

JUDICIARY COMMITTEE
57th ASSEMBLY SESSION-NEVADA

MINUTES

MARCH 6, 1973

Mr. Keith Hayes, Chairman, called the meeting to order at 1:05 PM.

MEMBERS PRESENT: MESSRS: HAYES, BARENGO, GLOVER, TORVINEN, HUFF, FRY,
LOWMAN, HICKEY, AND Ms. FOOTE.

MEMBERS ABSENT: NONE

GUESTS PRESENT: Warden Carl Hocker of the Nevada State Prison, Mr. G. Coglin and Mr. W. Peebles also representing the prison; Ed. Glick from the Department of Parole and Probation; Donald Wadsworth from the District Attorneys office in Las Vegas; Assemblyman D. Demers; Members of the Press.

Warden Hocker appeared before the Committee to testify on Several bills having to do with the prison and prison policies. He told Committee members that with regard to construction of a medium security prison in Las Vegas he is neutral, but would offer some pertinent information. He stated that as he understood it the reasons for this construction would be 1. economic-to add to the economy of Southern Nevada, and 2. that the feeling exists prisoners originating from a certain jurisdiction might be better confined in their own vicinity. Warden Hocker presented a census showing that as of last month out of 788 commitments 284 were from Clark County, and 250 from Washoe County. He said that somewhere between 35% and 50% of the prison are transient. He felt that the acquisition of land may be a problem, along with the many auxillary services required to operate such an institution.

Warden Hocker then went on to discuss the five bills on today's agenda concerned with the prison. (see attached)

Mr. Demers came before the Committee to explain A.B. 318. This is a bill requested by the registrar of voters in Clark County. It increases the penalty for violation of election laws to a gross misdemeanor. The intent is to keep people from registering at any address other than their own. Mr. Torvinen inquired if anyone had ever filed a misdemeanor complaint. Noone seemed to have heard of this being done. Mr. Torvinen felt that an increase to gross misdemeanor would be too strong.

Mr. Don Wadsworth said that he wasn't here to testify on any particular bill, but after listenting to the comments on S.B. 66, he did have a question. Looking at Section 4 from the prosecution side he said that he could not see the desirability of having to file an accusation of habitual criminal. As a practical matter it is very difficult to obtain proper documentation.

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Mr. Hayes thanked the witnesses and excused them. He called for action on the matters pending.

A.B. No. 318 SUMMARY-Increases the penalty for violation of election laws.

Mr. Fry moved Indefinite Postponment, Mr. Lowman seconded. Mr. Huff and Ms. Foote voted against this motion.

MOTION CARRIED (A.B. 318 INDEFINITELY POSTPONED)

S.B. No. 66 SUMMARY-Provides for parole eligibility for certain persons convicted of being habitual criminals.

Mr. Lowman moved INDEFINITE POSTPONMENT, Mr. Hickey seconded.

Mr. Barengo said that he felt that this is a good bill, but that there are some provisions which should be cleared up like further investigation into what a conviction is and to show prior felony conviction. Mr. Torvinen asked what the effect would be if page 2 were deleted. He further stated that he could see where prison work may be easier if they could dangle the carrot of parole.

VOTE ON THE MOTION:

Voting against indefinite postponment, Mr. Hayes, Barengo, Foote, Glover Fry, and Torvinen.

Voting in favor of the motion, Huff, Hickey, & Lowman.

MOTION FAILED

Mr. Fry moved to amend S.B. 66 to the original form and increase from five to seven years. Mr. Torvinen seconded. and DO PASS

MOTION CARRIED UNANIMOUSLY (AMEND AND DO PASS S.B. 66)

Mr. Huff asked to poll the Committee with reference to increasing parole eligibility from seven to ten years. The Committee preferred to leave it at seven years.

S.B. No. 146 SUMMARY-Clarifies provisions for preconviction time credits in criminal sentences.

Mr. Lowman moved to recommend DO PASS, Mr. Fry seconded/

MOTION CARRIED DO PASS S.B. 146

S.B. NO. 148 SUMMARY-Redefines peace officer powers of state prison personnel.

Mr. Huff moved to recommend DO PASS, Mr. Barengo seconded.

MOTION CARRIED UNANIMOUSLY DO PASS S.B. 148

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S.B. No. 149 SUMMARY-Requires report to be submitted to warden of state prison of certain facts concerning prisoners transferred to state prison.

Mr. Barengo moved to recommend DO PASS, Mr. Fry seconded.

MOTION CARRIED UNANIMOUSLY DO PASS S.B. 149

S.B. No. 150 SUMMARY-Provides flexibility in forfeiture of good behaviour credits of prisoners in state prison.

Mr. Hickey moved to recommend DO PASS, Mr. Huff seconded.

MOTION CARRIED UNANIMOUSLY DO PASS S.B. 150"

A.B. No. 234 SUMMARY Imposes additional criminal penalties if certain crimes are committed while perpetrator is in possession of firearm.

Mr. Hayes announced that he would like some disposition of this bill and said "quite frankly I would like to see A.B. 234 go out of here with a DO PASS".

Mr. Barengo moved to recommend Do PASS, Mr. Lowman seconded.

Mr. Torvinen stated that as long as we have determinate sentencing this bill accomplishes absolutely nothing except to deny probation. This could be done with a lot shorter bill. It has also been expressed that involuntary manslaughter especially with regard to the hunting accident shouldn't even be included. The only sensible way to accomplish the objectives of this bill is to look at each individual crime and state what the sentence should be. There are other bills with other introducers which accomplish the same thing. This particular bill was in the Governor's message, rather this particular concept. Several people who campaigned for the assembly used the votes cast on similar bills last session as a political issue. "I feel that these people who use this as a political issue, this bill has been around for two years, we pointed out then the defects, they have had two years to think about it, the Governor has had two years to think about it, and they still haven't corrected all the obvious simple defects." "They haven't attempted to draft a good bill." "I will oppose the bill here, and on the floor". If it is going to be done it ought to be done right. We should go back into the armed robbery section and make it non-probatable, perhaps the voluntary manslaughter section and etc.' "As long as we have determinate sentencing if you pass this bill you haven't accomplished a thing because the judge can still grant the same maximum sentence he would have without this bill.

Mr. Fry said that he would like to echo Mr. Torvinens sentiments, and that we are being neglectful as a Committee if we pass whitewash legislation. By passing this bill we are not doing anything to hit at specific cases such as armed robbery etc. We should consider these

in light of the individual statutes to really try and solve the problem and not give this a broad brush effect.

ACTION ON THE MOTION DO PASS

Mr. Torvinen and Mr. Fry voted against this motion.

MOTION CARRIED DO PASS A.B. 234

Mr. Barengo moved to Indefinitely Postpone A.B. 118 and A.B. 435, in view of the fact that they are similar to A.B. 234. Mr. Hickey seconded.

Mr. Lowman voted against this motion.

MOTION CARRIED INDEFINITELY POSTPONE A.B. 118 & A.B. 435.

A.B. No. 295 SUMMARY-Permits denial of bail to person charged with committing a felony while free on bail.

Mr. Hayes reminded the Committee of prior testimony that this had been tested in Arizona. A 1970 Arizona case construing an Arizona statute to the effect that when bail is granted on a felony the judicial officer granting bail impose the condition that the release of the defendant is conditioned on his good behavior while he is released. The showing of probable cause that the defendant committed a felony during the period of his release was reasonable grounds for revoking the bail. In other words, this was not a denial of bail on the second offense, rather a revocation of bail on the first offense. There is however a difference in the constitution in Arizona. It reads "all persons charged with crime shall be bailable by sufficient suretys except for 1. capitol crimes where the proof is evident or the presumption great, and 2. Felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption is great as to the present charge. So this is not just from an Arizona statute, there has been amendment made to the Arizona constitution providing for this. The question this presents is are we able to pass a statute in the face of the Nevada Constitution which will meet the test.

Mr. Barengo read from the Nevada Constitution Section 7 which states all persons shall be bailable by sufficient suretys except for capitol offenses where the proof is evident or the presumption great.

Mr. Barengo moved to recommend DO PASS, Mr. Glover seconded.

Mr. Fry stated that it is his feeling that this bill is unconstitutional and he would oppose the bill but not a constitutional amendment.

Voting against this bill was Mr. Fry and Ms. Foote. Mr. Torvinen abstained from voting.

MOTION CARRIED (DO PASS A.B. 295)

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Mr. Barengo moved to introduce an Assembly Joint Resolution amending the Nevada Constitution. Specifically adding to Article 1, Section 7 "felony offenses committed when the person charged is already admitted to bail on a separate felony charge and when the proof is evident or the presumption great as to the present charge. Mr. Huff seconded.

MOTION CARRIED (COMMITTEE INTRODUCE AJR AMENDING NEVADA CONSTITUTION.)

Mr. Lowman moved reconsideration of A.B. 274, Mr. Huff seconded.
MOTION CARRIED

Mr. Hickey moved reconsideration of A.B. 165, Mr. Lowman seconded
Ms. Foote voted against this motion.
MOTION CARRIED.

Mr. Hayes read a bill for proposed introduction regarding habitual criminals similar to A.B. 165 except giving a ten year period instead of five .

Mr. Barengo moved not to sponsor this bill in introduction, Mr. Fry seconded.

MOTION CARRIED - DENY SPONSORSHIP IN INTRODUCTION.

Mr. Hayes informed the Committee that he had received Senate amendment #150 to A.B. 173 for concurrence.

Mr. Torvinen moved to Concur, Mr. Hickey seconded.
Mr. Barengo moved against concurrence.
MOTION CARRIED CONCUR WITH SENATE AMENDMENT # 150 to A.B. 173.

RECONSIDERATION OF A.B. 274:

Mr. Torvinen said that this bill does not accomplish it's intent which is to get the drunk driver off the road.

Mr. Barengo moved Indefinite Postponment. Mr. Torvinen seconded.

Mr. Hickey questioned the right of the passenger, stating that the law is reaching into the privacy of the car in this measure.

Voting against this motion were Mr. Hayes, Mr. Huff, Mr. Lowman and Ms. Foote.

Voting in favor of Indefinite Postponment were Mr. Glover, Mr. Torvinen, Mr. Barengo, Mr. Fry and Mr. Hickey.

MOTION CARRIED INDEFINITE POSTPONMENT OF A.B. 274.

MR. Glover moved to adjourn, Mr. Lowman seconded. Meeting Adjourned.

JUSTIFICATION:

AB66 was submitted by the Prison in an attempt to correct an apparent inequity existent in the parole statutes. The Prison recommends the passage of S.B. 66 for the following reasons:

1. The Prison feels, that possibly through an oversight, the category of habitual criminals were overlooked when the parole statutes were revised in 1967. Specifically, when the statute was repealed that allowed parole eligibility for life termers to occur in 7 calendar years was repealed, it left no provision for parole eligibility for the category of habitual criminals serving life terms.
2. At present, habitual criminals serving life terms, insofar as parole eligibility is concerned, are placed in the same classification as those violent offenders sentenced to life without possibility of parole for murder in the 1st degree, kidnapping in the 1st degree with bodily harm, and rape with bodily harm.
3. Typically, those sentenced to life terms under the habitual criminal code tend to have a past history of property offenses, rather than a past history of violent crimes mentioned in the above section.
4. In many instances, inmates with many more prior felony convictions than some of our habitual criminals retain their regular parole eligibility, determined by the length of the instant term.
5. While Nevada quite recently utilized the number of prior felony convictions in any and all cases to preclude parole eligibility in certain instances, this practice has been overturned by the Nevada Supreme Court, which stipulated that the number of prior felony

S. B. 66: PROVIDES FOR PAROLE ELIGIBILITY FOR CERTAIN PERSONS CONVICTED OF BEING HABITUAL CRIMINALS

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convictions cannot in itself preclude the attainment of parole eligibility. In 1969, the possession of 3 prior felony convictions precluded one from ever attaining parole eligibility, regardless of the nature of the instant conviction. More recently, the possession of 4 prior felony convictions precluded parole eligibility. At present, as previously stated, there are many 5th, 6th, 7th, and 8th termers at the Prison who attain parole eligibility in accordance with the length of their instant sentences, notwithstanding the number of prior felony convictions they possess.

6. Pertaining to line 20 of S.B. 66, the Prison's initial bill requested a parole eligibility of 5 years for habitual criminals, although this was subsequently amended to read "When a minimum of 7 years have been served." The Prison felt that more than a 5 year parole eligibility would be excessive, in view of the 5 calendar year eligibility for such serious crimes as murder 2nd, kidnapping without bodily harm, and rape when sentenced to a term of 5 years to life.

7. In reference to line 1, page 2 of S. B. 66, the Prison would recommend deletion of lines 1 through 3, based upon the aforementioned Nevada Supreme Court Ruling wherein the number of prior felony convictions cannot in itself preclude parole eligibility.

In summary, the Prison strongly urges that parole eligibility be established for habitual criminals serving life sentences on the basis of all of the foregoing information.

S. B. 146: CLARIFIES PROVISIONS FOR PRE-CONVICTION TIME CREDITS IN
CRIMINAL SENTENCES (COUNTY JAIL TIME CREDITS)

EVALUATION OF BILL:

S.B. 146 was submitted by the Prison in an attempt to resolve a current dilemma in cases wherein county jail time credits are granted, either by the courts or by the Nevada Board of Pardons. While the Prison has absolutely no objection to inmates receiving credit for time previously spent in county jail, prior to conviction of their instant felony charge, too very significant problems have arisen pertaining to proper computation of time credits: 1. In many instances, when a judge grants credit for time previously served in county jail, it has proven extremely difficult, and in some cases virtually impossible, for the Prison to determine the actual amount of time to be credited against the Prison term; 2. In certain cases, some courts are directing that the county jail time credits be applied to the beginning ("bottom") of the Prison term, and in certain other instances, are even directing that statutory good time credits be applied for time actually served in county jail prior to sentencing on the felony charge which subsequently brought the inmate to the Prison. The Prison is in possession of several Attorney General Rulings, including official opinion #25, which clearly stipulates that there can be no retroactive application of county jail credits for prison inmates. In essence, the rulings indicate that a sentence date is a sentence date, and cannot be moved back in time. Specifically, the Prison recommends that S. B. 146 be passed as stipulating two things: 1. That credits for county jail time be subtracted from the end ("top") of prison sentences, rather than from the beginning; 2. That judges, when granting county jail time credits, specify the exact amount of preconviction time credit granted pursuant to NRS 176.055 if any.

S. B. 146: CLARIFIES PROVISIONS FOR PRE-CONVICTION TIME CREDITS IN CRIMINAL SENTENCES (COUNTY JAIL TIME CREDITS)

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RECOMMENDED AMENDMENT TO S. B. 146 AS CURRENTLY DRAFTED:

On line 8, page 1, wherein the phrase "credit allowed pursuant to this section does not alter the date from which the term of imprisonment is computed," we would recommend substituting the phrase "the term of imprisonment designated in the judgment shall begin on the date of sentence of the prisoner by the court, per NRS 176.335."

Except as noted above, the Prison is in complete agreement with the current drafting of S. B. 146.

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S. B. 148: AN ACT TO AMEND NRS 209.133, RELATING TO PEACE OFFICER POWERS OF STATE PRISON PERSONNEL, BY REDEFINING THOSE POWERS; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO 111

EVALUATION OF S. B. 148:

This bill was proposed by the Prison, specifically to bring NRS 209.133 into alignment with NRS 169.125, pertaining to the defining of certain Prison personnel as peace officers. The Prison is in complete agreement with the current drafting of S. B. 148 as proposed.

JUSTIFICATION OF S. B. 148:

The Prison recommends passage of S. B. 148 for the following reasons:

1. There appears to exist certain confusion between NRS 209.133 and NRS 169.125, pertaining to which Prison employees may properly be designated as peace officers. The Prison much favors the provision of 169.125 as opposed to the provision of NRS 209.133.
2. It is felt that the comments pertaining to "other employees of the Nevada State Prison," as contained in NRS 209.133 are too limiting in scope, and several situations can be envisioned wherein non-uniformed staff of the Prison ("other employees") might well be called upon to also perform in a peace officer capacity regarding their normal duties and routine charge over Prison inmates. Specific non-uniformed staff might well be called upon to effect arrests in Prison-related situations; non-uniformed employees are required to participate in quelling any and all Prison disturbances, including the possible utilization of firearms, gass equipment, etc.; non-uniformed Prison employees are obliged to assume a rotating administrative officer of the day schedule for a week at a time, thereby presenting the possibility that one or more of them might be compelled to act in the Warden's stead in certain emergencies or other situations.

S. B. 148: AN ACT TO AMEND NRS 209.133, RELATING TO PEACE OFFICER POWERS OF STATE PRISON PERSONNEL, BY REDEFINING THOSE POWERS; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

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Nothing in the current drafting of S. B. 148 entails the addition of other Prison job classifications to the current early retirement features of NRS.

In summary, the Prison urges passage of S. B. 148 as currently drafted and amended, so as to bring NRS 209.133 into alignment with NRS 169.125,, which latter Statute appears to cover most eventualities which might occur in relation to performance of Prison duties.

S. B. 149: REQUIRES REPORT TO BE SUBMITTED TO WARDEN OF STATE PRISON 143
OF CERTAIN FACTS CONCERNING PRISONERS TRANSFERRED TO STATE PRISON

EVALUATION:

S. B. 149 is a Prison- sponsored bill, based upon the staff's feeling that certain types of information on new arrivals is rather critical during the preliminary intake, orientation and classification of new inmates.

Specifically, it is very important that the Prison staff be made aware of any particular medical, psychiatric, unusual behavioral and/or criminal aspects of the new prisoner's history, as noted by, and submitted by, county jail staff.

As a brief example of each category, preliminary medical information might indicate a history of epilepsy; preliminary psychiatric information might indicate suicidal tendencies; preliminary behavioral information might indicate undue assaultive potential and/or disruptive influence upon others; and unusual criminal information might indicate such things as enemy situations, crime partner situations, militant background, etc.

Simply stated, very little is usually known about an inmate upon initial intake at the prison. We would hope that participating jail staff inform us of any background information which, in their opinion, is out of the ordinary and therefore critical to a smooth transition from jail to prison to programming and/or treatment.

The Prison staff are in complete accord with S. B. 149 as currently drafted, particularly in respect to lines 4 through 10 on page 1.

S. B. 150: PROVIDES FLEXIBILITY IN FORFEITURE OF GOOD BEHAVIOR CREDITS OF PRISONERS IN STATE PRISON

EVALUATION:

S. B. 150 is a Prison-sponsored bill and the staff are in complete agreement with the current drafting and amendments as printed.

Simply stated, the existing version of NRS 209.290 was felt to be too all-inclusive, in that theoretically, an inmate who neglected to make his bed would have to be referred for a Statutory Time Hearing before the Parole Board.

In drafting S. B. 150, the Prison was attempting to provide for Statutory Hearings, and possible resultant loss of good time credits, for those inmates who perpetrate the more serious violations of Institutional and/or state laws and regulations. For instance, on line 8, page 1, the phrase, "gross misdemeanor or felony" was added; on line 13, page 1, the subphrase "serious violation" was added, etc.

Although S. B. 150 as drafted does not specifically indicate a Statutory Time Hearing for the frequent violator of relatively minor Institutional rules, the Prison and the Parole Board have an internal policy in existence whereby a given inmate may be referred for a Statutory Time Hearing for a singular, serious infraction, but also for a cumulative record of less-serious violations.

The Prison would strongly urge passage of S. B. 150 as currently drafted and amended.

ASSEMBLYAGENDA FOR COMMITTEE ON JUDICIARY

Date MARCH 6, 1973 Time 2:00 ^{1:00} PM Room 240

Bills or Resolutions
to be considered Subject Counsel
requested*

- A.B. 305 SUMMARY—Authorizes construction of a medium security prison in Clark County. Fiscal Note: No. (BDR S-915)
- A.B. 318 SUMMARY—Increases the penalty for violation of election laws. Fiscal Note: No. (BDR 24-902)
- S.B. 66 SUMMARY—Provides for parole eligibility for certain persons convicted of being habitual criminals. Fiscal Note: No. (BDR 16-291)
- S.B. 146 SUMMARY—Clarifies provisions for preconviction time credits in criminal sentences. Fiscal Note: No. (BDR 14-285)
- S.B. 148 SUMMARY—Redefines peace officer powers of state prison personnel. Fiscal Note: No. (BDR 16-293)
- S.B. 149 SUMMARY—Requires report to be submitted to warden of state prison of certain facts concerning prisoners transferred to state prison. Fiscal Note: No. (BDR 16-302)
- S.B. 150 SUMMARY—Provides flexibility in forfeiture of good behavior credits of prisoners in state prison. Fiscal Note: No. (BDR 16-297)

*Please do not ask for counsel unless necessary.