MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 19, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:10 a.m. on Friday, April 19, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Heather Procter, Senior Deputy Attorney General, Office of the Attorney General
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety
Steve Yeager, Attorney, Clark County Public Defender
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Frierson:
[Roll was called and protocol was explained.] Welcome back to Judiciary, and happy Friday. We have two bills on the agenda today, and we are going to stay in order. I will open the hearing on Senate Bill 30 (1st Reprint).

Senate Bill 30 (1st Reprint): Revises provisions governing the dissemination of records of criminal history by an agency of criminal justice. (BDR 14-400)

Heather Procter, Senior Deputy Attorney General, Office of the Attorney General:
In 2011, the Legislature authorized the Attorney General to organize a statewide multidisciplinary team to review the deaths of victims of crimes that constitute domestic violence with the underlying objectives of prevention, preservation of the safety of battered women, holding perpetrators accountable, and assessing whether the victim utilized local and statewide social services. The statewide fatality review initiative brings together all of the necessary parties to solve a statewide problem, and will provide data necessary to better address the continued problem of domestic violence in Nevada.

The Attorney General organized a statewide team that conducted its first fatality review in 2012. During the review process, the team determined that access to the criminal history of the perpetrator and potentially the victim was necessary to conduct an effective fatality review. Existing law requires the Central Repository for Nevada Records of Criminal History to provide, upon request, records of criminal history to certain persons or governmental entities. The domestic violence fatality review statewide team is not currently one of

those entities. Other fatality review teams do have access to these vital criminal histories, such as the child death review teams.

Without the criminal histories, it is difficult, if not impossible, for the domestic violence fatality review statewide team to meet the purposes of the team review and to fully determine the impact that the relationship, including the domestic violence history between the victim and perpetrator, had on the death of the victim. This bill will grant the review team the statutory authority necessary to access these criminal histories.

Assemblyman Ohrenschall:
Do you know how many domestic violence fatalities we have per year in Nevada?

Heather Procter:
I know that there is data, but I do not have it with me. I would be happy to provide it to you.

Assemblyman Ohrenschall:
Currently, if the fatality review team wants to try to get any of the information, are they able to under the auspices of the Attorney General, or are they completely barred from the Central Repository?

Heather Procter:
At this time, we are unable to do so. If we are to try to get that information, we can try to ask law enforcement, but they are also under a confidential coverage through the Central Repository for Nevada Records of Criminal History. In essence, we cannot get that information.

Assemblyman Wheeler:
What safeguards are in place for the review team for the privacy of individuals? Obviously, you cannot get it because of privacy concerns. What safeguards does the review team have to address those privacy concerns?

Heather Procter:
The review team has a two-day review process where we create a timeline of the victim and the perpetrators' lives, both separately and together. Once that review is completed, all documents associated with that review, including any potential criminal histories, are shredded to protect the privacy of all those involved.

Assemblyman Ohrenschall:
Are there local fatality review teams? If so, do they work with the review team under *Nevada Revised Statutes* (NRS) 228.495?

Heather Procter:
As far as child death review teams or adult domestic violence teams?

Assemblyman Ohrenschall:
I was thinking adult, but I am interested in either.

Heather Procter:
My understanding is that there are child death review teams already in existence throughout the state in each county. Washoe County and Clark County also have their own separate review teams for adults. The review team that I discussed, which was created last session, was for the rural areas. It is my understanding that the other adult teams have access to the criminal histories through their deputies when they speak to the review teams, but they do not have separate access to the criminal history.

Assemblyman Ohrenschall:
As I read NRS 228.495, it says, "The Attorney General may organize or sponsor one or more multidisciplinary teams to review the death of the victim of a crime that constitutes domestic violence pursuant to NRS 33.018 if a court or an agency of a local government does not organize or sponsor a multidisciplinary team . . . ." Does the Attorney General not look at fatalities if Clark County already has a fatality review team?

Heather Procter:
That is correct. Any fatalities that occur in Clark County would be reviewed by that team.

Assemblyman Ohrenschall:
So you would mostly be covering the frontier counties?

Heather Procter:
Correct.

Chairman Frierson:
Are there any other questions? [There were none.] Is there anyone here or in Las Vegas wishing to offer testimony in support of S.B. 30 (R1)? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 30 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position? [There was no one.]

[The following exhibit was submitted but not discussed: (Exhibit C).]

I will close the hearing on S.B. 30 (R1).

We will be in a brief recess and wait for Senator Parks. [Recess at 9:20 a.m.]

Chairman Frierson:
I will call the meeting back to order [at 9:22 a.m.], and open the hearing on Senate Bill 71. Welcome, Senator Parks.

Senate Bill 71: Revises provisions governing sentencing of certain criminal offenders and determining eligibility of certain prisoners for parole. (BDR 14-447)

Senator David R. Parks, Clark County Senatorial District No. 7:
I am here in front of you today with Senate Bill 71, which provides for the aggregation of consecutive prison sentences. Under existing law, a person who is convicted of committing more than one crime may be sentenced by the judge to serve either concurrent or consecutive prison sentences. If a person is sentenced by the judge to serve consecutive sentences, he or she must complete or be paroled from one sentence before beginning to serve the next sentence. Under the current process, the inmate may be eligible for a parole hearing on a lesser charge shortly after entering prison.

We have found that certain inmates, shortly after entering prison, are eligible for a parole hearing on a lesser charge. Usually it is because they have already been granted time toward their prison sentences for the time they have served in the county jail. The current process places a burden on the Department of Corrections, the Board of Parole Commissioners, and especially on the victims of crime.

Aggregating consecutive sentences means that an inmate does not get his or her first parole hearing until he or she has served the minimum time for the total of all consecutive sentences. Senate Bill 71 does a number of things. First, it simplifies the sentencing for the inmate and helps reduce a lot of confusion, as well as addresses the lack of confidence in our judicial system.

As legislators, you may have received emails or letters from individuals who are either victims of crime or are inmates. Victims of crime are always retraumatized whenever they realize that the inmate is going to have a parole hearing shortly after entering the prison system. I have received many letters from inmates or their families regarding the confusion as to how their sentence structure will operate. I believe S.B. 71 will greatly improve that.

Senate Bill 71 allows inmates to adjust to the prison environment and begin rehabilitation efforts in an appropriate manner before their initial parole hearing comes due. It may also allow for shorter periods of total incarceration and longer periods of community supervision under parole. Aggregating sentences may also assist with the inmate's rehabilitation efforts. We certainly know that if an inmate has to be paroled from one sentence before they can start serving a consecutive sentence, inmates will serve longer time in prison overall.

The last advantage of S.B. 71 is that it would mean fewer required parole hearings and certainly save the expense and time spent in parole hearings, as well as additional time served by the inmate in prison. Corrections Director Greg Cox indicated a few weeks ago that the average overall cost to incarcerate an inmate is approximately $22,000 per year. There are many inmate years that are served just by the fact that the inmate's initial parole hearing was denied.

Finally, aggregating sentences was a recommendation that came out of the Advisory Commission on the Administration of Justice, which is a 17-member statutory committee. With that, I will happily answer any questions you may have.

Chairman Frierson:
Unless someone has questions, we could have Ms. Bisbee go through her remarks on the bill, and then we could entertain some questions.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety:
Senate Bill 71 has become a passion over the past four years. When this sailed through the Senate unanimously, I made that remark to Mr. Horne while we were in the elevator and he laughed. He said, "You really need to get a life, Connie." I do feel very passionate about S.B. 71. One of the things that has happened is that Senator Parks brought forth the bill to aggregate sentences on life-to-life sentences in 2009. That has been very successful. One of the things that happened in public comment after presenting Senate Bill 104 in February, was that someone spoke on behalf of the victims and said that victims want to be at all those hearings and that they opposed the bill. However, my own experience with this has been that victims are traumatized by these constant letters from the parole board when these folks have multiple consecutive sentences. There may be a huge sentence following a very short sentence, and six months or nine months after the inmate is incarcerated, they get a letter from me saying we are going to have a parole hearing and it retraumatizes them. They do not have a good understanding of consecutive sentences, have no idea why this inmate is being heard so early, and they find it

very disruptive. In the case of your having passed the life-to-life aggregated sentences, I personally dealt with the first inmate and the first victim that was impacted by it because that inmate became eligible to opt-in to the aggregated sentences within a week of the law passing, and did so. I contacted the victim, who had been contacted a month earlier in saying this date has been set for this inmate. In this particular case, it was a murder two. Her daughter had been murdered by this gentleman, and he was given two 10-to-life sentences, one for the murder two and the second for the use of a deadly weapon. It had been ten years, and he opted in to the aggregated sentences. We canceled the hearing, and I contacted the victim to say he would not be heard until he has served 20 years. Her response was to cry and to thank the Assembly and Senate—the Legislature—profusely. She said, "I was not ready to face him. I appreciate that the law changed, and I will see you in ten years." There will be victims that will say—and they have told me this—that they want to be at every single hearing every time. But my experience over the past ten and a half years with victims is that they do feel traumatized by these hearings, and anything we can do to relieve that is in their best interest.

There was also some testimony last go-round from a group that they had heard from inmates and that the inmates were opposed to this bill. The thing about current inmates is that this does not impact them unless they choose for it to impact them. If they are opposed to it, they would not participate in it. The way it is set, it does not begin until July 1, 2014. At that time, those inmates currently serving with aggravated sentences could opt-in to having their sentences aggregated or they could just continue to serve them one after the other. It does not affect any current inmate. All it affects are those who choose to commit crimes in the future.

One of the things that I personally like about aggregating sentences is that my boss put me on the spot one time when talking about a case of someone who had multiple consecutive sentences that happened to be 5-to-life. I believe there were six 5-to-life sentences. He had been in prison for quite some time, and he said, "Connie, explain to me why this first parole board denied him until he had done seven years, and the next case he was granted after six years, and the next case he was granted after nine years." I had to say, "I cannot explain it. That was 20-some years ago. I can tell you generally the philosophy of the folks that are serving on the board now and why they may have granted or denied him last time, but I cannot speak to the decision that 16 different people have made in this one inmate's sentence structure over the last 20 years."

There is a beauty in that it is a truly neutral field when you aggregate sentences. It brings them all together. When the person comes to the board, the board is making the decision as to whether or not that person is suitable for

the community at that time or if they are not. You are not going through each of those sentences with different philosophies. You are going through one sentence. We are considering whether or not you are good to go to the board now or if you are not. It is not tough on crime. It is not easy on crime. It is merely a tool that makes the whole gathering of sentences together make more sense. It is easier to explain to the community when you have someone who has been sentenced for four different things and they have been consecutive. The way it is presented in the press is, "He will not be seeing the parole board for 30 years." Well, it may be that first sentence is a 2-to-6, and he is actually seeing the parole board after about 20 months, and that makes no sense to the community or to the victims. They contact me and say, "I was told he did not have a chance to be considered for parole for 20 or 30 years." It is because of the difference between consecutive and concurrent, and people generally do not understand.

This morning I was asked the question as to whether or not this is a common practice in other states. I presented my comments to the Senate Judiciary and attached them on the Nevada Electronic Legislative Information System (NELIS) last night (Exhibit D). If you look on page 10, Senator Parks was asked on the last go-round, "What about other states?" We queried and these are the responses we received. When you ask all the other states to answer something, not everyone is going to answer. I have been guilty of that myself. You will see that of the states that did answer, the vast majority of them do aggregate sentences, so this is not a new concept.

You will also see in what I provided you in NELIS that there are different configurations of sentences to hopefully make this more understandable. For what we are talking about here, we can use the one titled, "The Benefits of Aggregating Consecutive Sentences." If you look at page 2, it shows you the first example. That is how you are looking at a consecutive sentence structure. In this particular case, there are three consecutive sentences. The first one is an ex-felon in possession of a firearm. These are actual sentences that we pulled out when we wanted to illustrate this. An ex-felon in possession of a firearm is the first sentence that he has to serve, which is a minimum of one and a maximum of six. The next case he has is a second-degree murder conviction, which is a minimum of ten and a maximum of life. The third case is a deadly weapon enhancement on that murder, which is a minimum of 4 and a maximum of 12.

Think about this particular case. Your victim is the surviving spouse, parent, sibling, or child of the murder victim. They went out of court thinking, "I do not have to deal with this for the next 15 years." That is not true. We are going to contact them in nine months and tell them, "We are going to have a hearing on

whether or not to parole this gentleman," and they are going to start freaking, because they were expecting to hear from us in 15 years. All we are considering is the ex-felon possession of a firearm at that point. If you aggregate sentences, it means you gather those minimum sentences together. Instead of hearing him at that minimum of one and either granting or denying, and then hearing him when he meets the minimum of ten and either granting or denying, and hearing him when he meets that minimum of four and either granting or denying, the State Board of Parole Commissioners would not consider him for 15 years. All of those sentences would be gathered as one minimum and the board would consider at 15 years whether or not he is safe to parole to the community.

In this particular situation, we are not concerned about aggregating those maximum sentences, because he has a life sentence. So let us say that he addresses everything that brought him to prison. The victim most generally is never happy about someone being paroled. Sometimes they are more accepting of parole if it comes after a long period of time. Let us say that he has done everything right and the board goes ahead and says that at 15 years we are going to send him out to the community. He has a community supervision sentence of life. I have found out that life never really means life in the strictest sense. The statute would allow, in that particular situation, for that parolee, through the Division of Parole and Probation, to petition the board after 10 years of successful supervision on the street to have us recommend to the court that that supervision cease. In this particular situation, if we granted him parole at the minimum, we would have seen him once at 15 years, sent him out to the community, and he would have done a minimum of 10 years with community supervision. If he did everything perfectly, at that point, the Division of Parole and Probation may contact the board and ask that we consider a reduction of that life supervision.

The other situation you have is when you aggregate sentences for someone who has a determinate sentence at the end. They are going to expire at a particular time. I have given you an example of that at the bottom of page four (Exhibit D), and that is a case of robbery with the use of a deadly weapon. This guy came in with four consecutive sentences, each 4-to-10. On the first robbery, he comes before the board after four years. One of the things I have noticed over the years about criminal behavior when you are being sentenced to a long period of time is that there is a very difficult adjustment for the first several years of incarceration. If this gentleman comes to the board at that minimum of four in the first robbery, there is a really good chance that he has not done so hot in the Department of Corrections. There is a really good chance that he has not done any programming, has gotten himself in trouble, and the Parole Board is not going to grant him. While we could deny him to

expiration, unfortunately I really do not like using that 10 years as the maximum, because with credits it is actually 4.97 years. If you apply the credits this man is getting by law, you are talking about 4 to 4.97 years. Let us say the board denies him to that expiration, which is about 5 years. He will do 5 years on that first. He comes back and he still is not doing so hot. We deny him to expiration after an additional 4 years. He will do 5 years on that.

Let us say we are still talking about someone who is just not getting it. Now it has been 10 years on that fourth sentence, we deny him to expiration, so he does five on it. He has now done 15 years, and he starts on that last sentence. He comes to the board having done 19 years and he is not a good candidate for the community. The most we can do is deny him to expiration, which means another .97 year. We are going to be putting him out at less than 20 years by expiring him on each of those cases. If we aggregate those sentences, we are going to see him at 16 years, and we are going to have the opportunity—because of aggregating the maximums also—at the end of the 16 years to say, "We are going to try you in the community, and the Division of Parole and Probation is going to have 4.97 years in order to supervise you." Someone that we were not really thrilled with and that we have been seeing all of these years, under a straight system, we would not have the opportunity to supervise him; he would just plain be out there. We have the opportunity to parole him to an almost 5-year supervision deal. That gives him the opportunity to adjust. Ultimately, we want all of these people coming out and being good citizens, paying taxes, having jobs, and raising their families. We want them to be good citizens. This gives the Division of Parole and Probation the opportunity to support that.

The opposite case is the guy who even the victim did not want in prison, who has done everything and because of that adjustment issue may not get that first hearing and end up with the same scenario. He may be doing an extra three years that would not have happened in an aggregated situation. It also helps in rehabilitation because, rightfully so, the Department of Corrections does not have a huge programming budget. If you want to throw some money at them, throw it to their sentencing people too. How they deal with all this, I do not have a clue. They do not have a huge budget for their programming, so they are going to be very picky about who they use those programming monies on. They are going to use them on those folks who are being considered for the street, not for those folks who have six, seven, four, or three consecutive sentences to go to, because they are not even being considered for the street at this point. They are going to use their limited monies on those who have a window to the street. When you aggregate sentences, you make those inmates eligible for those limited funds. When they are looked at by the Board, they are going to be looked at for the community.

There are changes that we suggested to existing law so that it could facilitate aggregated sentencing. There would be a prospective and a retroactive application of aggregated sentences. The only way this bill and aggregated sentences would affect a current inmate in the Department of Corrections is if they choose to take advantage of it. It is entirely up to them. It is optional and they do not have to participate. The only time that this would become mandatory is for those committing crimes after July 1, 2014. There are costs related to database programming changes and implementation, and we have been working on that for four years. The Parole Board, along with the Department of Corrections Sentence Management section, has pounded all that out and they believe they are in the position to implement it if they are given a year to do so.

This is not a budget committee, and I do realize that. However, there is a potential for savings of marginal incarceration costs. Senator Parks spoke about overall costs. Marginal incarceration costs for a single inmate total $6.69 per day. If you release an inmate into the community six months earlier, that is an estimated savings of $1,221. There would be 3,300 inmates eligible for sentence aggregation. If you parole 20 percent of those 3,300 eligible inmates—660 inmates—by six months, that is an estimated savings of $805,000.

This is not a parole board bill. This is a system bill. This is a corrections bill. This is meant to affect all of us in a positive way. It does mean that inmates are not coming to the Parole Board with the frequency that they were. The way that positively impacts the Department of Corrections, besides the ultimate reduction and the cost of corrections, is that their staff is not doing those parole hearing reports, which are quite extensive. Hopefully, there are going to be some changes with the psych panel, but that also means that there are fewer psychosexual evaluations that have to be done, because we are only looking at them when we are actually considering them for the street. Remember, the cost to supervise a parolee is less than the cost to incarcerate an inmate. A longer period of parole supervision helps support an offender's efforts to habitualize those positive behaviors, and that could result in permanent change. That means that once they are no longer supervised, because the Department of Parole and Probation has been given the opportunity to actually supervise them for a long period of time, you get a resultant reduction in recidivism because they have had a smooth transition into the community, have been on supervision in the community, and then are able to continue their lives without supervision in a smooth manner.

Nevada Revised Statutes 176.033 allows Parole and Probation to request an early termination from parole. They do not currently use this statute for

parolees, because the way everything happens in the current supervision, it is somewhere between 30 and 90 days. They do not even have time to get to know the parolee before they are off parole because they have done the bulk of their time in the institution. They do not ask for early termination because there is nothing to terminate early. They have been a lot more active. I will tell you, in terms of the lifetime supervision, in fact, we are having a request for relief from a lifetime parole hearing at the end of this month, so they are actively looking at those life sentences.

With the longer terms on parole—those inmates with aggregated consecutive sentences—Parole and Probation is going to be able to reduce their caseload on those parolees that are doing everything right, on those parolees that we want working for us, living next to us, and having their children in school with ours. For those parolees who are doing everything right and have been for a proactive period of time, the Division is going to be able to ask that they be released early, and they will be able to monitor those that need that really long tail in terms of supervision in the community.

I am happy to answer any questions you may have.

Assemblywoman Diaz:
Thank you for that thorough explanation, because it does clear up a lot of questions about aggregating versus the current way of handling it. If we move to the aggregate sentences, have you looked at how that will make the parole area of our state a little more efficient in terms of not seeing folks that soon after they are sentenced for a first term, or that are coming up? Their minimum is a year but then they go back before the board very prematurely. Have you analyzed this part and how many you would not have to see versus how many you are seeing now?

Connie Bisbee:
Absolutely. The impact on the Parole Board would be a reduction of about 350 hearings a year initially. The inmates right now who would be eligible if they opted in to it are about 3,300. Not every aggregated sentence will look the same. It will spread it out over the years. The immediate impact is a reduction of about 350 a year. After several years and after those long tails on parole and probation, I could see those 350 coming back, but only in the fashion of those that have done really well on the supervision and they are asking for an early termination of supervision. I do not think the impact on the Board is going to be that huge. The impact on the Department of Corrections is a little more difficult to quantify. We know the number of parole board reports their caseworkers would be writing would be reduced, but I could not ultimately tell you. They have staff who support the hearings. There would be an impact.

It would not be huge. Where you save the money is instead of having them serve their time in that bed in the institution, they are serving that time in the community where they are working and paying their bills and being supervised.

Assemblyman Ohrenschall:
We have talked about trying to habitualize those positive behaviors. Do you find that more of your parolees succeed versus being revoked and going back to prison? Do you have any data on it?

Connie Bisbee:
We have a fabulous success rate in Nevada. The highest I have ever seen it is a 26 percent recidivism rate where nationally it is either 40 or 44 percent. We are already doing some things right. For those on parole who are revoked, 14 percent are revoked for new criminal behavior. Thirteen percent are revoked for technicalities, and that percentage may be flipped. When you are talking about revocation rights, please realize that there is only a recidivism rate of 26 percent. Even though 13 percent will do this and 14 percent will do that, that 26 or 27 percent is above 26 or 27 percent. We do not have that many folks come back. We are doing some things right through the Department of Corrections, through the Board making the right decisions as to who to release, and through the supervision that is done by Parole and Probation. We have a lot to be proud of in Nevada in terms of our very low recidivism rates.

Assemblyman Ohrenschall:
That is good to hear. If a parolee is brought forward for a revocation hearing, are most revoked? Is there any data as to how many parolees who are actually brought forth for a revocation hearing are sent back to prison?

Connie Bisbee:
I have those facts and I am more than happy to send them over to you.

Assemblyman Ohrenschall:
In section 6, page 9, line 12, the 58 percent—that is probably something that I should be understanding and I am not. Would you explain the 58 percent? Another question regarding section 6 is on page 7, and is the existing statute on lines 39 and 40, where it refers to an offender "who has no serious infraction of the regulations of the Department . . . ." I am wondering what serious infractions are.

Connie Bisbee:
Serious infractions would be things like an assault and battery in the prison.

Assemblyman Ohrenschall:
Not usually something less than that?

Connie Bisbee:
Yes. We are seeing less and less of it, but there is a major infraction, which is the possession of tobacco, and where that happens most is the Casa Grande Transitional Housing center where these folks are going out and working during the day. For those who have tobacco addictions, if they come back into Casa Grande with tobacco, it is a major infraction. The board does not see it that way. We certainly see it and understand why the Department has it as a major infraction, but we do not consider it a real big deal. Now a major infraction of assault, battery, or compromise of a staff member, or things like that are definitely considered to those higher degrees.

Assemblyman Ohrenschall:
I am wondering about the 58 percent on page 9, line 12.

Connie Bisbee:
The way it works now, if they are not A or B felonies, they get credits off both the back end and the front end. They get the reduction off the end of their sentence, which is why a 2-to-10-year sentence is not a 2-to-10. A 2-to-10 is actually a 2-to-4.97-year sentence. They get credits off the back end and they also get credits off the minimum. The way you get credits off the minimum is if you are less than an A or B felony and you are doing things like when they send you through intake and you immediately go out to a camp. You get more credits for being at that minimum custody. You can get merit credits for the particular job you are doing, et cetera. Believe it or not, we have had inmates who actually expired their sentence before they ever saw the Board on their minimum sentence.

Assemblyman Ohrenschall:
By expiring their sentence, you mean they have earned enough good-time credit?

Connie Bisbee:
They never made their minimum. They expire before they ever hit that one-year minimum. That is what they are talking about. For the sake of sentence management, you have to be able to manage that sentence so that it is not constantly changing if you aggregate sentences. So the reason for the 58 percent is to say, okay, if this person is at minimum, this is what they would be earning, so let us cap that at 58 percent, so that Sentence Management can actually manage that aggregated sentence.

Assemblywoman Cohen:
Would you explain why a prisoner might not want to opt-in to this?

Connie Bisbee:
It is a legitimate concern. There are inmates who come to us at the Board and say, "Do not even consider me." There are inmates who feel like they cannot do supervision in the community. They just flat out cannot follow rules. They have never been able to follow rules. They will come to us having violated five or six different paroles or probations throughout the years, and they will say flat out, "Ms. Bisbee, I cannot do supervision. Just expire me." That is the type of inmate who will not do well on a longer sentence in the community and they would not opt-in to that. It is just a reality. I would love for them all to say, "I am going to try it." The Division of Parole and Probation works really hard with these folks to make them successful, but there truly are those folks who cannot. It is called "being on paper." They will say, "I cannot be on paper." Those are the folks who will not opt-in to anything that could possibly make their supervision in the community longer.

Chairman Frierson:
This measure was proposed last session and did not advance. My review of the record appears that there was an unsolicited fiscal note last session, and I am wondering if you could provide any insight as to what happened last session and why we are back here today.

Connie Bisbee:
It originally went through the Senate without the enthusiasm it has this time around. It was a very long hearing. It passed out of the Senate and ended up getting stuck in the money committees. At the time, there was also a new director at the Department of Corrections, so we had not been able to deal with that at all. He was very concerned there would be a negative fiscal impact. It got bogged down in the money committees and, frankly, did not get to you until Sunday morning of the very last week. Senator Parks and I were here and you guys had sat through a very long three-hour presentation on something else and we had three minutes or less. It is too complicated of a bill, so it got bogged down. What is different about it this time is that it sailed through the Senate and Senator Segerblom said, "Let's get this moving along so that the Assembly can spend the time they need to on it." That is the difference. In the meantime, we have worked very closely with the Department of Corrections to figure out what, if any, fiscal impact there is going to be, and they are comfortable with it this time.

Chairman Frierson:
Section 6, the 58 percent—would you address where that came from and why we would set that 58 percent amount?

Connie Bisbee:
As the maximum?

Chairman Frierson:
Yes.

Connie Bisbee:
That came from applying this to the most basic of situations. When we were dealing with the Department of Corrections' Sentence Management section, they had to be able to make it work without constantly having to figure out how you apply what credits to what sentence. What they took was the highest that you are ever going to apply to a minimum sentence. Could there be someone who actually, off a minimum sentence, gets higher than 58 percent in a normal consecutive sentence scheme? Yes, but that would be a rare case. That would be a case of someone who immediately went out to minimum, got on a fire crew, and got that merit credit. We think the payoff is that, even if you mess up, you are going to get an opportunity to come to the Board at your minimums and have an opportunity to return to the community, and the fact that you have that fire time gives you a skill that you can actually look at for a job. It would be a very small fraction of people that that would affect, so we went with the generally accepted maximum that anyone would get off of minimum.

Chairman Frierson:
The concern there is that even if it is the exception disincentivizing someone who wants to go that far above and beyond, I would imagine that if it is such an exception, it would take a little more than a mere desire to get out early to really be able to accumulate that much credit. I would be concerned about trying to disincentivize someone to do as much as they could with programs and education and options as they reenter the community.

Connie Bisbee:
My response to that would be that the rare person who is able to get more than that 58 percent is motivated by things greater than the sentence they are doing. That is the person who is interested in making changes, not just getting out 30 days earlier. That is a highly, highly motivated person. It could be one of those persons who retroactively decides they do not want to opt-in to it.

Chairman Frierson:
In section 17, subsection 7, one of the proposed additional paragraphs, is somewhat of a drafting question. It seems to me that subsection 7 is simply deleting subsection 2, but doing it in a long-winded way. In subsection 2, we are saying that offenders that committed the crime when they were under the age of 16 get these extra considerations and opportunities or mandated release. In subsection 7 we say, "but not really."

Connie Bisbee:
That is the way the law currently reads. Let me tell you why that is in there, and it is really important that it is in there. Back in 2009, Assembly Bill No. 474 of the 75th Session was passed to make parole mandatory for those under 16 years of age. The problem with the mandatory law is that if you go out and commit a new felony while you are on mandatory parole, you can no longer be paroled on the case you were paroled on. It was never a problem because there is no mandatory parole on life sentences. But then you passed A.B. No. 474 of the 75th Session, which made it mandatory to parole the kids at 21 years old. If, at 45, they committed a drug crime and came back to prison, by law we would have to revoke that original parole and they could never be paroled on it. Essentially, it gives them a life sentence. This fixes it for those kids. It does not make it mandatory if they violate that mandatory parole that they have to be revoked to the end of that sentence.

Chairman Frierson:
I am not advocating for this, but why did we not just advocate for the repeal of A.B. No. 474 of the 75th Session? My second question is more concerned with the initial granting of parole that it is affecting the situation, not necessarily the circumstances that you described, where they are out and they reoffend. It just seems to me that what we are doing is simply striking A.B. No. 474 of the 75th Session. It says, "Sex offenses or if they are a high risk to reoffend . . ." but the other catchall pretty much says all the reasons why we would grant someone parole. It seems like we are undoing A.B. No. 474 of the 75th Session.

Connie Bisbee:
The only part of A.B. No. 474 of the 75th Session that we are undoing is the part that requires that we have to revoke them to expiration on that case that they violated. Assembly Bill No. 474 of the 75th Session was Mr. Horne's bill, and I would never suggest that we go back and strike it. We just want to fix it so it does not put that small category of people in a position where they now have a life without if they violate. That is how it fixes it.

Chairman Frierson:
I may follow up with Mr. Horne as well.

Connie Bisbee:
I had multiple discussions with him a couple years ago about it. Senator Parks was gracious enough to let us tack that on to the back of the aggregated sentences. We have a couple of young people out on that, and the Board has expressed extreme concern that if they ever violate, the rest of their lives they come back to a life without. I know that was not the intent of the bill, and Senator Parks allowed us to put it on there so we could do some housekeeping.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.] I will invite those who are here to provide testimony in support of S.B. 71 to come forward now.

Steve Yeager, Attorney, Clark County Public Defender:
I also have the authority to echo these comments on behalf of the Washoe County Public Defender's Office. I want to thank Senator Parks and Chairwoman Bisbee for bringing this bill. We are in support of the bill, mainly because it helps us inform our clients of how much time they are going to do and what the process is. There is a lot of confusion when there are consecutive sentences—confusion to our clients and particularly confusion to the family members of our clients who are trying to understand the process of having to make multiple paroles on different sentences. I think this will give us a tool to be able to tell people that this is what they are really looking at, this is the minimum on a time before they come up for parole. I have dealt with that scenario in my practice where clients have been sentenced to multiple consecutive sentences with different ranges, so this will be a tool where, hopefully, we can give everyone better information and make it easier to explain to them how much time they are going to do and when they come up for parole.

Chairman Frierson:
Are there any questions of Mr. Yeager? [There were none.]

Tonja Brown, Private Citizen, Carson City, Nevada:
I am an advocate for the inmates and advocate for the innocent. I support this bill, but I am a little confused on a couple of things regarding the bill. It was discussed in section 6, subsection 9, where it is at the 58 percent. Does this only apply if you opt-in? If you opt-in, then it would apply, but if you do not opt-in, it does not. There was an amendment submitted—but I guess it did not make it in—by Nevada Cure who had concerns about the bill regarding

section 17, subsections 1 and 10. As I was discussing this with Commissioner Bisbee, these subsections contradict one another in the original bill. If this goes forward as is, section 6, subsection 9, with the 58 percent conflicts with pages 16 and 17. Line 4 on page 16 says, "as reduced by any credits the prisoner has earned to reduce his or her sentence . . . ." Then on page 17, line 28, it says, "the 12-month period before the end of a prisoner's term must be calculated without consideration of any credits the prisoner may have earned . . . ." They contradict one another.

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
Have you spoken to the bill's sponsor about this? Have you let them know?

Tonja Brown:
It just came to my attention today. I did discuss this with Connie Bisbee.

Vice Chairman Ohrenschall:
I encourage you to reach out to the sponsor and let them know your concerns.

Tonja Brown:
Okay. That was the concern here. If this passes as is, this would be if they opt-in, correct? And if it does not, only if they opt-in, then the original laws are conflicting with one another, so it would have to be changed there.

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:
We are in support testimony.

Tonja Brown:
Right.

Chairman Frierson:
It does not sound like support testimony. It sounds like you are in opposition.

Tonja Brown:
I had a concern. I am in support of this. I do not know if you had time to read the amendment that I had presented on S.B. 71, which I would be in support of (Exhibit E).

Chairman Frierson:
Has that amendment been accepted by the sponsor? That would mean it is in opposition. It is only supportive if it has been accepted by the sponsor.

Tonja Brown:
I have not had a chance to really discuss it with Senator Parks. I did meet with him a week or so ago—not pertaining to this, but on another bill—and I did not have time to discuss it with him.

Chairman Frierson:
I would ask that you discuss it with him. My question for you right now is, do you support the bill as it is right now without any of your other amendments? Are you saying that you think your amendments are going to make it better?

Tonja Brown:
Yes, I do.

Chairman Frierson:
But you support the bill as it is right now?

Tonja Brown:
Yes. I just had a clarification on section 6, subsection 9, because it says if you are going to opt-in, then that 58 percent is only if you opt-in to this before 2014. If you do not opt-in, then it would still apply to the original bill, and if that is the case, there is conflict within the bill that needs to be changed.

Chairman Frierson:
Again, I have to be consistent. This does not sound supportive unless you support the bill as it is with no changes.

Tonja Brown:
Okay.

Chairman Frierson:
If you have other suggestions, I would welcome you to talk with the sponsors of the bill to see if they would find those helpful. I am sure they would be open to it. Otherwise, I have to stay consistent about how we organize our witnesses. As far as the proposed amendments, I would urge you to contact Mr. Parks; that way we, as a Committee, can know whether it is a friendly amendment or not. It helps us map how we go forward.

Tonja Brown:
Okay. Thank you.

Chairman Frierson:
Is there anyone else here or in Las Vegas wishing to offer testimony in support of S.B. 71? [There was no one.] Is there anyone here or in Las Vegas wishing to offer testimony in opposition to S.B. 71? [There was no one.] Is there anyone wishing to offer testimony in a neutral position either here or in Las Vegas? [There was no one.]

Ms. Bisbee, would you come back up? I want to make sure that we are on the same page. My question is in regard to section 17, subsection 7, and how that jibes with subsection 2. I am wondering if you were referring to section 19 in some of your answers, and I just want to make sure I was not confusing things.

Connie Bisbee:
I am old, so let us take a look at this. Yes, I was confusing section 19 with section 17. I have drawn a complete blank here, so let me get back with you on it.

Chairman Frierson:
Thank you. I will still consult with Mr. Horne about how these changes might impact some of the measures that were advanced in previous sessions.

Connie Bisbee:
You are absolutely correct. The fix of Assembly Bill No. 474 of the 75th Session is section 19, starting with line 30. I will get back with you on Monday as to what the thought was in subsection 7.

Chairman Frierson:
Thank you. Are there any other questions from the Committee before we close the hearing? [There were none.] I will close the hearing on S.B. 71, and open up the agenda for public comment either here or in Las Vegas.

Tonja Brown:
I heard some testimony regarding sentences, and I want to give three examples of life sentences and the amendment that I was asking to have presented (Exhibit E). I know of one person who had a 5-to-life, maintained innocence, and spent 21 years in prison. I know of another inmate who had two 10-to-life sentences and—as I recall and personally witnessed—a juror came forward at his parole hearing and stated that had she known that this individual was going to stay in prison more than ten years, she would have found him not guilty of the murder charge. To this day, this inmate has been in prison for 32 years and has not been given parole.

I have seen another instance where a person was given parole at a pardons board hearing where he served 17 years in prison for the intent to go out to commit robbery and murder, and killed a man. He was given parole, given a pardon, and then the Parole Board basically just went ahead and authorized it and he was out within 90 days. You have the Parole Board which is relitigating these cases, and that is why I wanted this amendment.

If they have served their sentences and served consecutive sentences of 20 years, this is what it would be. A person who has served 20 consecutive years or more in prison, who has a total aggregated minimum sentence of 20 years or more, and an aggregated minimum term of imprisonment before being eligible for parole, is 50 years of age, who has been disciplinary-free for a minimum of 5 years, and has a maximum sentence of life with the possibility of parole, he or she must be paroled to the community. I have known cases where we, the taxpayers, have spent hundreds of thousands of dollars just on one inmate's medical care. This is costing the taxpayers millions and millions of dollars a year. These people have been disciplinary-free for many years.

The jury is the fact finder, not the parole board, yet they are relitigating some of these cases. The inmates do not have access to see what the victims are saying, and I have seen instances where the victims have come in to the Parole Board and admitted information to the Parole Board, knowing it was not true, and the Parole Board is basing its decision on this. It is the jury that finds them guilty, that gives them the life sentences. If the jury is going to give them a life sentence and says 5-to-life or 10-to-life, whatever the case may be, then that should be it.

We need to determine what a life sentence is, and that is why I am saying I think we need to cap the life sentence. If a jury says 5-to-life or 10-to-life, the life sentence must be a 20-year sentence. They should be released under this amendment if they have complied with everything, they have been disciplinary-free for five years, and they are over the age of 50. Studies have shown, through the Advisory Commission on the Administration of Justice, that when dealing with murder, the chances of recidivism are very low because, in most instances, the persons who have committed these horrendous crimes have done it at an early age, most of them before the age of 25, before the time of the male brain matures. I am thinking this is a good reason to do an amendment and have a 20-year cap on life sentences. I would give the inmate a chance to have hope for his freedom.

For those who have maintained innocence—I have seen it. I have documentation from the Parole Board denying an inmate because he has maintained innocence and he is still appealing. I have sat through many parole

hearings and I have seen some of the injustices that are done, particularly to those who want to litigate whatever the laws are that we have enacted to better the laws through federal courts, which ultimately comes back to you. I feel retaliation by the Parole Board. This inmate has served 32 years. A juror in this case wrote a letter saying that if they had known they would have been in for more than ten years, they would have found the defendant not guilty. He is still in prison. This is something that most people do not understand when you are dealing with inmates who want to fight for their constitutional rights. Then we have the Parole Board that circumvents the laws in order to make changes to what their actions have done where it created new legislation or federal laws have changed it and the inmate has won.

These are my concerns. I want you to take into consideration that we really need to define a year—determine a year on a life sentence. Should someone who has a life sentence spend the rest of his life in prison because it says he has life with the possibility of parole? It does not say life without, it says life with. What is life with the possibility of parole? I say it should be 20 years. Otherwise the jury should have come back and said life without. Thank you very much.

Chairman Frierson:
Is there anyone else wishing to offer any public comment? [There was no one.] Seeing none, today's Assembly Committee on Judiciary meeting is now adjourned [at 10:25 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 19, 2013 **Time of Meeting: 9:10 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 30 (R1)	C	Brett Kandt	Testimony
S.B. 71	D	Connie Bisbee	Testimony
S.B. 71	E	Tonja Brown	Proposed Amendment