

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 23, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:02 a.m. on Wednesday, February 23, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

David A. Huff, District Judge, Department 1, Third Judicial District
Arthur E. Mallory, Churchill County District Attorney
Bjorn Selinder, Churchill County Board of Commissioners
Rex Reed, Ph.D., Administrator, Offender Management Division, Department of Corrections
Jeff Wells, Assistant County Manager, Clark County
James J. Jackson, Nevada Judges of Limited Jurisdiction
Melissa A. Saragosa, Las Vegas Township Justice Court, Department 4, Clark County

Senate Committee on Judiciary
February 23, 2011
Page 2

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 94.

SENATE BILL 94: Provides for the realignment of certain judicial districts.
(BDR 1-758)

SENATOR MCGINNESS:

This bill will add a tenth judicial district with one judge in Churchill County. Judge David Huff has all the details.

DAVID A. HUFF (District Judge, Department 1, Third Judicial District):

I have a handout explaining the background and effect of S.B. 94 ([Exhibit C](#)). I also have a letter from Brad T. Goetsch, County Manager, Churchill County, expressing his support for the bill ([Exhibit D](#)). The purpose of this bill is to use the assets we have in a more efficient manner. The current situation is that three judges are assigned to the Third Judicial District; cases are assigned as they come in on a rotating basis. This requires each judge to travel between Fallon and Yerington, a 60-mile trip one way at least once a week.

The most important thing about this bill is that it would give Lyon County two full-time judges. Page 2 of [Exhibit C](#) is a graph showing that the Third Judicial District, which consists of Lyon County and Churchill County, is the third largest judicial district in the State. That surprises a lot of people. The population of Lyon County is more than that of the Fourth Judicial District, which is Elko, and the Ninth Judicial District, which is Douglas County. Both of those counties have two full-time judges who do not have to travel outside their counties.

This bill would result in some financial savings. The greatest savings, however, would be the savings in time. Also, there is a new courthouse under construction in Yerington at this time. When the economy improves, Churchill County will probably be considering a new justice facility. Currently, neither county has adequate facilities for three judges. When I go to Yerington, I use a conference room or a jury room to meet with people.

ARTHUR E. MALLORY (Churchill County District Attorney):

I support S.B. 94 and agree with the comments of District Judge Huff. Part of what this bill will accomplish is increased access to justice for the population of Lyon County and Churchill County. With this structure, we will have a full-time

judge in Churchill County who will not be traveling. If you need a judge, you will go down to the courthouse, and there he will be. Right now, we have to worry about whether the judge is in Lyon County or Churchill County. The same thing is true when it comes to setting up trials or hearings. If we had a judge there full time, we would only have to work with one schedule. Right now, we have to look at both Lyon County and Churchill County schedules before we can set a trial date.

I have been authorized by the public defender's office in Churchill County to say it also fully endorses this measure because it will lead to better efficiency. It will also lead to better efficiency for our office because it will reduce the time lag in going to trial. Defendants will also benefit because they will have speedier trials. We hashed this out twice with the Churchill County Commissioners, both in budget hearings and in a public County Commission hearing. We were all in agreement that this would be extremely beneficial.

Overall, this measure would be a tremendous savings for us with no additional cost in the future, based on the population being approximately the same in both counties. I wish we could anticipate tremendous growth, but we do not at this time. This bill would be a great way to save money without any additional cost.

CHAIR WIENER:

Thank you for having those discussions before coming before the Committee. That lends to the process of open government.

BJORN SELINDER (Churchill County Board of Commissioners):
We urge your favorable consideration of S.B. 94.

CHAIR WIENER:

I will close the hearing on S.B. 94.

SENATOR GUSTAVSON MOVED TO DO PASS S.B. 94.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

We will now have an information briefing on the system of sentence credits used by the Department of Corrections (DOC).

REX REED, PH.D. (Administrator, Offender Management Division, Department of Corrections):

I have a handout that I will use as I discuss this topic today ([Exhibit E](#)).

Page 2 of [Exhibit E](#) lists the type of people housed in the DOC. "New commits" are those who have been sentenced by a judge to our custody. "Probation and parole failures" are those who have violated the terms of their parole or probation and have been sentenced by a judge to return to the DOC for the remainder of their sentences. "Intermediate sanctioned parolees or probationers" are people sent to us, as we say, for a tune-up. That is, they have not been sentenced to finish their sentence in prison; rather, they are returned to prison temporarily for a cooldown period before going back out on probation or parole. "Bootcampers" are those who are sent to us for our 190-day regimental discipline program, which runs like an armed services boot camp. "Interstate boarders" are prisoners from other states, as we sometimes send our prisoners to other states. For example, if we had an offender who had committed such a heinous crime that he would not be safe in our system, we might send him to another state where he was not as well known. "County safekeepers" are those in county jails who have medical problems the county cannot handle. We have a regional medical facility and take in those county safekeepers to care for their health issues.

Page 3 of [Exhibit E](#) talks about the documentation required for each of those types of people in the DOC system. This is important because the documentation gives us a hint at how we need to manage their credits.

Page 4 of [Exhibit E](#) defines the five types of sentence credits we manage. "Flat time" is our term for the time an offender spends in prison. If you are in prison for a week, you get seven days of flat time credit. "Good time" credit is given to an inmate for good behavior or time spent without getting into disciplinary trouble. By statute, if inmates stay out of trouble for a full month, they get either 10 or 20 credits, depending on the type of inmate. "Work time" is given to inmates who work, such as in one of our Prison Industry operations, or who go to school. That earns between 10 and 20 credits a month. If you are working in a medium custody environment or above, you get 10 credits; if you

are in a minimum custody environment, you earn 20 credits. "Merit credits" is used to classify other types of credits that are found in *Nevada Revised Statutes* (NRS) 209.446, 209.4465 and 209.449. Finally, "jail credit" is awarded by a judge. An inmate sometimes waits for trial in a city or county jail. At the time of sentencing, the judge can award the offender credit for the time served awaiting trial in jail.

Page 5 of [Exhibit E](#) defines terms we use to talk about various sentence dates. For those who were sentenced under truth in sentencing (TIS), S.B. No. 416 of the 68th Session, the "parole eligibility date" (PED) is what we now refer to as their minimum sentence. Most of our inmates have a minimum sentence that is also their PED. The "next parole eligibility date" is used when an inmate is denied parole, at which time they are assigned another PED. The next term is "mandatory parole release" date. One year from an inmate's expected discharge, the parole board looks at that inmate again. Unless there are extenuating circumstances, they will then release that inmate on parole. The "projected expiration date" (PEXD) refers to our estimate of the date the inmate's term will expire. We do not know the actual expiration date until about a week before, since an inmate can lose credits from disciplinary action or gain them by completing a program. Finally, the "current earned expiration date" is the date an inmate will be released based on the credits earned at the time we are doing the math.

Page 6 of [Exhibit E](#) defines the types of credits earned by each type of offender. New commits and parole and probation violators earn all five types of credits. Bootcampers earn only flat time. The program takes 190 days, and that is it. Interstate boarders acquire credits according to the rules of the sending state. We send the information to the sending state, and they award the credits. County safekeepers earn no credits with us.

Pages 7 and 8 of [Exhibit E](#) show more details about good time credits, which are the credits that take the most time to manage. Good time credits are also called statutory good time or stat time, and they are automatically earned by the inmate who stays out of trouble. The number of credits received are based on the statute under which the inmate was sentenced and where he is living. Good time credits are added automatically, but they are deleted manually. Only good time credits are subject to disciplinary removal. If an inmate gets in trouble, good time credits can be removed as a way to modify behavior, not to punish. The inmate must be found guilty of a major disciplinary infraction, not a minor

or general infraction. We then follow the process found in the DOC's administrative regulation No. 707 to protect the inmate's rights before we can take away the good time credits. We follow rules of evidence, we give the inmate written notice, we give the inmate a chance to call witnesses and we give the inmate a written decision at the end of the process. We can then deduct good time credits.

In order to be as equitable as we can, we also follow a specific process when assigning the number of credits we will take away. We have a matrix listing each of the disciplinary infractions and the recommended number of credits to be taken away if the offender is found guilty of the infraction. Also, all the determinations of credits to be lost are done by one person in order to ensure everyone is treated the same. Inmates have the right to appeal this process, and lost good time credits can be restored.

One good time credit is equal to one day of an inmate's sentence. We use the terms interchangeably. I want to point this out because I would not be surprised if you were to get calls from constituents saying that a credit is not the same as a day. It is. Good time credits and work credits are applied at the end of every month. They are not given every day. If an inmate only works for part of a month, the credits are prorated.

Page 9 of [Exhibit E](#) gives some other facts about good time credits. The DOC keeps track of good time credits for all inmates, even those awaiting execution or serving sentences of life without the possibility of parole. This may seem like a waste of time, but we are required to do this by law. It can happen that sentences are commuted from life without the possibility of parole to life with parole. When that happens, we can pull up the inmate's credits immediately. Occasionally, inmates will claim we are not keeping an accurate record of their credits because credits do not show up on the record. When that happens, all we have to do is go back to the computer and flip a switch, and those credits will appear.

It was A.B. No. 510 of the 74th Session that changed the number of good time credits awarded each month from 10 to 20. That is only for those inmates sentenced under NRS 209.4465, which is the TIS statute. Inmates sentenced before TIS took effect are most likely sentenced under NRS 209.446, and their good time credits were not increased by A.B. No. 510 of the 74th Session.

When parolee violators are returned to our custody pending the parole board's decisions, they earn credits based on our rules. The parole board has its own rules about how it applies credits, and I am not as knowledgeable about those rules as I am about sentence credits.

Most of the rules I have discussed apply to inmates whose crime was committed on or after July 1, 1985. The sentences of those committed before that date are managed under what is called the one-third or one-quarter law. I do not think we have more than 5 percent of our population under this law.

Pages 10 through 13 of [Exhibit E](#) show how an inmate's credits are tracked. This is our "Credit History by Sentence" report. The sentence date is the date the person was sentenced. The retro date is the sentence date minus any jail credits awarded by the judge, which then becomes the date the sentence started. The maximum term, when added to the retro date, will give you the number of days the inmate owes us and his PEXD. In this case, the maximum term is 60 months, and the computer has determined that this is 1,826 days. It has then added this to the inmate's retro date to come up with the PED and PEXD. The PED shows this person's minimum sentence. I will say more about the current earned expiration date later.

The majority of this printout shows the credits being applied to the days remaining in the inmate's sentence. In this example, the inmate earned 30 days flat credit and 9 stat credits. Those 39 credits are then subtracted from the days owed to show the days remaining in the inmate's sentence. It works like a mortgage amortization table, with future credits showing when we expect the inmate's sentence to run out. On the fifth line, you can see a merit credit award of 30 credits for having completed a training class in air-conditioning and heating.

You will see that some credits are shown in blue. These credits are projected to occur in the future. We provide an estimate of the sentence expiration date as a courtesy to inmates so they know when they should start preparing to be discharged. This estimate shows all the flat credits, stat credits and work credits possible for that inmate to earn. The current earned expiration date shows the date of discharge without any of those future credits. As an inmate gets closer to the end of the sentence, the current earned expiration date and the PEXD start to move closer together. When we get a week away, we lock in the date and they are both the same.

Pages 14, 15 and 16 of [Exhibit E](#) contain a list of approved merit credit programs and classes offered to inmates. This list shows how many credits awarded upon completion of each program, which statute gives us the authority to award those credits and the dates those statutes cover. For example, an inmate who committed his crime after June 30, 1985, and before July 17, 1997, receives 30 merit credits for completing the General Education Development (GED) program. An inmate whose crime was committed after July 17, 1997, receives 60 merit credits for completing the GED.

I frequently receive telephone calls from inmates' families and loved ones saying that their credits are not being figured correctly. Pages 17, 18 and 19 of [Exhibit E](#) show how an inmate's PEXD can change from month to month. Page 17 shows an inmate with a one-year sentence beginning on January 1. If that inmate earns all the flat credits, stat credits and work credits he is entitled to earn, his sentence will run out in early July. In January, he earns 31 flat credits for the 31 days in January he spent in prison, 10 work credits for going to his job every day and 20 good time credits for not getting into trouble. This gives him 61 credits for 31 days spent in prison. He is therefore earning credit for two months of prison for every month he spends with us, which means he will get through his one-year sentence in about six months.

If this same inmate completes a program that nets him 120 merit credits, as you see on page 17 for the month of March, you might expect those 120 merit credits to shorten his sentence by four months. However, this is not the case. We estimate the expiration date by assuming they are going to earn work credits and good time credits in the future. In this case, the inmate will not be in prison to earn those extra credits. In May and June, the inmate would have earned 60 extra credits that he will now not earn. We have to take those credits from somewhere, and we take them from the 120 merit credits.

Page 18 of [Exhibit E](#) shows the case of an inmate who has a disciplinary forfeiture of minus 120 credits. Since he is working an extra two months, he has an extra 60 credits of work and stat credits, so he only actually serves an extra two months rather than four. Page 19 shows that if the inmate receives a merit award of 120 credits and a disciplinary forfeit of 120 days, his expiration date does not change.

CHAIR WIENER:

It looks like you are saying jail credit is discretionary and must be awarded by the judge. Is that correct?

DR. REED:

Yes. Jail credits are handled like flat credit, in that they count toward the minimum sentence and the maximum sentence. There has been an issue recently about inmates on house arrest when they are pending trial. The Nevada Supreme Court decision in *State vs. Second Judicial District Court*, 121 Nev. 413, 116 P.3d 834 (2005), says time on house arrest cannot be used for jail credit.

CHAIR WIENER:

If someone were in county jail for a year before going into the prison system, that would start the clock. Is that based on a judicial order? Does the judge determine whether time in county jail can be counted as jail credit, or does it always count?

DR. REED:

It has to be in the judgment of conviction that the judge awarded jail time toward the offender's sentence before we can apply jail credits. We do get judgments of conviction that specify no credit is to be given for time served.

CHAIR WIENER:

On page 14 of [Exhibit E](#), I see a class in entrepreneurship. What does that entail?

DR. REED:

I do not know the specifics of that program.

CHAIR WIENER:

We will look into that. On page 15 of [Exhibit E](#), some of the credits are shown as being awarded "per phase." How many phases are there?

DR. REED:

Some programs have phases. For example, our Offenders Acting in Solidarity to Insure Sobriety program, which is one of our drug and alcohol treatment programs, has three phases, and inmates get 60 credits for completing each phase. We do that because sometimes an inmate will get partway through a

program and then qualify for minimum custody. Rather than deny him all the credits he has earned, we let him finish a phase and then move him out to a camp.

SENATOR KIHUEN:

Can you define the major disciplinary actions that result in credits being taken away?

DR. REED:

We have a list of major disciplinary infractions. They range from having unauthorized property to murder and also include things like escape, assault and battery, theft, making threats and so on.

SENATOR KIHUEN:

What does the appeals process consist of? Is it handled by a committee or an individual?

DR. REED:

Inmates can appeal to the warden. When they exhaust the administrative remedies, they can go to court.

SENATOR KIHUEN:

The inmate completes a form explaining his side of the story and sends it to the warden. If the warden does not agree, the credits are permanently taken away. Is that correct?

DR. REED:

Yes. The warden is the last level of appeal before going to the courts.

CHAIR WIENER:

Page 4 of [Exhibit E](#) states that good time credits are either 10 or 20 credits per month, while work credits are between 10 and 20 credits. Could you explain the difference between "either/or" and "between"?

DR. REED:

Good time credits are either 10 or 20 credits per month, depending on the statute under which the inmate was sentenced. Those sentenced under NRS 209.446 receive 10 credits a month, and those sentenced under NRS 209.4465 receive 20 credits a month. Those sentenced under TIS receive

the higher amount. In the case of work credits, those in medium custody or higher receive 10 credits a month. Once you move into a minimum custody environment, you earn 20 credits. That provides an incentive to move into minimum custody, which is our least expensive level of housing.

CHAIR WIENER:

The language "between 10 and 20" makes it seem discretionary—one person might get 10, another might get 14 and so on. Could that be stated as "either 10 or 20"?

DR. REED:

Yes, with one exception. We prorate work credits, so that if you worked 18 days, you would get 12 credits.

CHAIR WIENER:

Are good time credits prorated?

DR. REED:

Yes, if you come into the system halfway through a month.

SENATOR BREEDEN:

You said that good time forfeitures are assessed according to a matrix by one person. Is that one person in an administrative or clerical level position?

DR. REED:

In the past ten years, it has either been the person in my position or the Deputy Director of Operations in the North, Don Helling. Mr. Helling is doing this job at the moment.

CHAIR WIENER:

Linda J. Eissmann, Policy Analyst, prepared a handout giving the breakdown of the prison population by felony categories ([Exhibit F](#)). This is in response to a discussion we had at the joint committee meeting on February 18, 2011.

I will open the hearing on S.B. 25.

[SENATE BILL 25](#): Revises the method used to determine the number of justices of the peace in a township in certain counties. (BDR 1-342)

JEFF WELLS (Assistant County Manager, Clark County):

We have a proposed amendment for S.B. 25 ([Exhibit G](#)). This amendment represents a compromise agreement between County management and the justice courts. The amendment is designed to clarify four points. First, S.B. 25 deals with Clark County justice courts only. We are not intending this bill to have any effect on the rest of the State. Second, increasing the population trigger for new justice courts is not designed to eliminate or reduce any existing judicial department. By that, I mean not just the judge, but the department itself. Third, the townships of Henderson and North Las Vegas each have three justices of the peace. The amendment makes it clear that they would add a fourth justice of the peace under the current 100,000 population trigger. It would only be after they have arrived at the fourth department that the new trigger of 125,000 would take effect. Fourth, the Las Vegas Justice Court starts with a township population of 1.1 million, and we recalibrate with the new population trigger at 125,000 moving forward. Effectively, what that means for Las Vegas Justice Court is that they would get a new Department 15 with about 95,000 more people, and then it would be at 125,000 thereafter.

"I want to go on the record and thank Judge Saragosa. I think she and I have met three times and sent 500 e-mails to each other in the last week and a half to work out this arrangement."

CHAIR WIENER:

I also want to thank the parties involved. I appreciate you working together to bring us something everybody could agree on.

This bill presumes population growth. What would be the scenario if there was a reduction in population? Would that mean the loss of a justice court?

MR. WELLS:

The current statute does not provide a mechanism for a reduction in departments. This bill does not change that. There is a statute saying that if the township lines shift and the population shifts, you might have to adjust justices. However, there is nothing addressing a drop in population that does not move elsewhere within the State.

CHAIR WIENER:

I am not suggesting you should or that this will happen; it was a hypothetical question.

SENATOR GUSTAVSON:

I know this bill is intended for Clark County. However, I see a large disparity, in that rural justices are only expected to serve 34,000 people, whereas the justices in Clark County are expected to serve 100,000 people or more.

MR. WELLS:

That is existing statute. I am not completely sure why it was written that way. I was told it was in part because of travel concerns for the justices in the townships, who serve a small population over a large area.

JAMES J. JACKSON (Nevada Judges of Limited Jurisdiction):

That difference was in consideration of the wide open spaces in the rural areas the justices may have to cover. In addition, Clark County has resources at their disposal that are not available in some of the more rural areas, such as referees and hearing masters who can take on some of the specialized load and relieve justices of some administrative functions.

I met with Mr. Wells, and he agreed this bill was not intended to apply to any county other than Clark. In that regard, the Legislative Counsel's Digest of the bill indicates it applies to counties "whose population is 400,000 or more (currently Clark County)." Our understanding and agreement is that that number will be amended through the omnibus bill to keep that carveout for Clark County only.

BRADLEY A. WILKINSON (Counsel):

That is correct.

CHAIR WIENER:

What do we do when those thresholds are reached? Have they been adjusted through time?

MR. WILKINSON:

Yes. Those numbers are based on the census and are adjusted upward appropriately following the census.

CHAIR WIENER:

Can we expect, since the census reports are coming, that the statutes will reflect new numbers?

MR. WILKINSON:

That is correct. They will be changed to adjust that upward if Washoe County is getting close to the 400,000 mark.

MELISSA A. SARAGOSA (Las Vegas Township Justice Court, Department 4, Clark County):

I do not have much to add to Mr. Wells's statement. We have spent a great deal of time trying to come to a resolution everyone could agree to, and we are comfortable with the way the draft is now.

Although this language has an impact on Henderson Justice Court and North Las Vegas Justice Court, our negotiations have always involved Chief Judge Natalie Tyrrell of the North Las Vegas Township Justice Court, Department 2, and Chief Judge David Gibson Sr. of the Henderson Township Justice Court, Department 3. They were involved at every step of this negotiation, as was Chief Judge Karen Bennett-Haron of the Las Vegas Township Justice Court, Department 7.

CHAIR WIENER:

I can confirm that. I met with them in the early stages to encourage this level of cooperation, which is demonstrated today by the collaboration in the amendment.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 25 WITH THE AMENDMENT IN [EXHIBIT G](#).

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senate Committee on Judiciary
February 23, 2011
Page 15

CHAIR WIENER:

Is there any further business to come before the Committee? Hearing none,
I will adjourn this meeting at 9:06 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 94	C	Judge David A. Huff	S.B. 94—Supporting Documentation
S.B. 94	D	Judge David A. Huff	Letter from Brad T. Goetsch re: Churchill County Support of S.B. 94
	E	Rex Reed	"Nevada Department of Corrections: Sentence Credits and their Management"
	F	Linda Eissmann	"State of Nevada Department of Corrections: Felony Categories by Gender"
S.B. 25	G	Jeff Wells	"Proposed Amendment, Revised Version"