

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 21, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:02 a.m. on Thursday, April 21, 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 Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Rick Gimlin, Administrative Services Officer III, Division of Parole and Probation,
Department of Public Safety
Douglas Edwards
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's
Office

Senate Committee on Judiciary
April 21, 2011
Page 2

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Kristin Erickson, Nevada District Attorneys Association

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 12.

ASSEMBLY BILL 12 (1st Reprint): Abolishes the Parolees' Revolving Loan Account. (BDR 16-458)

RICK GIMLIN (Administrative Services Officer III, Division of Parole and Probation, Department of Public Safety):

This bill, as it was originally drafted, would have put the use and control of the Parolees' Revolving Loan Account (PRLA) under the Chief Parole and Probation Officer. The current arrangement has the use of the PRLA under the State Board of Parole Commissioners but the control of the fund under the Chief Parole and Probation Officer. At the hearing of A.B. 12 in the Assembly Committee on Judiciary, Connie S. Bisbee, Chairman, State Board of Parole Commissioners, suggested the bill be amended to abolish the PRLA. The Division of Parole and Probation agrees with this amendment.

As amended, A.B. 12 abolishes the PRLA and returns any remaining funds to the General Fund, which is where the fund originated.

CHAIR WIENER:

What is the purpose of the PRLA?

MR. GIMLIN:

The intent was to loan parolees startup funds when they were released from prison. It was often used by parolees going into the construction trade to buy tools. Over the years, the account has not been used. The majority of activity occurred in 2000, and since then it has seen little use. At this point, there is little cash in the account. The average loans were \$100 to \$120. In our current economy, we are not seeing as much repayment by parolees as in the past.

Senate Committee on Judiciary
April 21, 2011
Page 3

When Ms. Bisbee proposed abolishing the account, it made sense to us. The account is small; it takes staff effort to administer it; and given our current economy, \$500 probably would not do much for any parolee.

CHAIR WIENER:

I will close the hearing on A.B. 12 and open the hearing on A.B. 348.

ASSEMBLY BILL 348 (1st Reprint): Revises provisions governing the apportionment of federal transfer taxes upon the death of a person. (BDR 12-569)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

I was asked to introduce this bill by two attorneys: Michael DeLee and Douglas Edwards, who is adjunct faculty at the Boyd School of Law, University of Nevada, Las Vegas, and one of our region's most prominent tax attorneys. There is a glitch in one of the *Nevada Revised Statutes* (NRS) having to do with the gift and estate tax that penalizes Nevadans. This bill is an attempt to correct that glitch. Mr. Edwards and Mr. DeLee have worked with Layne Rushforth, Probate and Trust Law Section, State Bar of Nevada, and others to forge an amendment that addresses all concerns, and it was adopted by the Assembly.

DOUGLAS EDWARDS:

Our original proposal was that NRS 150.400 be repealed as a whole. After speaking with Mr. Rushforth and others, we decided instead on an amendment to the statute that would take care of our concerns regarding its effect.

I have a printed version of the presentation we made to the Assembly on this bill ([Exhibit C](#)). Under NRS 150.400, it is possible for the Internal Revenue Service (IRS) to collect, at the behest of a Nevada judge, gift taxes and generation-skipping taxes (GST) that the IRS could not collect under the Internal Revenue Code (IRC). We want to make sure we do not put Nevada citizens at a disadvantage.

Page 4 of [Exhibit C](#) is a map of the United States showing there are few gift tax or GST statutes in the rest of the country. Nevada is the only state with language dealing with a court ordering payment of these taxes.

Page 6 of [Exhibit C](#) covers the definition of "estate." When NRS 150.400 talks about a bankrupt estate, what estate does it mean? Immediately preceding

NRS 150.400, we have a number of statutes talking about the federal taxable estate and what effect it has. The definition of "estate" in NRS 150.300 does not extend that definition to NRS 150.400. If you go back to the first definitions in the sections covering estates and trusts, you find that it refers to a probate estate. In modern estate planning, one of the objectives is to have no probate estate. You want everything to pass either by operation of law, by trust or by insurance. Many people have a zero probate estate at death, and that may be the definition of a bankrupt estate; yet they have assets that are not part of probate that would be available to pay unpaid gift taxes at their death. Our proposal is to extend the definition in NRS 150.300, the federal taxable estate, to be the definition of estate when NRS 150.400 talks about a bankrupt estate.

Page 7 of [Exhibit C](#) refers to the statute of limitations. The problem here is that NRS 150.400 speaks of things happening "without limitation." A donor may be forever liable for the taxes on the gifts they give, but IRC 6324(b) puts a statute of limitations of ten years on collectability of taxes from the donee, the person who receives the gift. However, NRS 150.400 would allow a judge to order someone to pay the taxes owed by the decedent even if it was more than ten years since the gift was made. We felt Nevada's statutes should not put Nevadans at a disadvantage with regard to what the IRS could do about collecting taxes. After consultation with Mr. Rushforth, we agreed to make the statute of limitations the same as that specified in the IRC.

Page 8 of [Exhibit C](#) is what we refer to as taxpayers underwater. It is possible under the IRC for people making gifts to their grandchildren or great-grandchildren to come under the GST. It is possible, when the tax brackets on which those are computed are up to 42 percent or beyond, to have an addition of tax. That is, the GST is deemed to be a further gift by the donor. For example, if a grandfather makes a million-dollar gift to his grandson, the GST is \$500,000 if there is a 50 percent bracket. That \$500,000 is deemed by the IRC to be a further gift by the grandfather. For the purposes of the IRC, the gift to the grandson is \$1.5 million, and the gift tax is imposed on that amount. In a 50 percent bracket, the tax owed is \$750,000. Add that to the \$500,000 he is paying on the GST, and the grandfather now owes \$1,250,000. If that is unpaid at the grandfather's death, NRS 150.400 would allow the court to order the grandson to pay \$250,000 more than he actually received. That does not seem right. In fact, the U.S. Congress decided that it was not right. In IRC 6324(b), Congress also said the amount of tax that could be collected from a donee could not exceed the amount of the gift. That means there is a

limitation under the federal code that is not present in NRS 150.400. The bill states that a court cannot order a donee to pay more in taxes owed by the donor than they can collect under the IRC.

SENATOR ROBERSON MOVED TO DO PASS A.B. 348.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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SENATOR BREEDEN MOVED TO DO PASS A.B. 12.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the hearing on A.B. 142.

[ASSEMBLY BILL 142 \(1st Reprint\)](#): Makes various changes governing crimes against property. (BDR 15-599)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

I was asked to introduce this bill by Assemblyman William C. Horne, Assembly District No. 34, who serves as Chair of the Advisory Commission on the Administration of Justice and the Assembly Committee on Judiciary. This bill was recommended by the Commission.

Assembly Bill 142 changes the threshold levels for property crimes, which have not been changed for many years. Under current statute, the threshold that changes a crime from a misdemeanor to a felony is \$250. That amount has been in statute since 1989. Prior to that, it had been \$100 since 1949. The Bureau of Labor Statistics has an inflation calculator, and it shows that the \$100 of 1949 would have been close to \$500 in 1989 dollars.

Let me give you an example. Let us say that in 1989, someone broke into your backyard and stole a bicycle you had just purchased for \$249. In 1989, that would have been a misdemeanor. However, if you were to buy the same bicycle today, it would cost \$500. A person stealing that bike today would be guilty of a felony, not because he or she has committed a worse crime, but because the NRS has not kept up with inflation. What this bill attempts to do is bring those numbers a little closer to what inflation has done to the dollar.

Why should we do this? We have limited resources in terms of our judicial system, our prosecutorial system and our prisons. If we are going to penalize people on a graduated scale based on the value of the property stolen, we need to accomplish what we intended to accomplish and not bring people into the system as felons inappropriately.

This bill changes the threshold from misdemeanor to felony from \$250 to \$650, and it changes the threshold to Category B felony from \$2,500 to \$3,500. That was last changed in 1997.

If we pass A.B. 142, the thresholds will still be lower than most states. In Arizona, the threshold between misdemeanor and felony is \$1,000; in Utah, it is \$1,500; in Oregon, it is \$1,000; in Idaho, it is \$1,000; and in California, it is \$950.

CHAIR WIENER:

In looking through the bill, I note that different crimes have different levels of severity. For example, some crimes have different levels for misdemeanor, gross misdemeanor and felony; others only have misdemeanor and felony levels. Was this discussed in the hearings on A.B. 142?

ASSEMBLYMAN OHRENSCHALL:

I do not recall it being discussed in the Assembly Committee on Judiciary.

BRADLEY A. WILKINSON (Counsel):

Most property crimes go directly to the felony level at \$250. As you pointed out, there are some crimes for which a value of \$250 to \$1,000 is a gross misdemeanor.

ASSEMBLYMAN OHRENSCHALL:

The minutes of the Commission report that members did not discuss trying to bring uniformity to the patchwork of statutes about different crimes. The reason there are those different gradations on the different crimes is probably historical, reflecting the different priorities of different Legislatures. This bill will at least make the minimum threshold uniform.

CHAIR WIENER:

We will need to tackle this issue at some point in the future.

ASSEMBLYMAN OHRENSCHALL:

This discussion brings to light the fact that when we put numbers in statute, they stay stagnant until a future Legislature changes them. However, inflation ensures that the value of our money does not stay stagnant. In the Assembly hearings on A.B. 142, we talked about indexing the penalty to the rate of inflation. In the end, however, it was felt this would be too problematic for courts, defenders, prosecutors and defendants, so we did not add that provision. However, when we do not keep pace with inflation, we are bringing people into the system that the Legislature never intended to charge with more serious crimes. It then costs the State more money to accomplish something it did not intend.

CHAIR WIENER:

How did you arrive at \$650?

ASSEMBLYMAN OHRENSCHALL:

There were some who wanted to go to \$1,000. In the spirit of compromise between prosecutors and defense attorneys, we settled on \$650.

SENATOR GUSTAVSON:

I agree that these thresholds need to be raised to allow for inflation. However, Chair Wiener brings up a good point. What is the difference between a misdemeanor and a gross misdemeanor, or between larceny and grand larceny? Before we process this bill, I would like to understand the reasoning behind the discrepancies, if there is one.

CHAIR WIENER:

It could take a great deal of work to weigh in on each one of these crimes. This is legislative history, and unwinding the reasoning behind each punishment

would be a large work. However, this would be a good project to work on for a future Legislature to help even up the subjectivity in sentencing.

SENATOR GUSTAVSON:

I understand that, and I do not have a problem with the bill, as long as there are no conflicts created in the NRS.

ASSEMBLYMAN OHRENSCHALL:

As Chair Wiener said, the reason we have this patchwork on the different crimes is historical. One Legislature might have felt that a specific crime warranted three steps—misdemeanor, gross misdemeanor and felony—whereas another Legislature felt another crime was serious enough to have only two steps—misdemeanor and felony.

I should point out that raising the threshold to \$650 still keeps us far below inflation.

CHAIR WIENER:

What was the threshold before 1949?

ASSEMBLYMAN OHRENSCHALL:

In 1915, the threshold for grand larceny was \$50. It was changed to \$250 in 1947, and then back down to \$100 in 1949.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We support this bill. Tierra Jones, who represents the Clark County Public Defender's Office, was not able to be here today, but she asked me to report that she also supports the measure.

Both justice and smart fiscal policy require that we be smart about sentencing and the punishments for various crimes. This bill does that. In my experience as a public defender, we see quite a few cases where the financial impact is above \$250 and below \$650. When the amount is \$350, it is quite frustrating. I have seen cases where the amount stolen is \$249, but prosecutors add in the sales tax in order to get the charge bumped up to a felony.

It is important to note for the record that in particularly egregious cases where people are repeating this behavior, we always have the option to charge them

with burglary. Burglary is a felony regardless of the amount stolen, as long as the person enters a property with the intent to steal. There are many options for prosecutors to deal with these different cases.

One of the things that led to the patchwork in the NRS is that we have all had experiences with crime that shape the way we think crimes ought to be punished. When Mr. Ohrenschall gave the example of a bicycle being stolen, I remembered the time my bicycle was stolen when I was in college. The severity of our experiences shapes what we think the penalties ought to be.

I am glad this discussion is under way, and we look forward to being part of the discussion. Consistency in punishment is also a requirement of justice, in our opinion. We think A.B. 142 will go a long way toward not only saving a lot of money but also doing the right thing.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

We support A.B. 142. This concept was thoroughly discussed by the Commission. The genesis of the idea came from The Sentencing Project and the work it has done on compiling information on how states have been able to successfully downsize their prison populations and reclassify crimes. In 2010, The Sentencing Project published a report called *The State of Sentencing* that dealt with inflationary issues. That report can be found online at <<http://sentencingproject.org/doc/publications/publications/Final%20State%20of%20the%20Sentencing%202010.pdf>>. Nevada would become one of several states to move forward in this since the publishing of this report by The Sentencing Project. It is a good, pragmatic approach to dealing with overincarceration issues.

I want to note our appreciation of the Committee's interest in reclassifying crimes and correcting the disparities and patchwork approach that has traditionally been done over time. The Commission had a reclassification subcommittee that started to look at reworking the statutes to provide a more equitable continuum of penalties for different crimes. However, it is a large and complex issue. The Commission decided not to take any action in this area at this Session, though it did recognize that the problem should be considered during the next interim because of its long-term impact on Nevada.

CHAIR WIENER:

Do you know how many other states are working on this?

MS. GASCA:

My notes say that six other states have increased the threshold for theft and other property crimes.

CHUCK CALLAWAY (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):

We are neutral on this bill. However, I would like to offer law enforcement's view on this issue.

Regarding the question of why some crimes have more steps than others, there has always been a black-and-white line between petty larceny and grand larceny; there has never been a third step between those two levels. On the other hand, when it comes to malicious destruction of property, there are many types of damage that might be done. Someone could throw an egg at a car and cause a small amount of damage or tear down a structure and cause a huge amount of damage. That is why there has been that variance.

We are not necessarily opposed to raising the threshold above \$250. We realize that there has been inflation, and the cost of living is much more than it used to be. At the same time, we would caution that there are professional thieves who target retail businesses. They know what the threshold is, and they work around it. My experience has been that some thieves will steal \$249 worth of goods because they know if they are caught, they will only be charged with misdemeanors. When we raise the level to \$650, they will steal \$649 worth of merchandise.

CHAIR WIENER:

Section 9 of the bill refers to an organized retail theft ring. Does that not cover the situation you describe?

MR. CALLAWAY:

The difficulty in that is if a thief gets away with it at two or three stores and is finally caught at the fourth store, going back and putting those other cases together where the person got away with it is often difficult. Usually the officer in the field is investigating that final case where the person got caught, and it is difficult to put the pieces together to charge the thief for all the thefts.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):

We support A.B. 142, and I agree with the points made by the proponents of the bill.

In response to Mr. Callaway's comments, I do not know that I have ever had a client charged with theft who was smart enough to focus on the dollar amount stolen in order to avoid a felony. If there are professional thieves who are that zeroed in on the dollar amount, they might be better off moving to Utah where the limit is \$1,500. As Mr. Johnson said, someone who goes onto a property for the purpose of stealing can always be charged with burglary, and there is no misdemeanor or gross misdemeanor burglary.

There are certainly a lot of levels in the different crimes. I agree that this is probably a problem to tackle another time. Certainly, the place to start is by increasing the minimum level. We need to remember that this is not just a resource issue for the State. When we have a client who is convicted of a felony, it causes another host of adverse consequences. We have always wanted to make sure that when we charge someone with a felony, it is for a crime that is serious enough to warrant it.

It is important that we move with the times. Other aspects of the law have always made adjustments for inflation, such as in tax law. Every year, the IRS increases the minimum level of money you can make before you have to file a return. The fact that we have not addressed this since 1989 tells us that it is time to make an increase, particularly when we take into consideration the limited resources of the State and the adverse consequences of a felony conviction to someone for whom it may be a first offense.

We support the bill, and I would be happy to participate in an interim committee that looks at the inconsistencies and discrepancies in sentencing.

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General):
I am also speaking as the Executive Director of the Advisory Council for Prosecuting Attorneys. We are neutral on the bill. I wanted to point out that a study done by the Legislative Counsel Bureau found that the national median threshold was \$500.

Senate Committee on Judiciary
April 21, 2011
Page 12

KRISTIN ERICKSON (Nevada District Attorneys Association):

We are neutral on the bill. We agree that the amount should be raised from \$250.

While it is true that at times we can charge burglary on an amount that is less than the statutory level, it is not true that we can always charge burglary. That can be done only in limited circumstances.

I also wanted to put on the record that it is more common that we would reduce a charge from a felony to a misdemeanor if the amount stolen was above the threshold.

CHAIR WIENER:

Is there any public comment or any further business to come before the Committee? Hearing none, I am adjourning the meeting at 9:04 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
A.B. 348	C	Douglas Edwards	Presentation titled "AB 348: Estate Administration Consistency"