a "stick" is generally the most effective way to ensure they comply with these programs. The problem that category B felonies are being charged copiously is a theme that has resonated in this Committee before. It has resonated in the Senate Judiciary Committee as well. It is an issue that is costing the state a lot of money.

Yesterday I did a random "snapshot" of burglaries. Burglary is a big "piece of the pie" in category B felonies. A burglary has a one- to ten-year sentence. It covers entering any dwelling, building, or car with the intent to commit larceny. I pulled six files. I want to share with you the facts of these six cases. These are not my cases, and this is according to the police reports. The first one is a man with mental health issues who walked into a store and lit fire to a greeting card stand. The fire was quickly put out by the store owner. He was arrested and charged with burglary and first degree arson. If he had burned down my house, he would have been charged with the same crime. In the second case, a man stole \$7.18 worth of deli food from Wal-Mart. Another man went to Target and stole \$336 worth of DVDs, CDs, and video games. Then he went next door to a game shop, and tried to sell them as used items. He received \$42, but was also arrested. He was charged with two burglaries and is looking at a 20-year sentence. The fourth one was a woman who stole \$161.89 worth of clothes at T.J. Maxx. She had clippers in her purse in order to cut the tags off. She was charged not only with burglary, but possession of burglary tools, because of the clippers. She is facing one to ten years, plus another year for a gross misdemeanor. The fifth case is probably the most legitimate. It was a custody dispute where someone broke into a house, fought with the people, took the children, and ran away. That is a legitimate burglary. Finally, there was a burglary where a man was caught taking a flashlight and an FM transmitter, charged with burglary, and is facing a one- to ten-year sentence.

In some of these cases, the defendants had criminal histories, including other burglaries. These cases show how commonly the crime of burglary is charged. Keep in mind, that if you are convicted of more than one burglary, then probation is not even an option. You have to be incarcerated. This is costing a ton of money. It is not that these people did not commit a crime, or that they should not be punished. Obviously that is not the case. We do need to deal with theft. However, we are incarcerating people for years for what really should be a petit larceny misdemeanor. We should allow these people to participate in a program, or incentivize them to do a program while in custody, so they can get educated, they can stop the cycle, and "quit being stupid."

This is how we can save money, keep our streets safe, and focus our resources on the serious crimes, when people are being hurt, when there is violence.

We do not want Nevada to be in the situation that California was in a few years ago where they were literally letting violent offenders out of prison because the state simply could not afford to keep them. This is a great opportunity to allow people to appear before a parole board a little bit earlier. They will not necessarily be granted parole, if their criminal history does not support it.

Again, I would like to reiterate that those six cases I discussed were a "snapshot," randomly assigned to both attorney and department. We did not "cherry pick" the six stupidest burglaries. This is a "day in the life" and is very typical of what we see.

Assemblyman Kite:

Normally, with the six examples you gave, I could probably dig through and find extenuating circumstances where those people should be incarcerated. I think the key words are "certain" category B felonies and "certain" credits. I will go along with this bill providing there is someone with common sense deciding which are "certain" and which are not.

Orrin Johnson:

I do not disagree with you. Criminal law is incredibly fact specific. No two cases are exactly alike and are not "cookie cutter" cases. This bill is important because it provides a parole board the opportunity to look at extenuating circumstances. Has this person committed this crime several times in the past, or is this the first time, or are they just "down on their luck?" This bill allows for that flexibility.

Chairman Horne:

For clarification, this excludes category B felonies that include the use of violence, sexual assault, and drunk driving.

Assemblyman Frierson:

I am aware of the budget issues in California, and that a number of prisoners were released simply to save money. Is this bill an effort to avoid having to do that?

Tierra Jones:

That is correct. This is an attempt to ensure that Nevada does not end up in the same position where there are so many offenders that a federal judge steps in and takes the same action that was taken in California. We would then be

releasing violent offenders onto the streets based on overcrowding in the prisons.

Assemblyman Frierson:

Is there also an opportunity for the Department of Corrections to remove good time credits for those offenders while they are incarcerated, if they are not doing what they should be?

Tierra Jones:

Yes. The State Board of Parole Commissioners, as well as the Department of Corrections, has the authority to take away good time credits if there are any disciplinary infractions, failure to attend classes, et cetera. The amount of good time credit that is awarded and taken away is completely at the discretion of the Department of Corrections.

Orrin Johnson:

Further, this is not only while they are incarcerated. We do parole revocation hearings in our office and one of the options that the Parole Board has in looking at revocation, is to take away all their credits, so they have to serve more time than they had expected. Good time credit can be revoked even after they have been paroled.

Chairman Horne:

Any other questions? Thank you for your presentation. Anyone in favor of A.B. 136?

Connie S. Bisbee, Chairman, State Board of Parole Commissioners:

The Parole Board is in support of A.B. 136. The most significant part of this bill is that it accelerates the time that people come before the Board. The Board will still make the decision as to whether or not they are paroled. Some inmates in category B are very appropriate for the earlier parole release, and some are not. We are not talking about opening the doors and sending inappropriate people out onto the street. It is the discretion of the Board whether or not it is the right time to release them.

Something very important about A.B. 136, especially during our particular financial crisis, is that there is a fiscal impact. You have been provided with the fiscal note ([Exhibit C](#)). Some of you are very familiar with what happened as the result of Assembly Bill No. 510 of the 74th Session. We had what was referred to as a "bubble," which was a massive group of people who were immediately parole eligible. It took months to clear it up. In this particular situation, the Department of Corrections has estimated that 518 inmates would be affected by the credits and be immediately parole eligible. We do not want

to make that a very slow process. We are currently seeing approximately 650 inmates per month for discretionary and mandatory parole hearings. Essentially, this bill will create a one-month caseload of immediate parole eligibles. In order to do that in a timely fashion, there is a one-time fiscal impact of approximately \$13,000. Our Board receives additional support from persons who are used as hearing representatives, case screeners, and occasionally, sit on the panel. We only have a total of \$24,000 available a year for these people, which is a reduction of over \$10,000 from what we had previously. The fiscal note states that the cost will be \$13,853 to process these people without creating a months-long bubble. If we do not get the additional funding, we will be expending 57 percent of our entire annual budget for hearing representatives. We are in support of this bill, but I think it is very clear that the fiscal note is necessary.

Chairman Horne:

I would like to note that even with the \$13,853 expense, if you parole just one of those 500 inmates, there would be a savings.

Connie Bisbee:

Thank you for mentioning that. We are talking about very little money for a very large savings. According to our audit, through fiscal year 2010 we paroled 61 percent of those who came before the Parole Board. That would make almost 300 of the 518 inmates being paroled several months early. Doing the math, that is \$6.69 per inmate day per marginal cost. Absolutely, you are going to save money. Going forward, we will absorb these people into our regular hearings.

Assemblyman Hansen:

You are talking about potentially paroling 300 category B felons, correct?

Connie Bisbee:

Statistically, there is a possibility of that.

Assemblyman Hansen:

What type of felon is a category B felon?

Connie Bisbee:

As Mr. Johnson stated, some burglaries may essentially be shoplifting or crimes where there is no violence involved. Cases where there have not been any disciplinary issues, or someone that has worked on his education, worked on programming, if drugs were the reason for the criminal behavior, they have participated in drug treatment. We do a statistical risk on every single person that comes before the Board. We would not release someone that is a high risk

or when the recommendation is to deny parole. But you certainly could consider their release several months early if the initial recommendation is at first or second hearing.

Assemblyman Hansen:

At some point I would like some clarification regarding the category A through E felonies. If category A are the very "bad" crimes and category E are minor crimes, in my mind, category B sounds pretty high on the scale. I do not want 300 "bad guys" being released because we want to save some money.

Connie Bisbee:

We are very careful about whom we parole. Statistically we have done very well. We have an extremely high parole success rate in Nevada. We have an okay recidivism rate overall.

Chairman Horne:

This particular provision excludes the violent category B felons. We have had testimony in other hearings stating 66 percent of the incarcerated population is category B felons. Not all of those are violent felonies. During the ACAJ, there was debate on the grand scope of category B felonies. There are various types of crimes that fall into category B felonies. Yesterday we learned that fraud is a category B felony.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

The American Civil Liberties Union (ACLU) sat on the ACAJ. We were represented by Dr. Richard Siegel, President of the ACLU of Nevada's Board. I would like to address Assemblyman Hansen regarding his comment on the scope and variety of felonies that exist in this state. It is a very complex system. There are category A to E felonies, A being the worst, E being the least worst of all felonies. A list of the crimes is available through the Legal Division. I do not know how many of each level of crime exists, but it is very complex. As a result of changes in the law, especially the truth in sentencing reforms that this state has seen, there was a ratcheting up of criminal penalties for things that essentially could amount to shoplifting. That is why we have seen the burgeoning of category B felonies. Again, this was largely debated by the ACAJ and its diverse membership, which includes victims' rights advocates, district attorneys, the ACLU, defense attorneys, the Bar Association, et cetera. This bill has been meted out through various different constituencies and stakeholders. It would exclude anyone who is convicted of a category B felony with the use of force, or sexual offenses. The cost savings as noted earlier could be substantial as it would extend the A.B. No. 510 of the 74th Session credits to category B felons. The gatekeeper function the Parole Board plays is

incredibly important. This is not going to be an opening of the floodgates. It is a sensible way to ensure that our state's responsibility in releasing appropriate offenders is fulfilled, while also ensuring public safety. We support this bill and hope that you see fit to support it as well.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:

Last legislative session we did a Racial Equity Report Card. We will be doing one this session also. We are in support of this bill because it does impact communities of color, more often than white communities. According to the Department of Corrections, over 55 percent of the correctional population is people of color. The state population of people of color is 42 percent. This bill has a larger impact to communities of color, and will probably be one of our graded bills.

Chairman Horne:

Anyone else wishing to testify in favor of this A.B. 136? Anyone neutral?

Kristin Erickson, representing the Nevada District Attorneys Association:

Yesterday I attended a meeting with Dr. James Austin of the JFA Institute, representing The Pew Research Center, to study the impacts of the A.B. No. 510 of the 74th Session credits on category B felonies. This meeting was attended by representatives from the District Attorney's Office, the Office of the State Public Defender, the Attorney General's Office, the Board of Parole Commissioners, and the Division of Parole and Probation (P&P). Dr. Austin selected 20 convictions at random from the Nevada Department of Corrections for our review. We looked at both the plea bargaining and the sentences, and the impact both have. We learned that if these credits are applied to category B felonies, it will basically cut in half the minimum and the maximum sentence. So if a defendant receives a sentence of 12 to 48 months, it would essentially reduce it, assuming they receive all their credits, to a 6- to 24-month prison term. That is information you should have before you make a decision.

It was also agreed that there needs to be some exceptions to this bill, such as weapons offenses and habitual criminals. As it currently stands, the bill excludes crimes of violence, but what does that mean? Does a crime of violence include a former felon in possession of a firearm? Technically, it is not a crime of violence, it is a possession crime, but it does involve a weapon. Regarding crimes such as possession of stolen property, what if the stolen property is a gun? Those types of questions need to be answered. In regards to habitual criminals, there is a reason they are adjudicated as a habitual criminal, and we believe they are not deserving of such credits.

Regarding the statements by Assemblyman Kite, he is correct. What you did not hear about the cases cited by Mr. Johnson, were the sentences. In the cases that were examined in our meeting, the sentences ranged anywhere from diversion, which means you complete certain programming and the felony is dismissed, up to habitual criminal. The other thing you did not hear regarding those cases was the defendants' criminal histories. In yesterday's meeting, the defendant with the least number of felony convictions was three. The most convictions was 14. The average was five felony convictions. Of those 20 convictions that were chosen at random, not one fit into what has been commonly referred to as the "shoplifting" burglary. As a result, the Nevada District Attorneys Association is neutral at this time.

Dr. Austin is having a second meeting to look at cases from Clark County. Yesterday's meeting concerned cases from Washoe County. We are certainly very interested to see the statistics and other information that will be in Dr. Austin's report, which he indicated would be ready by April 1, 2011. We want to gather full information regarding the cases in Clark County to see whether there is, in fact, an issue.

Chairman Horne:

Thank you, Ms. Erickson, are you sure you are neutral on this bill? You mentioned that on average there were five felony convictions. Was there any analysis done as to when those convictions occurred? Sometimes you have five felony convictions under five different circumstances over a period of time. Sometimes you have them all at once. Was the time span considered in these averages?

Kristin Erickson:

The presentencing investigation, which is a report prepared by P&P, was available at this meeting. The prior criminal history, as far as dates, was not brought up.

Chairman Horne:

Rarely do you get a conviction with just one felony, even if negotiated. Sometimes you plead guilty to two felonies, and three will drop off.

Kristin Erickson:

The presentencing report indicated the plea negotiations for each particular case, for example, pleading to one count, dismissing several others.

Assemblyman Frierson:

I agree this can be very complicated. You mentioned that the examples did not include the criminal history, and we are talking about reducing a lot of these

sentences in half. Ms. Bisbee discussed that we are not necessarily reducing the sentence, but reducing the time before an inmate appears before the Parole Board. He may not automatically be released, but will go before the Parole Board earlier. Also, with respect to the criminal history, that is something the judge considers when they impose the original sentence. Someone with an extended criminal history may have that history considered when the sentence is imposed, and may receive a greater sentence as a result of having a criminal history. I want to make sure that those factors are taken into consideration throughout the criminal justice process.

Kristin Erickson:

The statements you made are completely accurate.

Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:

We stand neutral on this bill. Currently we supervise nearly 3,000 category B felons. Our concern is avoiding the infamous "bubble" from the 2007 Session. The statute was made retroactive, and 2,000 offenders were released to our supervision immediately. Obviously, that is a huge fiscal impact to P&P. As you heard earlier, there are only about 300 people, with no guarantee they will be released to supervision. At this time, P&P feels they can add these people to our numbers, even if they come out rather quickly, because eventually it will level out again. However, if we get all 300 in a very short period, it will affect the way we supervise people, as it will increase our caseloads.

Chairman Horne:

These 300 people will be supervised at various levels. An assessment will be done for the level of supervision required, correct?

Mark Woods:

That is correct. We are anticipating that most of these people will not be on house arrest, and because it does not involve a sex offense, they will probably be supervised at the current level of 80 to 1.

James "Greg" Cox, Acting Director, Department of Corrections:

We did an initial "snapshot" of A.B. 136 concerning category B felonies with the ability to earn credits on a minimum sentence. Of the initial "snapshot," 195 are minimum felonies, 322 are medium felonies. We believe there will be some cost savings to our Department, if these inmates are released. We are still analyzing what that cost savings will be. We believe it will have the same immediate impact as A.B. No. 510 of the 74th Session did on our minimum population.

Assemblyman Hansen:

The Committee had a report earlier about the dramatic decline of crime in Nevada. It is down substantially. How much of that can we attribute to the increase of people we have been locking up, including the category B felons? There must be some relationship between the number of persons you incarcerate and the decline in crime in the state.

Greg Cox:

Our population is down 1 percent or less. I have testified previously regarding crime rates in our state, and specifically looked at the recent report from Clark County Sheriff, Douglas Gillespie. This report showed an increase only in sexual assault cases, the rest of the major crimes were down. Those of us in corrections and law enforcement did not anticipate this. People are looking at why crime has not increased due to the economy. We believe, historically, that it should have increased.

Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections:

This bill provides for an effective date of October 1, 2011. We ask that it be amended to become effective on January 1, 2012, to allow the Department time to do the computer changes necessary in order to implement the credits. When we implemented A.B. No. 510 of the 74th Session, it was effective immediately. It took us many months to be in compliance with the bill. We do not want to have that problem again.

Chairman Horne:

If this bill goes all the way through the Legislature and is signed by the Governor, even after sine die in June, you still have until October to get your computer program going. Is that not sufficient time?

Jeffrey Mohlenkamp:

I have been told by staff that it would be difficult to do by October 1, 2011. We have to hire a contractor. We do not own the source code to the software. As a result, it would be more appropriate to have until January 1, 2012, to ensure we are in full compliance with the bill.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

I would sound a cautionary note for you as you deliberate the merits of this bill and the expansion of the A.B. No. 510 of the 74th Session credits.

Chairman Horne:

You have a cautionary note, yet you signed in as neutral?

Brett Kandt:

Yes, I am neutral. I would like you to remember victims in this process. Victims have certain rights that are derived in the *Constitution of the State of Nevada*, Article 1, Section 8, and further specified in the NRS. The substance of those rights is that victims have an opportunity to be heard, to have notice, and essentially to be informed about the process. The credit process contained in A.B. No. 510 of the 74th Session has made the ability to ascertain what a true minimum sentence is incredibly complex. The ability to adequately inform victims and the public at large of a true mandatory minimum sentence a convicted offender faces has become more challenging. I ask you to consider that as you deliberate this bill. We all have an obligation to try to ensure truth in sentencing and to ensure that victims are properly informed of what a true mandatory minimum sentence will be. We need to work together to try to come up with a system for making those determinations and providing that information to our victims.

Assemblyman Sherwood:

There was a great bill presented yesterday from Assemblyman Ohrenschall dealing with the front-end problem of sentencing. We do not want shoplifters being classified as category B felons. What we are hearing now is that a pretty good job is being done on the front end by weeding out first-time offenders and plea bargaining down so that the right punishment is meted out. Is that your experience? Are the people who are getting in the system now as category B felons deserving of that categorization?

Brett Kandt:

Frankly, I am not here to pass judgment on the adequacy of the category B felony scheme, as it currently stands. That is separate from the issue I want to raise for your consideration regarding the rights of victims, regardless of the offender or the offense, the category of felony they are convicted of, or the sentence they ultimately face. In all circumstances, I just want to raise, for your consideration, the issue of the rights of victims to be informed of the true minimum sentence the offender will face and ensure there is truth in sentencing in our system. With regards to your specific question as to the current statutory scheme for the category B felonies, I am not here to provide any input or editorial comment on that.

Chairman Horne:

You are aware there was a victims' rights advocate who sat in on the ACAJ and approved this piece of legislation to move forward and be presented to the Legislature. The victims' concerns were not overlooked in this process.

Brett Kandt:

I am aware of that. As you all know, the Attorney General also chaired a Victims of Crime Subcommittee of the ACAJ. The issue of the ability to have truth in sentencing and adequately informed victims has been raised before the Commission. It has been discussed. I think the Commission recognized that it is a challenge to ensure under all circumstances, that we collectively focus on how we can best inform victims and the public at large as to what a true mandatory minimum sentence will be in any particular circumstance.

Chairman Horne:

Also, you have mentioned to stay true to truth in sentencing. This legislative body has made reforms in truth in sentencing, so your testimony implies that we should go back to the original truth in sentencing that was put in place in 1995. I have not seen any legislation come from the Attorney General's Office suggesting that we do that. This bill is reflective of reforms that we began in 2007.

Assemblyman Hansen:

We heard testimony that there is approximately a 22 percent recidivism rate. If we are talking about releasing 300 category B felons early, we are essentially releasing at least 60 people that will probably end up back in the system. Is there a difference in recidivism between category A through category E felons? It is great that we will save some money, but we are releasing at least 60 people who will reoffend and get sent back in. Is there any evidence that one category is more likely to return than another?

Brett Kandt:

I am not the person who can answer that question. I would like to respond to Chairman Horne's comments, because I am concerned that my testimony not be mischaracterized. I certainly did not mean to imply that the Attorney General is challenging the policy determinations of this body with regard to truth in sentencing. I simply wanted to emphasize that we collectively . . .

Chairman Horne:

Let me stop you there. A response is not necessary. The one thing that is frustrating to me is persons testifying in neutral when their position is clearly in opposition. I do not have a problem with opposition testimony. Check the box and testify in opposition.

Thom Gover, Chief Deputy Attorney General, Office of the Attorney General:

I work in the Special Prosecution Division, which handles all of the post-conviction petitions that are filed by inmates. Nothing gets an inmate writing his petition for writ of habeas corpus quicker than when he cannot

figure out how the time on his sentence is being calculated. Our experience with the A.B. No. 510 of the 74th Session "bubble" was that it generated a number of petitions because people were not getting their parole hearings soon enough. They could not get an audit of their time because the computer had not been updated. I truly am neutral. We have no problem dealing with the petitions, but I hope the execution of the bill will be better than it was in A.B. No. 510 of the 74th Session. We need to give the Information Technology (IT) Director more time to get the computer program fixed, or there will be delays in parole hearings. That translates to a fiscal cost for the Special Prosecution Division. A deputy attorney general, who is doing other things, will be completely involved in litigation and going to court hearings. The Eighth Judicial District Court judges heard several A.B. No. 510 of the 74th Session cases. I hope we learned from that experience and address that minimally by giving the IT Director sufficient time to work on the software.

Assemblyman Hammond:

Are you saying that if this bill passes, you are worried because you cannot work fast enough to get these cases through; that you personally are not fast enough to get this done?

Thom Gover:

Our experience with A.B. No. 510 of the 74th Session was that we did get the work done. The problem was there was an unnecessary cost to the system, because the bill was retroactive. Everybody who was entitled to parole hearings did not get their parole hearings in a timely manner, due to several factors. Ms. Bisbee provided a fiscal note as to the cost to complete hearings quickly. That is critical. If those hearings are not held quickly enough, or an inmate is not informed when his parole hearing is going to be held, he is going to handwrite his post-conviction petition for a writ of habeas corpus challenging the calculation of his sentence. This will require unnecessary litigation in the Eighth Judicial District Court. If the bill or amendment works as it should, it will free up time for our office also.

Chairman Horne:

Any questions? Anyone else wanting to testify on A.B. 136? I will close the hearing on A.B. 136 and will bring it back to the Committee for a work session. Our last bill on the agenda is Assembly Bill 83.

Assembly Bill 83: Revises the statute of limitations for crimes relating to identity theft. (BDR 14-536)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

I am presenting this bill, hoping to protect Nevada's young people, hold criminals responsible, and prevent future identity theft ([Exhibit D](#)). The problem is child identity theft. It occurs when a child's identity is used by another person for personal gain. The perpetrators are sometimes family members. They are sometimes people unknown to the family and people who target children specifically. This crime is attractive because it goes undetected for a number of years. In 2007, 400,000 children were victims of identify theft. We found an 11-month-old child who was a victim of his identity being stolen. The number of these complaints has increased by 78 percent over the last several years, making this the fastest growing segment of identity theft. The current law is that an indictment or complaint must be filed within three years after the commission of an offense. The problem with child identity theft is that no one knows it has happened. The existing law does not give the ability to address offenses that may have occurred at a time when a child could not have reasonably been expected to check or even be aware that he had a credit history at all. I do not believe children can be expected to address problems that they are not aware of.

Children are targeted because they have a clean credit file. Their stolen identities may be used for years without the victims or the parents being aware. The identities are used for credit card fraud, telephones, utility service, banking fraud, and employment fraud. Someone could have their identity stolen at the age of 12, and probably would not find out until he is 18 or older, when he starts to look for credit, or tries to rent a house, or tries to go to school. There is a chart on the Nevada Electronic Legislative Information System (NELIS) that shows the identity theft complaints by victim's age. Identity theft complaints for persons less than 19 years of age are a very small number because the persons do not know about it. By the ages of 20 to 29, that number increases dramatically, and drops off again after that.

The problem is about 85 percent of these victims find out that they have been a victim of identity theft in a negative manner. They find out when they are denied credit, they are denied a mortgage, they are denied a loan, they are unable to open a bank account, they receive a collection notice, they are denied utility or telephone service, a driver's license, they have job applications denied, they are quoted higher insurance rates, or receive credit card bills that they never requested. They are also being denied Social Security and welfare services.

The solution, under A.B. 83, is to provide identity theft victims, who are under the age of 18 when the offense is committed, with an opportunity to address the offense. Specifically, a complaint must be filed within four years after the time the victim discovers the offense was committed. This gives child identity theft victims a reasonable amount of time to learn about and take action on an offense that would otherwise potentially affect them for many years in the future. I believe if your Committee supports A.B. 83, we will help protect young people, and we will again hold criminals accountable, and possibly prevent future identity theft.

Chairman Horne:

What do you anticipate the level of enforcement to be? I do not think that all identity theft is committed by someone who is related or knows the child. It could be someone online, and we may not know who has taken the identity. How would we issue a warrant for their arrest?

Anthony Aguillard, Sergeant, Identity Theft Detail, Las Vegas Metropolitan Police Department:

The victim would file a police report. We would have the police report sent to the state where the crime occurred, and they would seek the suspect there. One of the problems we have is jurisdiction. A lot of identity theft is committed over the Internet, and we equate that to chasing ghosts. It is very difficult to prosecute. We are here now to seek some remedies and assistance by changing the *Nevada Revised Statutes* (NRS) to make it more favorable for the victim, instead of more favorable for the suspect. [Written testimony submitted but not presented ([Exhibit E](#)).]

Assemblyman Sherwood:

As I understand identity theft, Social Security numbers (SSN) are stolen. There is a date of birth (DOB) attached to that number. Independent of this bill, can we tie the SSN to a DOB and not issue telephone bills or credit cards to 13 year olds?

Anthony Aguillard:

When the SSN is stolen, it can be used by any thief, felon, hacker, scammer, or anyone. The DOB is never checked. Kids do not check their credit report or history or even their criminal history. I have a victim here today who did not know he was a victim until he turned 18, when he applied for a loan to get a car. His SSN and name were also used when a person was arrested for domestic violence and driving while intoxicated. Those charges are now on his criminal history. He is having a hard time trying to clean it up. The way the statute of limitations is written, law enforcement cannot do anything, because it happened outside the three-year time limit.

Assemblyman Sherwood:

I understand the problem. I have been served with a warrant because someone gave the wrong address. There are three identifiers: the SSN, the DOB, and the name. Creditors should not issue credit unless they can verify all three identifiers.

Anthony Aguillard:

Currently, the creditors are not checking the DOB. If a SSN has been dormant, or is clean, it can be stolen and credit obtained.

Assemblyman Carrillo:

Will this bill be retroactive so that records can be cleared?

Anthony Aguillard:

We would have an increase in cases that could be processed with proper investigations because there are a lot of people who were victimized before they were adults. We could proceed with a proper investigation and the District Attorney's Office would be able to proceed with prosecution.

Assemblyman Brooks:

How do you determine when the person found out about the crime? Is it on an honor system?

Anthony Aguillard:

Yes. When the victim comes in to file a report after he has applied for and been denied a college loan, or an apartment. Then they come to file a police report.

Assemblyman Brooks:

Nevada Revised Statutes 205.461 deals with identity theft. I understand the scenario of a 30 year old trying to buy a home and finding out that his identity has been stolen because of his credit report. Can this statute be used by an individual who was sexually abused when a person was younger, found out later, and then reported the sexual abuse?

Anthony Aguillard:

I do not know what the statute of limitations is on sexual abuse.

Assemblyman Brooks:

This is confusing to me. In section 1, subsection 1, paragraph (b), the bill references *Nevada Revised Statutes* 432B.100 and states before the victim of abuse is 21 years old, or 28 years old; then it goes into paragraph (c), which is where the amendment is located. It says if a felony is committed pursuant to

NRS 205.461, they have four years after the victim discovers the offense. Are these two different things?

Nick Anthony, Committee Counsel:

This bill amends NRS 171.095 which is the section of the law where we have limitations for offenses committed in a secret manner and offenses constituting sexual abuse of a child. In this particular section of law, we provide for extensions of the statute of limitations. From a bill drafting perspective, we felt this is the best place to put this particular amendment, as it relates to identity theft to certain victims under the age of 18.

Assemblyman Brooks:

So this has nothing to do with a victim of sexual abuse who may have found out when they are 18 that they were abused and then they have four years to apprehend that individual?

Nick Anthony:

No, this is completely separate.

Chairman Horne:

Why use the verbiage when the victim should have known as opposed to when the victim does know? For instance, a 25- to 30-year-old person discovers his identity was stolen when he was 16 years old. Arguably, the person probably had credit checks done by this time, so why was it not brought to the attention of law enforcement then, if indeed the identity theft took place? Also, what if the alleged theft is no longer a black mark on a credit report? If someone steals your identity when you are 15, you discover it at the age of 23, and it is now a satisfied lien, and is no longer having a negative impact on your credit, would that person still be eligible for prosecution?

Assemblyman Ocegueda:

Regarding the "should have discovered" issue, in my mind, we are talking about children. Generally speaking it will be discovered by an 18 to 22 year old. You probably are not going to know on the first credit denial. You might think the credit was denied because you are 18 years old. It is a reasonable amount of time, and most of these people are going to be 22 years of age and under. I am open to the thought of some reasonable standard, but I am not sure that we need to change that. I do not understand your second question.

Chairman Horne:

A 25 year old goes to buy his first car. The salesman tells him he bought a Cadillac eight years ago. It is not a negative mark, and is not having a negative impact on his credit. Or, it could be that he did not pay his gas bill eight years

ago in Minnesota. Again, no effect to his credit, just finding out that someone has used his credit.

Assemblyman Oceguera:

I am thinking a crime has still been committed, and the person who committed that crime, if possible, should be prosecuted. The test is not whether it is affecting a person's credit or not. It is whether a crime has been committed.

**Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

It could become an issue of resources. When the crime is reported, it is going to be up to the detectives to determine whether or not, considering resources, if it is worth pursuing. If the crime is continuing, it might be worth pursuing. I think it boils down to resources, and spending the time to look into something if it is no longer affecting anyone.

Chairman Horne:

Are there any other jurisdictions that pursue identity theft after discovery, as opposed to after the commission of the crime?

Anthony Aguillard:

I am not sure what the statute of limitations is around the country.

Chairman Horne:

Anyone else to testify?

Anthony Aguillard:

One of the witnesses who was going to testify had other commitments and is unable to be here today. She discovered she was a victim of identity theft when she was arrested about a year ago. The crime was committed when she was 16 years old. Her former roommate's brother used her SSN when he was arrested. It went to a warrant and she was incarcerated for 30 hours.

Carlos Hernandez, Private Citizen, Las Vegas:

I found out about my credit being used, as well as my SSN and identity, when I turned 18. I tried to get credit for a car and I was denied and was shown my credit score and what was on my credit report. I had several credit card loans, a couple of mortgages, repossession of cars and a home. I also went to the Internal Revenue Service (IRS) office for owing them \$4,000 for something I did not file taxes on. They gave me records dating back to when I was nine. They said it could have gone back farther, but that is as far back as their records go. I am waiting on returns from the IRS. I have been trying to get in touch with the credit companies to clean up my records. I was personally impacted first

and foremost with my education. In high school I did four years of Reserve Officer Training Corps, and I was planning to join the Navy. When they looked at my background, they found a driving under the influence (DUI) and domestic violence. I have no answer as to what is going on with that, but along with the identify theft, I was unable to join the Navy. I believe that is unfair to anyone who is not responsible and did not commit the crimes. It limits me as to what I am able to do. It is just very frustrating.

Chairman Horne:

I can only imagine, Mr. Hernandez. Have any of the credit agencies given you a timeline as to when this will be cleared off your credit reports?

Carlos Hernandez:

No, that is pending. I have to wait for a letter from the IRS stating that their investigation has concluded and proven that it is not me.

Chairman Horne:

Does law enforcement provide to these agencies supporting documentation, or a letter, stating that the Las Vegas Metropolitan Police Department is investigating this crime of identity theft perpetrated on Mr. Hernandez, who has been a victim since 9 years of age?

Anthony Aguillard:

Normally, when the victim comes in, we interview him, ask for their credit report, letters from IRS, bill collector notices they received, et cetera. We will then take an incident crime report so that it is documented. Next we look at when the crime occurred. When this crime first started occurring, Mr. Hernandez was 9 years old and it continued until he was in high school. The problem we have, even with a suspect, is if we try to submit the report to the District Attorney's Office, they will not honor the submittal because the statute of limitations has expired. Our report would be denied. Even if we try to explain it to the District Attorney's Office, they will still deny based on the statute of limitations.

Assemblyman Hammond:

Mr. Hernandez, how many years will it take before this is off your record? You stated it goes back to when you were nine years of age, which was the first use of your SSN. When was the most recent use of your SSN for a fraudulent activity?

Carlos Hernandez:

It was sometime during my sophomore year. Some of these loans date back to when I was nine and some are in 2008.

Assemblyman Hammond:

Are they holding these purchases and foreclosures against you on your credit score?

Carlos Hernandez:

I am not sure about the older ones, but from the ages of 12 to 17, they are still on my record. One is a home mortgage loan that was foreclosed, which stays on my record for 6 to 7 years. Car repossessions stay on for 4 to 5 years. My credit score average is 450 right now. When I tried to buy a car, I had a cash down payment, and they would not sell me the car because of my credit history. Also, I cannot get a job at a casino, because my background check shows a DUI and domestic violence.

Assemblyman Ohrenschall:

Mr. Aguillard, you mentioned there was a young lady arrested for a felony, what was she arrested for?

Anthony Aguillard:

She was arrested for a warrant and possession of a stolen vehicle. A former roommate's brother used her SSN when he was arrested. A few years later, when no one showed up for court, a warrant was issued. She was picked up, booked, and spent 1 1/2 days in jail.

Assemblyman Ohrenschall:

Mr. Hernandez's case goes back to when he was 9 years old, when his identity was stolen. If Assemblyman Ocegueda's bill were the law now, do you think you would be able to bring the perpetrators to justice?

Anthony Aguillard:

Yes, I believe so.

Assemblywoman Dondero Loop:

You have referenced several different ways that people can acquire SSNs. Are these SSNs just randomly picked, or is research actually being conducted to acquire them?

Anthony Aguillard:

A child's SSN can be obtained a number of different ways. There are online companies that will scour the Internet looking for dormant SSNs. When they find SSNs that have not been used, which normally belong to children, they will sell these numbers to brokers, who eventually sell them to individuals for anywhere from \$100 to \$1,000. Once the individual obtains a SSN, he will run up credit, discard the number, and purchase a new number. You can buy SSNs

at a swap meet, over the Internet, through a black market, or you can "dumpster dive" and find SSNs. You can find SSNs anywhere. You can raid mail boxes, even look over a person's shoulder. In 2006, California passed a law stating every foster child in California must have a credit check done before the child turns 16. Foster children, who are wards of the state, are passed from home to home and school to school, and all their records are being passed also. They found that these children were being victimized at a much higher rate than other children.

Assemblywoman Dondero Loop:

Is there anything that young parents can do to protect their child's SSN so that it does not become dormant?

Anthony Aguillard:

One of the best ways that a parent can protect their family is to get an identity theft protection plan. Those plans are available through various companies, or banks. Also they should be very careful when giving SSNs to schools, to sport organizations, et cetera. Shred paperwork with SSN information on it. Do not carry SSN cards in your wallet or in your car. If your car is burglarized, the first thing a perpetrator will do is try to find all the information he can. Also, children do not have credit histories. If they did have credit histories, that should send up a "red flag." You need to be mindful of handing out personal information. If someone asks for personal information, ask questions first.

Brian O'Callaghan:

When we think about safety for our children, the first thing we think about is putting a helmet and elbow pads on our child, and buckling them up. Parents also need to be aware of the safety of their children's credit.

Chairman Horne:

Anyone else wishing to testify on A.B. 83?

Keith Munro, Assistant Attorney General, Office of the Attorney General:

We support the efforts of Assemblyman Ocegueda and the Las Vegas Metropolitan Police Department to provide additional protection for minors on this important issue. There have been a lot of questions regarding identity theft. Our office runs the Identity Theft Passport Program and if anyone would like additional information on how that program works, we would be happy to come to your office and provide assistance.

Jon Sasser, representing Washoe Legal Services and Legal Aid Center of Southern Nevada:

Both of the programs I am representing have projects that provide legal representation to children who are abused, neglected, or in the foster care system. I appreciate the Sergeant mentioning that this is a very vulnerable population and this is an issue we are very concerned about. We greatly support the Assemblyman's efforts. These children do not know, as a general rule, until they are 18 and out of the system that they have been victimized by identity theft. I have my own Identity Theft Passport that I got from the Attorney General's Office when I went through this a few years ago. I am very familiar with the hassle and heartache identity theft can cause. I am very supportive of this bill.

Chairman Horne:

Is there anyone else here to testify?

Terry Johnson, Director, Department of Business and Industry:

Our Department is concerned with the lawful conduct of commerce here in the State of Nevada, and we are certainly supportive of this measure to the degree that it would help foster that aim. Unfortunately, Nevada finds itself at the top of another bad list regarding identity theft. We are ranked the fifth highest state in the nation for identify theft incidents. There have been some recent media accounts that have discussed the role of identity theft as it relates to children. You heard testimony regarding the need to safeguard that information, especially as children become involved in sporting events and enroll in various youth leagues. I hope this will serve as an educational moment for parents whose children are victimized, not just internally by family members, but also by others outside of the family. Hopefully, parents will take greater steps, in addition to monitoring their own credit reports, by monitoring the activity in the names of their children as well. On behalf of the Department of Business and Industry, we support this measure and the efforts made in bringing this forward.

Chairman Horne:

Any questions? I will close the hearing on A.B. 83 and bring it back to Committee. This will be on the next work session document. We are adjourned [at 9:53 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 2, 2011

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 136	C	Connie Bisbee	Fiscal Note
A.B. 83	D	Assemblyman John Ocegueda	PowerPoint Presentation
A.B. 83	E	Anthony Aguillard	Written Testimony