MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY
Seventy-sixth Session
May 6, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:10 a.m. on Friday, May 6, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Allison Copening, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman William C. Horne, Assembly District No. 34
Assemblyman John Oceguera, Assembly District No. 16
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Carolyn Myles, Acting Warden, Florence McClure Women's Correctional Center, Department of Corrections

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department
Elisa Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Ronald P. Dreher, Peace Officers Research Association of Nevada
John Wagner, State Chairman, Independent American Party
Michael Oh, Assistant City Attorney, City of Henderson
Mark Jacobs, Chief Alternative Sentencing Officer, City of Henderson
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Tierra D. Jones, Office of the Public Defender, Clark County
Reed Thomas, Detective, Repeat Offender Program, Reno Police Department
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; Advisory Council for Prosecuting Attorneys
Kristin Erickson, Nevada District Attorneys Association
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Jeff L. Mohlenkamp, Deputy Director, Support Services, Department of Corrections

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 408.

ASSEMBLY BILL 408 (1st Reprint): Restricts the use of restraints on pregnant females who are in confinement. (BDR 16-117)

CAROLYN MYLES (Acting Warden, Florence McClure Women's Correctional Center, Department of Corrections):
We support this bill. The Department of Corrections (DOC) can follow the guidelines set forth in the bill that no restraints will be placed on pregnant females during the labor and delivery process. Only minimal restraints will be used during the recuperating phase if they are needed.

SENATOR GUSTAVSON:
I considered introducing a bill like this myself. However, after speaking with DOC officials in northern Nevada, I wondered how much of a problem it is. What is your current policy in this area?

MS. MYLES:
When the woman is taken to the hospital, she is placed in handcuffs only. Once the doctor confirms that she is in labor, the restraints are removed and are not replaced until after she delivers the baby. At that time, we place a leg iron from one leg to the bed.

SENATOR GUSTAVSON:
If that is the case, why do we need this bill? Is the policy the same in the north and the south?

CHAIR WIENER:
We will wait for the sponsor of the bill to answer that question. What is the current population of your facility?

MS. MYLES:
We currently have approximately 760 females, of whom 10 are pregnant at the moment.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
The American Civil Liberties Union (ACLU) of Nevada is in wholehearted support of A.B. 408. The bill was initially more broad, and we would have liked to see it stay that way. However, we support the bill in its amended form.

Many national organizations support the idea that women should not be shackled during labor and delivery and even throughout pregnancy. The American College of Obstetricians and Gynecologists, the American Medical Association and the American Public Health Association have all recognized that shackling women during labor, delivery and postpartum recovery is unnecessary and dangerous to a woman's health. A few court decisions have agreed that shackling pregnant women is cruel and unusual punishment. The regulations at various facilities in Nevada are not sufficient and indeed have some gaping holes, and this bill is a good step forward.

The ACLU recently received a complaint from a pregnant woman imprisoned in Nevada who was forced to wear shackles around her waist, arms and legs to all of her OB/GYN appointments, including when the physician examined her. In her letter, she said that the chains around her stomach were very uncomfortable, and she was concerned they were harming her and her unborn child. She was recently scheduled to have a Caesarian section due to complications.

The DOC has established a temporary regulation that we believe is inadequate. It requires pregnant inmates to be shackled to the hospital bed at all times until the attending physician declares that she is in labor. We would like to see that changed. We look forward to working with the DOC on that regulation.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We are in favor of A.B. 408 as written. A survey of the sheriffs who run the jails throughout the State show that this is not an issue for us at the moment. I spoke with James G. Cox, Acting Director of the DOC, regarding the prisoner who was shackled during her pregnancy, and he said the prisoner in that case was believed to be a danger to herself and the child. This bill would cover that situation and allow us the discretion to determine in each case if the person was a danger to herself and/or the child.

We support the bill as it came out in the first reprint. I am not aware of any other issues in our county jails in this area. There have been some graphic examples given regarding this practice. If someone did that in a county jail in Nevada, that person would be looking for a job somewhere.

CHUCK CALLAWAY (Police Director, Las Vegas Metropolitan Police Department):
We support this bill in its reprinted version. The standard operating procedure at the Clark County Detention Center is that we do not put restraints on women in labor. We do have to balance the safety concerns of the mother, the baby, the hospital staff and the public. There are rare extreme cases in which the mother is a threat to herself and others.

SENATOR GUSTAVSON:
You mentioned that you do not put restraints on women in labor. What do you do if they are pregnant but not yet in labor?

MR. CALLAWAY:
Whether or not we restrain a pregnant female depends on the specifics of each situation. It depends on what stage of pregnancy the prisoner is in and her health conditions. If a doctor or nurse at the jail recommends the restraints be removed, in most cases we will do that unless the prisoner is an immediate threat to herself or someone else. If the prisoner is in an early stage of pregnancy and we are moving her to court or from one part of the prison to another, she would most likely be restrained during that movement.

ELISA CAFFERATA (President and CEO, Nevada Advocates for Planned Parenthood Affiliates):
We support this bill. I have written testimony explaining our stance on the issue (Exhibit C). Speaking as someone who has given birth three times, I know that pregnancy and labor can be daunting experiences, even more so when women do not have a great deal of information about what to expect. We hope this bill begins a process of education and work within the prison system to find other ways to help keep women healthy.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
We support A.B. 408 for the reasons previously stated.

CHAIR WIENER:
This bill affects DOC facilities, county jails and juvenile facilities, which is why there is repetition in the bill.

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
I have a presentation on A.B. 408 explaining the problem tackled by the bill (Exhibit D).

This bill is simple. It basically says that if you want to use restraints on a pregnant inmate who is in labor, you have to set forth in writing the reasons why. In its original form, the bill required that this be done throughout the inmate's pregnancy. After testimony in the Assembly Committee on Judiciary, we amended the bill to its current form.

The bill does not say you cannot use restraints; it says if you are going to use restraints, the burden is on you to say why. There are some pregnant inmates who are killers whom you do not want to have loose. However, most female

prisoners are there for bad checks or other violations that are not violent crimes, and there is no threat to run. The thought that they would be shackled while they are in labor or giving birth is just unacceptable. Most law enforcement officials agree with that, but most of them do not have written policies saying so. This bill puts that into policy. Law enforcement has policies, and the policy is that when prisoners go to the hospital, they have to be shackled. But in this case, a woman in labor is not a flight risk. There is no reason for shackling in this situation.

CHAIR WIENER:
I will close the hearing on A.B. 408 and open the hearing on A.B. 321.

ASSEMBLY BILL 321 (1st Reprint): Revises provisions relating to the use of force. (BDR 15-963)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
This is a simple bill. I have a one-page presentation explaining the history and purpose of the bill (Exhibit E).

CHAIR WIENER:
What changes were made on this bill in the Assembly?

ASSEMBLYMAN OCEGUERA:
The change was in section 1, subsection 2, paragraph (c), where the phrase was changed from "engaged in criminal activity" to "actively engaged in conduct in furtherance of criminal activity." The intention was to make it clear that an old parking ticket or a marijuana cigarette in your pocket would not disqualify you from defending yourself. If you were in the process of committing a crime, that would be different.

RONALD P. DREHER (Peace Officers Research Association of Nevada):
On behalf of the professional peace officers of our State, we heartily support A.B. 321 for the reasons given by Mr. Oceguera.

JOHN WAGNER (State Chairman, Independent American Party):
I support this bill. This is particularly important for those of us who live in the north. I would have liked to see a provision saying that if you do have to shoot someone, there is no civil penalty, so the person cannot go to court, sue you and end up with everything they were trying to steal plus your house. Right

now, we do not have that in place, and you never know what juries are going to do.

CHAIR WIENER:
I will close the hearing on A.B. 321 and open the hearing on A.B. 135.

ASSEMBLY BILL 135 (1st Reprint): Revises provisions governing probation. (BDR 14-806)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
I practice in the arena of criminal defense in my other life, and it became apparent to me, in some instances and with some judges, that probation was being revoked for minor infractions. With the state of our economy, there are better ways to manage these offenders than sending them to prison at tremendous cost to the taxpayers.

The bill was amended from its original form with the assistance of Jennifer P. Togliatti, Chief District Judge, Department 9, Eighth Judicial District. With those revisions, it is a better bill and does not take too much discretion away from our judges in making these determinations.

CHAIR WIENER:
What changes were made when the bill was amended?

ASSEMBLYMAN HORNE:
The original bill was more specific and narrow, saying that judges could not revoke probation unless the probationer committed another serious criminal infraction. However, there are instances in which the conduct of the probationer may still rise to the level where the judge needs to revoke probation without a serious crime having been committed. The first reprint of the bill is much broader; it gives the judge more leeway, but still sends a message that these are the circumstances in which revocation is more appropriate.

SENATOR GUSTAVSON:
Could you give me an example of someone being revoked on probation for a minor offense?

ASSEMBLYMAN HORNE:
I had a client with an eighth grade education who was an unemployed construction worker in Pahrump. In his first brush with the law, he was put on probation. He was nearing the end of his probation when the judge extended it because he had not been able to pay his fees. He finally found a job and went out to celebrate; on the way home, he sideswiped a car, and his probation was revoked for a first offense DUI. Despite my pleas that the municipal court was more than adequate to deal with the case, that he had done everything the judge asked, that he had a wife and children, the judge said it was a violation of probation and sent him to prison. His two years in prison cost the taxpayer over $40,000. One of his children has special needs, and the judge was well aware of this. But that DUI was enough to send him to prison. And when he gets out of prison, he will still have to go to the municipal court and answer for that DUI.

The majority of the judges do a wonderful job. I have stories of judges bending over backward to help offenders get on the right track. But I have also seen cases like that man's.

MICHAEL OH (Assistant City Attorney, City of Henderson):
We are neutral on A.B. 135. We are not opposed to the bill as a whole, but we would like to clarify certain aspects because of the potential impact in Henderson municipal courts. We have an alternative sentencing department under *Nevada Revised Statutes* (NRS) 211A. Although this bill deals with felony probation, our concern is that the standard in this bill may perhaps trickle over into the municipal courts. Section 1, subsection 2 includes the phrase, "... on the basis of the circumstances of the original crime ... ." This appears to say that the court would have to take into consideration the underlying offense that placed the offender on probation. Our concern is that this means the new offense must be equal to or greater than the original offense. Interpreted like this, it could perhaps limit the function of our alternative sentencing department.

In the past, notwithstanding the fact that NRS 211A speaks to the probation for misdemeanor cases in municipal courts, defense attorneys have argued that nothing states specifically what can be done in NRS 211A and will apply certain criteria that is applied to felony cases, and judges have entertained that. That is our only concern with this bill.

MARK JACOBS (Chief Alternative Sentencing Officer, City of Henderson):
I would echo Mr. Oh's concerns. Probation is an opportunity. If this bill were to trickle over into NRS 211A, it would dilute its intent. That statute is set up to give my department the tools we need to supervise offenders, and it also gives the courts the tools they need to address probation violations. If it is determined that A.B. 135 will affect NRS 211A, we will need further dialogue.

ASSEMBLYMAN HORNE:
This is the first I have heard of these concerns. There was discussion on the effect of the bill on specialty courts, but those were within the district courts. I do not see how it could be interpreted as affecting NRS 211A.

BRADLEY A. WILKINSON (Counsel):
It does not seem to me that there should be any sort of trickling down. This bill does not, by its terms, apply to NRS 211A. Attorneys might make novel arguments that some of the language in NRS 176A might be applied to NRS 211A, but I have not heard that previously. It should have no impact whatsoever.

MR. JOHNSON:
We support this bill. In the vast majority of cases, the Division of Parole and Probation (P&P) does not ask for probation to be revoked unless revocation is warranted. The judge I appear before most often will listen to all the facts before he makes a decision to revoke. However, we have occasionally seen cases in which probation has been revoked, and it is a waste of money and maybe not the right thing to do. This bill puts some standards in place and still gives the judges sufficient discretion to do what they need to do on a case-by-case basis.

I have seen some revocations that raised concerns. Some judges will revoke probation at every probation revocation hearing. Refusal to use discretion has in fact been cited by courts as an abuse of discretion. Probation has been revoked for mere accusation of crimes, casual association with felons and relapse, which is often part of recovery. The lack of money is also a factor, even though constitutionally we are not supposed to send people to prison if they cannot pay their fees. It happens anyway. Sometimes we have to go fight for the next two or three months to get the offenders back out of prison.

This bill strikes a great balance between giving judges discretion and making sure we are weeding out some of the revocations that do not warrant the time and expense of sending people back to prison.

MARK WOODS (Deputy Chief, Division of Parole and Probation, Department of Public Safety):
We had some problems with the bill as it was originally introduced. However, the sponsor worked with us on our concerns, and we are neutral on the amended bill.

MS. GASCA:
We are in support of A.B. 135. Much of the related issues was discussed by the Advisory Commission on the Administration of Justice. Assemblyman Horne is the Chair of the Commission, and he has put a lot of work into shepherding this process through.

This bill is practical. It is part of a larger national trend of being smart on crime in order to only preserve state resources and help offenders to fully recover instead of being caught up in a cyclical participation in the criminal justice system. We believe this is a great bill for fiscal reasons and long-term responsiveness to the citizens of Nevada.

CHAIR WIENER:
I will close the hearing on A.B. 135 and open the hearing on A.B. 136.

ASSEMBLY BILL 136 (1st Reprint): Revises provisions governing credits for offenders sentenced for certain crimes. (BDR 16-634)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
This bill is being brought on behalf of the Advisory Commission on the Administration of Justice.

This bill would allow certain Category B felons to receive good-time credits on the front end of their sentences. Category B is the most broad area of felonies in our statutes and encompasses a wide range of crimes. In 2007, we allowed good-time credits for Categories C, D and E felonies on the front end of their sentences; Category B and A felonies were excluded. After reflection, there are certain Category B felonies that we might want to make eligible for good-time credits, which would allow offenders the possibility of an earlier release. They

will still have to go through the normal procedures of going before the State Board of Parole Examiners and earn that release, but they will be able to earn those credits and make their case before the Board to be released back into the community.

The discussion on this issue in the Commission was contentious. Some Category B felons are nonviolent, and some are very violent. How do we distinguish between those who deserve good-time credits and those who do not? The bill before you was amended to exclude those who were deemed habitual criminals pursuant to NRS 207.010, habitual felons pursuant to NRS 207.012 and habitual fraudulent felons pursuant to NRS 207.014.

There are two friendly amendments. The first excludes crimes involving the use of a firearm, which was suggested by the Nevada District Attorneys Association (Exhibit F). The second was brought by Reed Thomas, a detective from the Reno Police Department's Repeat Offender Program (Exhibit G), addressing a concern about individuals who have not been deemed habitually criminal but whose records show that they are. Their habitual status has been stayed because of negotiations with the district attorney and their defense counsel. They have multiple felony convictions and multiple prison stays but have yet to be deemed habitual. The amendment will address that.

TIERRA D. JONES (Office of the Public Defender, Clark County):
We strongly support this bill. Phil Kohn, who is the Clark County Public Defender, participated in the Commission's discussion and worked on the language of this bill with Assemblyman Horne. This bill excludes Category B felons who have committed crimes of violence, sex offenders, habitual criminals and DUI offenders. This bill will serve several purposes. Inmates accrue good-time credits by going to school, doing the work release program and staying out of trouble while in custody. This increases safety for officers and others in the DOC, gets inmates more educated so they can reintegrate into society when they are released and helps them develop skills to help them succeed and earn money to pay toward restitution, which makes victims whole.

It was also stated to the Commission that this measure would reduce the prison population by 700 beds annually. According to the DOC, the average cost to house a prisoner is $19,980 each year. That includes staff, buildings and other things that are necessary to house that inmate. Connie Bisbee, Chairman, State

Board of Parole Commissioners, testified in the Assembly Committee on Judiciary that this would affect some 500 inmates.

SENATOR ROBERSON:
Did you say 700 additional felons will be on the street per year?

MS. JONES:
The bill would reduce the prison population by 700 beds annually for certain Category B felonies.

MR. JOHNSON:
Some violent felons should be in prison. When it comes to the shoplifting burglaries, maybe there are other things we do with our money. When this bill was heard in the Assembly Committee on Judiciary, I randomly pulled all the cases in my colleagues' offices charged as burglaries. Five of the six cases were for shoplifting. One of them stole $7 worth of goods from a Wal-Mart deli.

We then pulled every burglary case that was assigned to our office in the past year. They were burglary; unlawful possession of burglary tools, which is a gross misdemeanor; conspiracy to commit a burglary; and attempted burglary. Keep in mind that if you walk into a convenience store to steal a candy bar, that is burglary because you entered the building with the intent to commit a larceny. There were 365 of these cases assigned to our office in 2010. Of those, 35 were either conflicted out, assigned to other counsel or retained their own counsel. Of the 330 remaining, 168 were resolved as felonies. That is 51 percent. A further 12 percent were resolved as gross misdemeanors; 24 percent were resolved as misdemeanors; and 14 percent were dismissed, usually pursuant to negotiations in some other case.

Restitution, where assigned, ranges from a dollar to a couple hundred thousand dollars. Generally it is about $400 or $500, though I did not have enough data to do a good average. A bill is moving through that would bring that within the misdemeanor range. You can see from this that a lot of cases are going as felons and looking at prison time.

It is critical to note that these credits are discretionary. Inmates do not have to be granted these credits if they are not behaving themselves in prison. One benefit of these good-time credits is that it creates an incentive for the prisoners to do things that stop them from committing additional crimes in the

future, such as drug rehabilitation, education and so on. We want these incentives to stay in place, to be in place for those who deserve them.

This bill will save a lot of money while dealing with lower level offenders in a way that they ought to be dealt with, while still dealing with the higher level, more dangerous offenders in a way they deserve to be dealt with.

MR. DREHER:
We have an amendment dealing with section 1, subsection 8, paragraph (f) of the bill (Exhibit H).

CHAIR WIENER:
Mr. Dreher, what is your position on the bill without the amendment?

MR. DREHER:
We would oppose the bill without the amendment.

REED THOMAS (Detective, Repeat Offender Program, Reno Police Department):
I support this bill with the amendment. I have written testimony explaining my concern about the bill and describing the effect of the amendment (Exhibit I).

CONNIE S. BISBEE (Chairman, State Board of Parole Commissioners, Department of Public Safety):
We are neutral on A.B. 136. This bill would authorize the nonviolent, nonsexual, non-DUI offenders serving Category B felonies to receive credits off their minimum sentence. A list provided by the DOC shows that this immediately affects approximately 517 inmates. The JFA Institute came up with 565 people who would immediately become eligible for parole.

The Board currently conducts 600 to 650 discretionary and mandatory parole hearings each month. This bill would almost double our caseload. The intent of the bill is to allow the earlier release on parole of appropriate individuals by reducing their minimum term. In order for the DOC to realize the benefit of this credit reduction, affected inmates should be seen by the Board as quickly as possible.

In order for the Board to properly evaluate and consider the 517 to 565 inmates in addition to its current caseload, contracted case-carrying representatives would be needed over a period of approximately five weeks. That is four hearing

representatives working three days a week for five weeks, equaling 60 contracted hearing rep days. The Board is budgeted to receive $24,533 in the Governor's recommended budget for fiscal year 2012 for these contracted hearing reps, which equals 106 contracted hearing rep days for the entire year. The Board's budget has been closed. The expenditure for hearing reps during the spike in hearings caused by this bill is projected to exhaust 57 percent of our entire annual budget for this category.

While the Board would expect a slight decrease in the caseload in the months following the initial eligibility of the Category B inmates, we also expect the future caseload to quickly level out to current norms as other inmates have their eligibility dates accelerated as a result of the credits applied to their minimum sentences. The Board requests the ability to go to the Interim Finance Committee to request $13,853 to be placed in category 12 hearing reps for the use of the contracted case hearing representatives during the fiscal year in which the bill is enacted.

Senator Roberson asked how many felons would be released to the street with this bill. Currently, parole hearings have a 63 percent grant rate. That means out of the 517 to 565 inmates who receive parole hearings, approximately 300 to 324 will get released earlier than originally anticipated.

This bill allows earlier access to the parole process for those who are determined to be appropriate to receive these credits. It does not mean in any way that the Board is obligated to grant parole. It still gives the Board the responsibility to make the appropriate decision on each case.

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General; Advisory Council for Prosecuting Attorneys):
Along with Ms. Erickson and Sam G. Bateman, I submitted Exhibit F, a proposed amendment to which Assemblyman Horne said he would be amenable. This amendment adds an additional disqualifier for any crime involving a firearm.

SENATOR ROBERSON:
What impact does this bill have on truth-in-sentencing (TIS) laws?

MR. KANDT:
When the court imposes a sentence pursuant to NRS 176.033, it sentences each offender to a minimum term and a maximum term of imprisonment. That

was required by the TIS reforms passed in the 1990s. According to P&P, the good-time credit program has resulted in an average reduction of the minimum term of approximately 50 percent. In some ways, the sentencing process does not reflect the impact good-time credits can have on the minimum sentence of an eligible offender.

SENATOR ROBERSON:
What impact does this bill have on victims of crime?

MR. KANDT:
Victims have certain constitutional rights. Under Article I, section 8 of the *Constitution of the State of Nevada*, they have three basic rights. They have the right to be informed of all critical stages of a proceeding in their case; they have the right to be present at the public hearings of all the critical stages of the proceedings in their case; and in some instances, they have the right to be heard, such as at sentencing or at any proceeding for the release of an offender.

This ties back to your question about TIS. At the sentencing, the victim will hear a minimum and maximum sentence pronounced, but there is no disclosure of whether that offender will be eligible for good-time credits or what effect that could have upon the minimum term of the sentence. In addition, with regard to this bill, expanding good-time credit to some Category B felonies, we are moving away from some so-called victimless crimes, like possession of a controlled substance, and toward some crimes with victims, such as identity theft or home invasion.

The Attorney General chairs the Victims of Crime Subcommittee for the Advisory Commission on the Administration of Justice. During the interim, I will take the issue of the impact of the program on the victims to the subcommittee. They may have some recommendations for consideration during the next Session.

KRISTIN ERICKSON (Nevada District Attorneys Association):
The Nevada District Attorneys Association had several concerns with this bill when originally presented in the Assembly Committee on Judiciary. However, with the amendments excluding habitual criminals, criminals with three or more felony convictions and criminals convicted of crimes involving the use of firearms from receiving these credits, our concerns have been addressed. We are now okay with this bill.

My testimony was going to end there. However, given the allegations made against my office, I now feel compelled to go on. In March and April of this Session, a meeting was held in Carson City and Las Vegas with Dr. James Austin of the JFA Institute. The focus of that meeting was to see the effect this bill would have on Category B crimes. The DOC chose 20 to 25 random cases at each meeting. In those 40 to 50 cases, not one was what has been referred to as a shoplifting burglary. In fact, Dr. Austin said, "These people who are in prison on Category B felonies deserve to be in prison."

One reason shoplifters are charged with burglary is the plea bargain. Perhaps the offender is pleading guilty to this shoplifting burglary in exchange for dismissing three other felony counts. Or perhaps the offender is pleading guilty because the State has agreed not to pursue the habitual criminal charges. Another reason these people are being convicted of felonies is their criminal histories. These are individuals with 10 to 15 petty larcenies, 5 felony convictions or 7 felony convictions. In the meeting with Dr. Austin, the person with the smallest number of felonies had 3 and most had 17. If a person is in prison for what was referred to as a shoplifting burglary, there is often a good reason.

It is also important to remember that it is not the district attorney who sends a person to prison. It is the judge who reads a presentence report giving all the facts in the criminal history, and the judge decides whether prison or probation is appropriate for this person. There is also a jury who decides the person's guilt or innocence. Just because people are charged with burglary does not mean they are convicted of burglary. A jury of their peers must decide unanimously that they are guilty, or they can plead guilty of their own choosing. It is important to keep those facts in mind when this issue is brought up.

With the amendments proposed, the Association supports this bill.

MR. KANDT:
For the record, the Advisory Council for Prosecuting Attorneys is neutral on A.B. 136 but supports the proposed amendments.

SENATOR ROBERSON:
If this bill passes, even with the amendments, would it be a true statement that TIS in Nevada as we have known it is gone?

MR. KANDT:
The sentencing statute requires the judge to impose a minimum and a maximum term. The AB 510 program—from A.B. No. 510 of the 74th Session, also known as the goodtime credits program—allows eligible offenders to work off the front end of their sentences and reduce their minimum terms to something less than the terms imposed by the judge. I will just leave it at that.

CHAIR WIENER:
I will add a postscript. That policy had been created by a previous Legislature, and that is how policy evolves in Nevada: no Legislature can bind a future Legislature to its ideas. For the record, the TIS legislation was created in 1995.

ASSEMBLYMAN HORNE:
To answer Senator Roberson's question, TIS was implemented in Nevada in 1995. The primary sponsor was then-Senator Mark James. In 2007, we made the policy decision that we needed to look at TIS again. But Nevada was not the first to do that. If you look across the Nation, in jurisdictions controlled by Republicans and those controlled by Democrats, they came to the same conclusion: TIS was no longer affordable, and there were smarter ways to manage offenders.

There have been various methods in addressing that and moving forward. We cannot afford to go back to 1995 practices. Prison costs are exorbitant. Medical care is more expensive inside prison than in the community. We have managed to cut the cost of feeding inmates to $2.20 a day, but it still costs millions of dollars. We have taken some prudent steps to address how we incarcerate offenders, how we supervise offenders who come out on parole or are put on probation, and certainly there are holes. We have fine professionals on the Parole Board and P&P and the DA's offices all trying to address these issues. This bill is just another method in doing that.

JAN GILBERT (Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada):
I am here in support of A.B. 136. This bill for us represents a way to affect the injustice against communities of color. This bill is one of those we will use to give Nevada a racial equity report card. It will give access to people who will be leaving prison and being productive citizens. We urge your support.

JEFF L. MOHLENKAMP (Deputy Director, Support Services, Department of Corrections):
The DOC is neutral on this bill.

I would like to provide some information with regard to the fiscal consequences of the bill. There are some changes I just learned about today, so we will have to go back and look at the numbers. We had estimated approximately 517 inmates would be released after the parole hearings have all taken place between January and June 2012.

With regard to the fiscal consequences, it has been said that incarceration costs $19,000 to $20,000 per inmate. Our costs are closer to $22,000 per inmate. However, if this bill passes, the savings to the State would not be that much. The only time we have that kind of savings is when we can close a facility. For this bill, we will be talking about eliminating incremental costs. This would include the cost of feeding, clothing and providing medical care to an inmate. That averages approximately $6 to $7 dollars per day per inmate. It is a much smaller amount than the overall cost of incarceration, which is closer to $61 a day.

I would also like to note that of the 517 inmates, 47 of those include possession of a firearm; 167 are drug trafficking. We would have to make sure we were clear on which offenses are covered or exempted before we can give you a definitive number.

CHAIR WIENER:
Mr. Mohlenkamp mentioned 517, and so did you, Ms. Bisbee, but you also said your parole rate was 63 percent, so a smaller number would actually get out. Is that right?

MS. BISBEE:
Yes. I took the 517 we got from the DOC and the 565 from the JFA Institute and applied the grant rate of the last quarter of 2010. Based on that, we are looking at 300 to 324 actual releases. Based on the new qualifiers in the amendments, that number would go down.

MR. MOHLENKAMP:
As soon as we get the revised bill language, we will revise the numbers.

CHAIR WIENER:
Could you give us hypothetical numbers so we know what will happen before we revise the bill?

MR. MOHLENKAMP:
I will get you the revised figures as soon as I see the proposed amendments.

I would also like to comment that we have an unsolicited fiscal note for the computer costs associated with this bill. I will revise that as well. As the bill was originally proposed, it mirrored A.B. No. 510 of the 74th Session. With the significant changes that have been made in the bill, the costs will need to be revised. I will get that to you as soon as possible.

MS. GASCA:
We are here in full support of this bill.

It is not fair to quote comments made by Dr. Austin at a meeting that was off the record. If the Committee wants to understand more about the work he has done in tandem with the Pew Center on the States, I urge you to read the minutes of the Commission, where you will get a full and robust understanding of his approach and of the ensuing result that will have on Nevada.

I would like to reference a meeting this Committee held probably about two months ago with respect to the different felony categories. At that meeting, Senator Gustavson asked about B felonies: what crimes they are, what the sentences are and how they rank against each other and other levels of crime.

This bill, while it does not address those issues, speaks to the broader scope of the criminal justice system in Nevada and why it is important to continue bodies like the Commission so we can adequately address concerns that stem back to the days of TIS. This is just one of those bills that helps us continue in that fashion in a responsible way. This is a trend we see around the Nation, not only because of fiscal concerns but also because it helps with safety in the prisons and on the streets, and because it more adequately responds to each individual person and type of crime.

I want to stress that these credits are not just given to offenders; they have to earn them with good behavior. That is something the State should encourage. If

people are behaving well and deserve to get out, they deserve to be heard by the Parole Board.

CHAIR WIENER:
Is there any public comment or any further business to come before the Committee? Hearing none, we are adjourned at 10:03 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 408	C	Elisa Cafferata	Written testimony
A.B. 408	D	Assemblyman Tick Segerblom	Presentation: Assembly Bill 408
A.B. 321	E	Assemblyman John Oceguera	Presentation: Right to Self-Defense
A.B. 136	F	Assemblyman William Horne	Proposed Amendments to AB 136
A.B. 136	G	Assemblyman William Horne	Proposed Amendment to AB 136
A.B. 136	H	Ronald P. Dreher	Position Paper AB136—Proposed Amendment
A.B. 136	I	Reed Thomas	Written testimony