

MINUTES

JUDICIARY COMMITTEE

February 1, 1977

9:15 a.m.

Members Present: Chairman Barengo  
Vice Chairman Hayes  
Mr. Price  
Mr. Coulter  
Mrs. Wagner  
Mr. Sena  
Mr. Ross  
Mr. Polish  
Mr. Banner

Members Absent: None

Guests Present: Mr. Larry Hicks, District Attorney for  
Washoe County  
Mr. Thomas D. Beatty, Asst. District  
Attorney for Clark County

This meeting was called to order by Mr. Barengo at 9:15 a.m. He stated that on the agenda today would be A.B. 12. Harley Harmon is the introducer of this bill and Mr. Barengo stated that he would not be able to be at the meeting until 9:30 a.m. However, he stated that in the interests of "moving along", they have Mr. Tom Beatty from the Clark County District Attorney's office and Larry Hicks, District Attorney for Washoe County, here on the bill. Mr. Barengo mentioned that he had some bills here, some of which are technical clean-ups, plus a couple of his own bills. He mentioned that some bills would be for his own introduction but he asked that members go over these bills and see what they thought of them for possible introduction.

Assembly Bill 12

Mr. Tom Beatty introduced himself as being at the meeting on behalf of the Clark County District Attorney's office. He stated that he plans to make some specific comments on the bill that is before the committee and secondly, he plans to spend a little bit of time to give the committee a background of facts and figures and problems that they have in Clark County. Specifically, looking at 193.165, as the bill A.B. 12 would amend it, he stated he has several points. Mr. Beatty stated that 193.165 provides for a consecutive penalty that is a penalty which, in effect, doubles the maximum penalty presently for whatever crime it is where a weapon is used. He stated that the only exception is where a weapon is necessary for the commission of the crime in the first instance. He stated that this bill would continue with consecutive sentence, but, instead of doubling would have limits of both a floor and a ceiling - five to seven years. The statute, he stated, that we have presently is constitutional and it is valid. There is no double-jeopardy issue; it is merely just a bill to increase punishment. It is not a separate crime. He stated that we

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also know how to prove and charge the use of a deadly weapon count. He stated that we now have the statute which has been interpreted, found constitutional and we know how to use it. The bill is working and he does not see why, at this point, this bill should be amended to reduce the penalty. He does not see how the protection of Nevadans would be increased. Thereafter he set forth to the committee a few examples. He felt that we seem to have a habit in our Legislature (not accusing this committee of it) of passing a new criminal law and the next session or so, reexamining it again while in many cases, we do not even know how it works yet. For an example, he stated, that they didn't even get the first gloss on this statute 193.165 until 2½ years down the line. It was shortly after the legislative session of 1975 that we had the first decisions telling us whether this law was good and how to use it. I think that this law has been on the books for a good 3 or 3½ years; it is valid and it is workable. He stated that he did not really see the need for any change at the present time. He mentioned that the "floor" of this law or the minimum years that are given part, may have some merit to it. However, to the extent that it would reduce penalty, he stated that he would not want that. He mentioned that he is aware of some other bills coming up that would, in effect, have somewhat of the same result. He stated that A.B. 131, inadvertently deletes the section that would make the use of a deadly weapon consecutive. The sentence for that would no longer be consecutive.

Mr. Beatty then turned to his "second point". He stated that he did not know how today so many bills are being introduced. He thinks that some of the legislation that we see arises through some cynicism about the role of the District Attorney in each county. He then commenced to point out some of the problems that they actually have. Mr. Beatty pointed out strongly their resources -- or the lack of them. It is a fundamental principle today that our problem isn't necessarily laws, but, the lack of funds. He feels that it is very clear that if the crime rate is up and arrests are up, but, there are no additional police officers, District Attorneys' typically get substantial increases in personnel only through federal grants and use of federal funds, no substantial additional parole and probation staff, no new courts, no new prison cells, no new jail capacity, all because of the more drastic problem of no money, then I suggest that there can be only one result, that of heading towards a crisis in chaos. Mr. Beatty stated that the question is this, "Can law that is unaccompanied by dollars change the results that we see today?" "The answer is no." He then proceeded to give some specifics out of Clark County which included personnel in the police,

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jails and the lack of those facilities, court calendars (for which he offered two exhibits which are attached hereto in addition to another which exhibited "persons convicted"), parole and probation. He then expanded on the subject of prison facilities. Mr. Beatty noted that there is some minor fluctuation as to the percentages of persons sentenced to prison. He stated that they had something like in 1971-1972 18½%, 1973-1974 20%, 1974-1975 22%. In fiscal 1974-1975 there were 409 persons statewide, sentenced to the Nevada State Prison, that is 25% of all persons convicted and an additional 7% were sentenced to time in the county jail, totalling 32%. He reported, in contrast, that in 1975-1976 fewer persons were sentenced to prison even though convictions sharply increased. Obviously, the reason is lack of prison facilities. He then spoke further on the parole and probation problems and the lack of officers. Mr. Beatty talked about the problems of the District Attorneys' in the state and more particularly, within Clark County and the fact that they do not have the time and the manpower to process many of their felony referrals.

Mr. Banner wanted to offer the comment that he is a casual observer around that court house and that his heart does not really bleed for the attorneys or the judges. He states that he wonders how many people are within the civil division that really might not have all that much to do.

Mr. Beatty answered him that as county government becomes larger, their civil division ends up spending an enormous amount of time dealing with those problems.

Mr. Coulter then asked of Mr. Beatty if they spend a large portion of their time prosecuting marijuana cases?

Mr. Beatty answered "no". However, if a case comes in we have a duty to try and prosecute it to the best of our ability. He stated that he does believe that there are still a number of cases that do come into the system. He stated that he doesn't believe that they get too far within the system; they are screened at an early date.

Mr. Price then asked of Mr. Beatty why does the District Attorney or prosecutor plea bargain because, he said, it seemed to him that if the responsible party went ahead and pushed it through the system anyway and the situation got bad enough at the prison end, eventually he felt that the public would realize they would have to spend the money for those facilities. He further commented that he didn't think they would get the public's acute awareness of the problem until such took place.

Mr. Barengo then offered that this committee does have a bill dealing with plea bargaining and that he has already received a letter from Tom and George on the matter and he

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was sure that they would be here again to testify on that entire issue.

Mr. Beatty did answer Mr. Price in stating that he did understand what he was saying and he felt that, yes it would, to a certain extent, bring the crisis proportions home, however, he stated he was not sure how this could be done responsibly.

Mrs. Wagner then stated that he mentioned that there has been something like 1600 penalties. In light of that, she stated that this bill addresses itself to the commission of a crime and were we talking about all of those 1600?

Mr. Beatty answered her, stating "yes", and further that in every case in which the use of a weapon is not already an element.

Mr. Ross then asked of Mr. Beatty if there was some source of information where one could see comparative analysis of the penalties.

Mr. Beatty said "no", there was no such place. The only way would be to go through the statutes, page by page.

Mr. Barengo then introduced Mr. Harley Harmon and Mr. Barengo summarized Mr. Beatty's testimony for him. He stated that Tom's comments were that by saying not less than five, no more than seven and by adding this "no more than seven" would, in some instances, reduce the penalties that are already being given. There are some instances where you might be able to give more than seven years -- ten years, life, things like that or a double penalty situation.

Mr. Harmon stated that this is what he questioned. How often do they use the law that is on the books right now or do they use it at all. He feels that this is a little more realistic law. He thinks that in this case, you wouldn't have as much plea bargaining and he would hope you wouldn't have anymore. He thinks that there is a lot of appetite in the public for this bill, although he does sympathize with Mr. Beatty's problems in the Clark County Court House.

Mrs. Wagner asked if there were any particular reason that Mr. Harmon came up with those specific years, "five years and no more than seven".

Mr. Harmon stated that originally, he just thought "five years" and then when he had the bill drafted, Frank put in there "no more than seven". He stated that he could be flexible on that.

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Mrs. Hayes asked if Mr. Harmon minded if they took out the "not more than seven" and leave it open.

Mr. Harmon answered affirmatively and stated that "no less than five" is fine.

Mr. Beatty commented that as long as we do have some ceiling, this would be fine.

Thereafter there was general discussion amongst committee members and Mr. Hicks and Mr. Beatty regarding reduction of penalties. Mr. Hicks offered in answering a question from Mr. Coulter that the way this particular bill reads, you could actually have a misdemeanor offense committed with a deadly weapon and it would be one to six months in the county jail on a misdemeanor offense and five years or more because he had a deadly weapon with him during the misdemeanor offense. Of course, he stated that this was unrealistic, but, conceivably you could have that.

Mr. Hicks wanted to make some statements in regard to this bill on behalf of his own office, the Washoe County District Attorney's office and also as President of the state's District Attorney Association. His observations were that this present law has been approved by the courts and has been held constitutionally valid. He stated that he knows they are charging it in his office and they are charging it in the Clark County office and both are getting convictions. He stated that this particular bill does not state whether or not a man receives probation or whether or not a judge gives a five year sentence or a 15 year sentence or a 30 year sentence, but, those are the matters that still go to the court more than to the substance of what is contained within these words. He concluded that he likes the way it is presently worded in opposition to the proposed bill because this would result in the limitation that Tom was talking about. He stated that in the proposed legislative package that was sent to this committee, the D.A. Association did propose in regard to this statute that the words, "any person who uses" be changed to "any person who uses or possesses" a fire arm.. He stated that he has no objection to the five year minimum, however, he does feel that the seven year maximum places a limitation that would be counter-productive.

Mrs. Hayes asked if they had a definition of the term "deadly weapon".

Mr. Beatty answered that whenever a firearm is involved that is a deadly weapon. Anything other than that becomes a jury question.

Mr. Ross commented on the fact that perhaps the ~~public~~ is one of information or the lack of information to the public

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and Mr. Beatty answered that perhaps this is the problem.

Mrs. Wagner asked in regard to the proposed change from the "use of a firearm" to "uses or possesses", would it then be up to the District Attorney's judgment as to whether, if this definition is enlarged in scope, whether they were going to use that or not. Mr. Beatty answered that ultimately in any criminal case, it must be left to first, the police department and secondly the prosecutor to determine if they have evidence and facts which will prove a violation of the specific statute. Mr. Hicks then further elaborated on the subject.

Mr. Barengo stated that the matter would be taken under consideration and he further stated that perhaps the committee would hold it up until there are some other bills on this area and put them all together.

There being no further business, Mr. Barengo adjourned the meeting at 10:15.

Respectfully submitted,

*Anne Peirce* *lc*

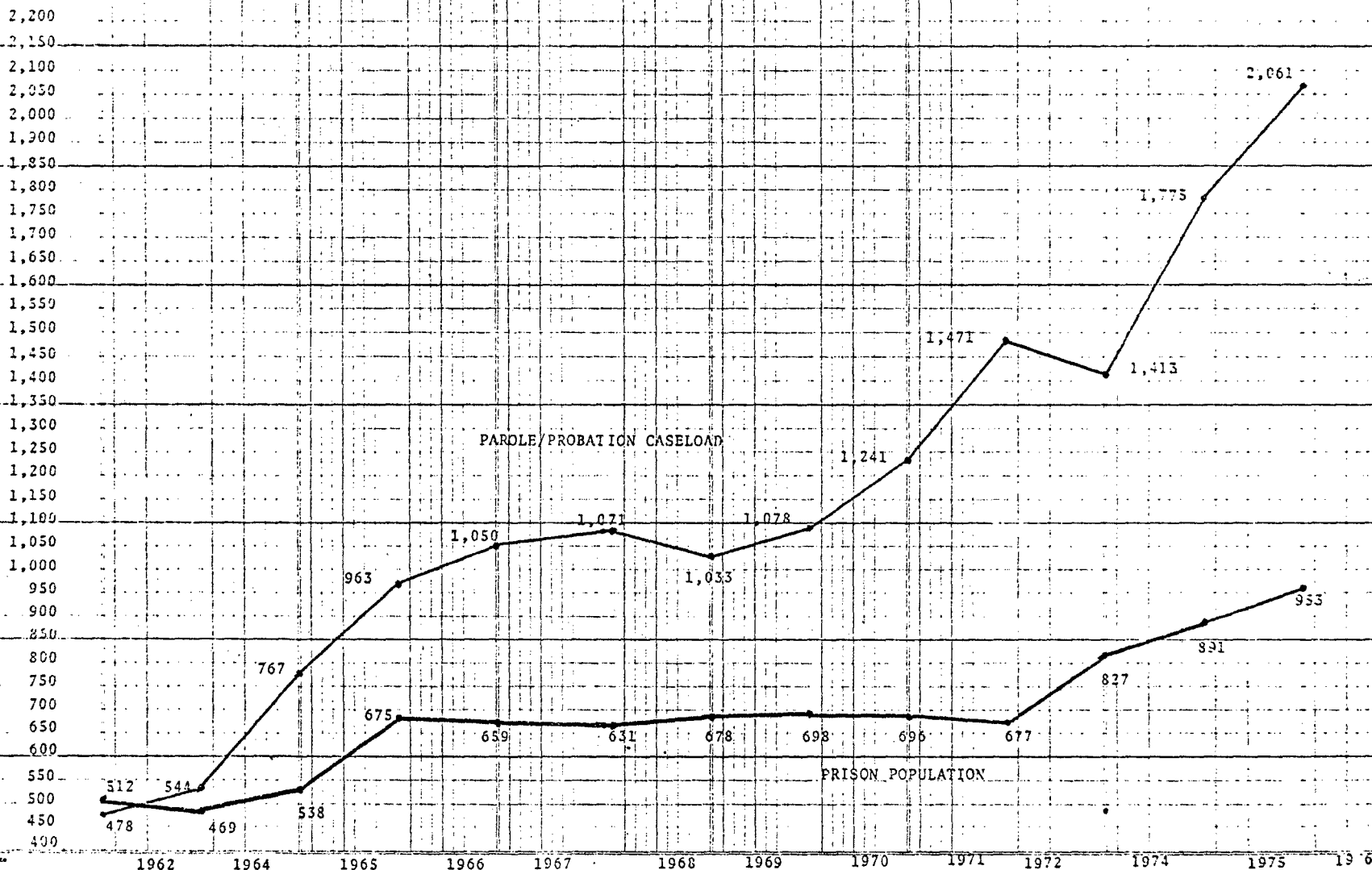
Anne Peirce, Assembly Attache



PRE-SENTENCE DISPOSITIONS BY DISTRICT COURTS

	1971-72		72-73		73-74		74-75		75-76	
Probation granted:	800	69%	939	71%	973	67%	1,039	64%	1,260	67%
Probation denied:										
To Jail	77	6½%	76	6%	83	6%	116	7%	119	6%
To Prison	214	18½%	272	20%	319	22%	409	25%	378	20%
Fined	13	1%	7	½%	8	¾%	24	1½%	18	1%
Other:										
Sentenced to Time Served	0		0		9		10		9	
Dismissed	3		5		3		4		0	
With Warrant Fuged	8		4		0		12		0	
No Action	41		25		48		9		95	
Other	0		0		0		7		2	
<hr/>										
1 Other	52	5%	34	2½%	60	4¼%	42	2½%	106	6%
1 -Sentences	1,156	100%	1,328	100%	1,443	100%	1,630	100%	1,881	100%

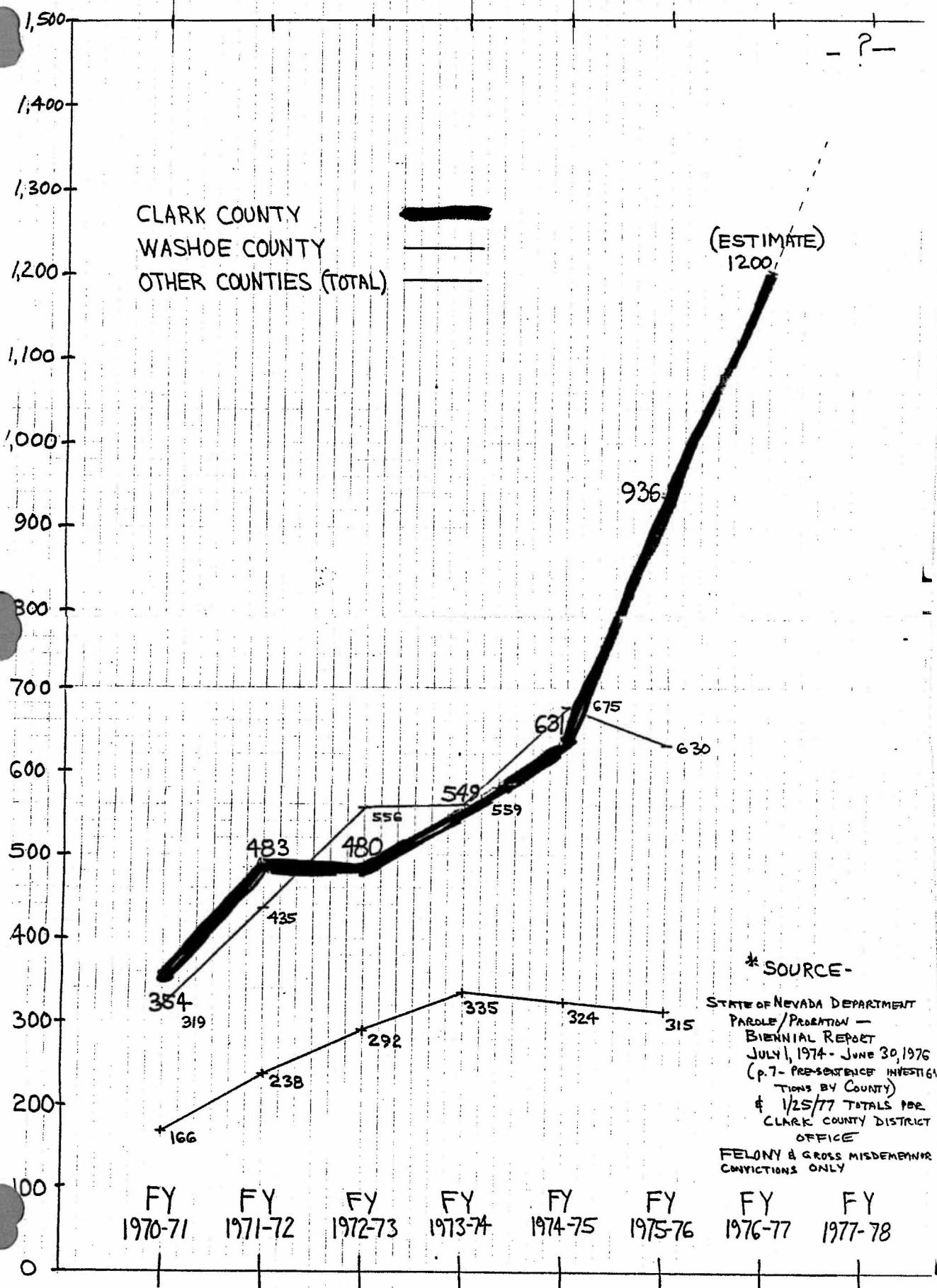
PRISON POPULATION vs. PAROLE AND PROBATION CASELOAD



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# PERSONS CONVICTED\*



\* SOURCE -  
STATE OF NEVADA DEPARTMENT  
PAROLE/PROBATION -  
BIENNIAL REPORT  
JULY 1, 1974 - JUNE 30, 1976  
(p. 7 - PRE-SENTENCE INVESTIGATIONS BY COUNTY)  
‡ 1/25/77 TOTALS FOR  
CLARK COUNTY DISTRICT  
OFFICE  
FELONY & GROSS MISDEMEANOR  
CONVICTIONS ONLY

ASSEMBLY

REVISED AGENDA FOR COMMITTEE ON JUDICIARY

Date Feb. 4, 1977 Time 9 a.m. Room 240

Bills or Resolutions  
to be considered

Subject

Counsel  
requested\*

Bills or Resolutions to be considered	Subject	Counsel requested*
Feb. 4 AB 24	Revocation or modification of parole from juvenile correctional institutions.	
AB 25	Requires notice of application for attorneys' fees in summary administration of decedents' estates.	
ACR 11	Commends General Federation and Nevada Federation of Women's Clubs for "HANDS UP" program against crime.	