

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
March 6, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:39 p.m. on Monday, March 6, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Kate Ely, Committee Secretary

OTHERS PRESENT:

Connie S. Bisbee, Chairman, Board of Parole Commissioners
David M. Smith, Parole Hearings Examiner II, Board of Parole Commissioners
Kristina Wildeveld, Nevada Attorneys for Criminal Justice

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CHAIR SEGERBLOM:

We will open the hearing on Senate Bill (S.B.) 184:

SENATE BILL 184: Revises provisions relating to aggregated sentences and eligibility for parole. (BDR 14-83)

CONNIE BISBEE (Chairman, Board of Parole Commissioners):
The Board of Parole Commissioners is neutral.

Senate Bill 184 was drafted to make clarifications to the original aggregated sentencing bill passed in the 77th Session. The request for these changes came after a review by the Advisory Commission on the Administration of Justice during the previous Interim Session.

Most states in the U.S. use an aggregated sentencing system. When a criminal sentence containing one or more consecutive sentences is pronounced by a court, the minimum and maximum term of each consecutive sentence are added together to form one aggregated sentence for the purpose of parole eligibility and sentence expiration. Nevada began transitioning to an aggregated sentence system in 2009 for lifetime sentences and completed that transition for all sentences in 2013.

One provision of the law enacted in 2013 was to allow inmates who have consecutive sentences imposed prior to 2013 to opt in and have those consecutive sentences aggregated. The original intent of the 2013 legislation was to allow an inmate to aggregate consecutive sentences. However, the language was not constructed clearly, leaving it vulnerable to more than one interpretation. Senate Bill 184 makes those technical clarifications.

Senate Bill 184 also makes a clarification related to parole eligibility on consecutive sentences imposed with death or life without the possibility of parole. Section 1 clarifies that if a person is sentenced to a term of death or life without the possibility of parole, he or she would not be considered for parole on any other sentences that might be imposed within that sentence structure. This is currently the practice, but the existing law could be interpreted in more than one way. This clarification is requested as a housekeeping measure along with other technical changes.

Section 1 also clarifies that enhancements must be aggregated when pronounced by a court. An inmate may elect to have sentence enhancements aggregated in accordance with the opt-in provisions. Section 1 also clarifies that different case numbers may be aggregated, which is one of the most important features of this bill. Most sentences imposed on an inmate will fall under the same credit earnings, but there are a small number of inmates serving consecutive sentences for crimes committed at different times spanning the effective date of separate sentence credit laws.

Section 2 of S.B. 184 provides the method for aggregating sentences under different credit laws. Section 2 also specifies that once these sentences are aggregated, all future credit earnings are applied against the maximum term of the current credit-earning law. A number of inmates who requested sentences from different cases be aggregated after the 2013 law passed were denied by the Department of Corrections (DOC) because the Attorney General's Office interpretation prohibited that practice.

Section 2 allows the DOC to act favorably on a previously denied request to disaggregate and then reaggregate sentences from multiple cases.

Section 2 provides that aggregated sentencing laws do not establish a basis for a cause of action related to credits an inmate might have received had the sentences not been aggregated.

CHAIR SEGERBLOM:
How many inmates does this apply to?

DAVID M. SMITH (Parole Hearings Examiner II, Board of Parole Commissioners):
In 2010, there were approximately 3,000 inmates. How many of those inmates aggregated after the 2013 law went into effect is unknown.

CHAIR SEGERBLOM:
Could it be over 1,000 inmates?

MR. SMITH:
Yes.

CHAIR SEGERBLOM:
Would it reduce the total amount of time for those 1,000 inmates?

MR. SMITH:

A consecutive sentence structure method allows an inmate to serve an entire term of the aggregated minimums. During this time, hopefully, the inmate will have adjusted and participated in programs and is less likely to be denied at a parole hearing. An aggregated sentence will not cause an inmate to serve more time than if he or she did not aggregate. It does give an inmate more time to adjust to prison life and become prepared for release.

SENATOR CANNIZZARO:

Will this bill allow for an aggregation of sentences in different cases?

MS. BISBEE:

Yes. The revisions make clear if there are different cases, they can still be aggregated.

SENATOR CANNIZZARO:

Does it have any bearing on when these cases were picked up? I understand that if inmates are being sentenced to consecutive time in two different cases, the likelihood is that they were probably were picked up relatively soon to one another. It just seems a little odd that we would be aggregating sentences from two cases that may have occurred totally separate and apart from one another.

MS. BISBEE:

That is absolutely possible. You could have been picked up in a case in Reno and then been on the run and done something else in Las Vegas. Technically speaking, the cases were five years apart, but by the time the offenders got sentenced in two different courts and there were multiple cases on each one, it could be a spree in different jurisdictions, or it could be completely separate times.

SENATOR CANNIZZARO:

Okay, thank you.

MS. BISBEE:

The inmates are still, however, doing the minimum on every single one of those cases. None of those minimums go away.

SENATOR CANNIZZARO:

Okay, thank you.

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KRISTINA WILDEVELD (Nevada Attorneys for Criminal Justice):
The Nevada Attorneys for Criminal Justice (NACJ) generally supports S.B. 184 ([Exhibit C](#)).

CHAIR SEGERBLOM:
I have [Exhibit C](#), but does NACJ have amendments to change the bill?

MS. WILDEVELD:
The NACJ has concerns with the irrevocable nature of aggregations because it has affected inmates who were eligible for mandatory parole under another statute such as *Nevada Revised Statutes* (NRS) 213.1215. The NACJ suggests a new provision be included in S.B. 184 to make clear where there is a conflict between two statutes, the more beneficial one for the inmate controls.

The lack of retroactivity is also a concern. For example, an inmate was convicted before July 1, 2014. Under the existing statute, she had the option to aggregate her two sentences. However, the prison failed to inform her of this, so she went before the Parole Board on her first sentence and was denied. She was then informed that she could aggregate her sentences except that under the current statute, she was not able to aggregate because she had been denied parole.

The NACJ suggests a provision be added to S.B. 184 to allow inmates to aggregate their sentences even if they are denied parole before October 1.

MR. SMITH:
Nevada Revised Statutes 213.1215 is the mandatory parole provision, and it establishes a parole eligibility date at the expiration of the sentence. If an inmate aggregates the term, it would occur on the aggregated sentence, but the inmate would still have a mandatory date unless serving a life sentence.

If an inmate has a consecutive sentence, he or she is not eligible for the mandatory parole on the term that has a consecutive sentence. This would not apply.

CHAIR SEGERBLOM:
Ms. Wildeveld, just talk on the record. Tell us what you want to do.

MS. WILDEVELD:

An inmate who committed a crime prior to his sixteenth birthday aggregated and did not go before a parole board on his first ten-year parole. For this inmate, the aggregation was to his detriment.

MR. SMITH:

Subsection 2 of NRS 213.1215 pertains to the mandatory parole of inmates under the age of 16. When the conviction results in a life sentence, it requires an automatic parole to the consecutive sentence. If the inmates do not aggregate and are paroled to consecutive, they begin serving their consecutive terms. If they aggregate, they would just serve the entire 20 years because they are both life terms and the expiration is not affected.

CHAIR SEGERBLOM:

Can the NACJ's proposed language with respect to conflicting statutes be included?

MR. SMITH:

This should not make it worse for an inmate as far as minimum terms are concerned. An inmate would not get a parole hearing until having served the entire minimum. Eligibility for parole for inmates under the age of 18 would take precedence over any other eligibility for parole.

I do not see NRS 213.1215, subsection 2 referenced in S.B. 184. We are open to discussing language that may alleviate NACJ's concerns.

MS. WILDEVELD:

We are suggesting the language state "if there is a conflict between two statutes, the more beneficial one for the inmate controls."

MR. SMITH:

Aggregation requires an inmate to serve the entire minimum and then be considered for parole. This allows inmates who would have had parole denied additional time to better prepare themselves to be more street-ready with more likelihood to get paroled.

An inmate with a life sentence should aggregate. It is always to the benefit of an inmate to aggregate if he or she has a life sentence. However, there are

some inmates who will gamble with a parole hearing to a consecutive. This is why we were trying to draw the line when an inmate can aggregate. If an inmate can wait for the results of a parole hearing to a consecutive sentence and then decide to aggregate because he was denied parole, this would allow all inmates who were denied to request aggregation.

If an inmate is granted parole to a consecutive term, he or she is going to serve the remainder of that term, or a portion of it, in prison. An inmate could potentially do less time in the community under supervision than if he or she had aggregated. If an inmate served half his or her time on parole, the inmate can petition a court to have the sentence modified to time served. If inmates get paroled in prison to consecutive terms, they can potentially cut the same time off at the end of their sentences. If inmates are allowed to decide after the parole hearing whether to aggregate, we would be adding another 50 percent of the caseload of the consecutive sentences.

There were a number of cases in which inmates had requested aggregation and the DOC did not aggregate their terms. We rescinded our action and allowed those cases to be aggregated because there was an intent prior to parole hearing to aggregate.

There were also a number of inmates who were asked if they had considered sentence aggregation. In each of those cases, the parole hearing was deferred to allow an inmate more time to consider aggregation. There are a number of inmates who are well-informed and attend their parole hearing knowing they are taking their chances. Some inmates then complain after the hearing results in a denial, claiming they should have aggregated their time.

MS. WILDEVELD:

There is a population within the prison that was not informed of the ability to aggregate prior to their parole board hearings, and we are requesting retroactivity.

MR. SMITH:

The only inmates that would affect are those who have had parole hearings and been denied.

CHAIR SEGERBLOM:

Is there a possibility to give this population of inmates another chance?

MR. SMITH:

There would be ramifications for the Parole Board. If that option were available, it would have to be a very narrow window. It would not be feasible to allow every inmate another hearing because he or she did not like the outcome of the previous hearing.

If it strictly pertains to inmates under 16 years old, that would not be a problem because that would be a small number. If we get into the entire population, that would be disruptive and difficult, not to mention the victims who would be dragged back into the hearing process.

CHAIR SEGERBLOM:

Mr. Smith has suggested it could be done retroactively.

MS. WILDEVELD:

We would like it retroactively.

MR. SMITH:

I was speaking specifically to the NRS 213.1215, subsection 2 inmates. I would not be in favor of any inmate who has been denied parole in the last four years to a consecutive term. It would be unfair particularly for the cases that have victims. The victim would have to endure another parole hearing. It would be difficult to manage.

CHAIR SEGERBLOM:

Are you open to the NACJ language with respect to the least onerous statute be applied?

MR. SMITH:

With respect to the mandatory parole, I do not see a problem with that. The fix to that would be to include "or aggregated term" because that would make mandatory parole on any aggregated time rather than just a life term.

CHAIR SEGERBLOM:

We will have a work session and see what we can do.

SENATOR HARRIS:

Section 2, subsection 5 of S.B. 184 refers to an irrevocable election to have the sentence aggregated. What crime would that apply to, and how does that impact an irrevocable election?

MR. SMITH:

The irrevocable choice to aggregate is for any aggregation. The provision would allow those who wanted to aggregate different case numbers to disaggregate and reaggregate into that sentence structure. That is the distinction.

With regard to aggregated sentencing, if inmates could choose at any time during their sentences what they wanted their sentences to be, it would create an unmanageable situation for the DOC in terms of timekeeping.

The DOC programmed its new timekeeping system to handle this issue and correct mistakes. It was discovered that inmates had requested aggregations that were not completed and parole hearings were conducted.

SENATOR HARRIS:

Are we retroactively applying a patch to fix the ambiguity in the law for the past four years? But moving forward, once an inmate decides to aggregate, it will be an irrevocable choice?

MR. SMITH:

Yes, that is correct with the exception of a mistake has been made causing an injustice to an inmate. We have worked with the DOC to correct those situations.

SENATOR PARKS:

The number of cases that Ms. Wildeveld is referring to are probably quite minimal. Perhaps we could find some type of solution with respect to language that NACJ would care to draft and submit to us for review. There may be one or two features here that we could incorporate into the bill through amendment.

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CHAIR SEGERBLOM:

We will close the hearing on S.B. 184 and adjourn the meeting at 2:15 p.m.

RESPECTFULLY SUBMITTED:

Kate Ely,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 184	C	3	Nevada Association of Criminal Justice	Letter of Support