

Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Prengaman
Mr. Sena

Members Absent:

Mr. Polish

Guests Present:

Bryn Armstrong	Chairman, Nevada Board of Parole Commissioners
A. A. Campos	Dept. of Parole & Probation
Norm Heering	Deputy Attorney General
Larry Ketzenberger	Las Vegas Metro Police Department
Bill Macdonald	District Attorney, Humboldt County
Mike Malloy	Washoe County District Attorney's Office
Steve McMorris	District Attorney, Douglas County
Geno Menchetti	Attorney General's Office
Bob Miller	District Attorney, Clark County
Stan Warren	Nevada Bell

Chairman Hayes called the meeting to order at 8:05 a.m.

ASSEMBLY BILL 458

Provides for oaths and subpoenas in connection with parole and probation.

Mr. Bud Campos, Department of Parole & Probation, said that this bill would give the Department of Parole & Probation, Hearing Officers and the Parole Board, powers to subpoena witnesses for hearings. Mr. Campos said they currently have two types of hearings in revocation processes:

1. Preliminary inquiry.
2. Appearance before parole board or district courts.

The purpose of this bill is to give the Department of Parole & Probation authority so that they can compel witnesses to attend hearings who would otherwise be unwilling.

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Mr. Campos said that approximately 5% of the people refuse to testify because they themselves are a little on the shady side. There would be no fiscal note to this because funds are already in the budget to pay for transportation for witnesses and so on.

Mr. Bryn Armstrong, Chairman, Nevada Board of Parole Commissioners, stated that this request for subpoena powers as far as the parole board is concerned is based on the premise that in certain kinds of hearings involving certain personnel there is an element of danger to the witness.

In answer to Mr. Malone's question whether or not it is wise to force a prisoner to testify, Mr. Armstrong said this must be balanced; if a prisoner has been granted parole but his conduct declares himself unready for this privilege, we must determine whether it is in society's best interest to keep him in jail or turn him loose because a witness is reluctant to testify.

Mr. Norm Heering, Deputy Attorney General representing the Department of Parole & Probation. Mr. Heering stated that he appeared before the Committee in support of this legislation. Mr. Heering said that the majority of parole revocation hearings are held outside the prison setting. At this time there is no leverage over witnesses because they usually appear out of their own good heartedness. Mr. Heering said there were a number of other state agencies that have subpoena powers, including, Department of Commerce, Equal Rights Commission, State Board of Health, Director of Dept. of Motor Vehicles, Commissioner of Savings and Loan Institutions and Director of Department of Agriculture to name a few. Mr. Heering said that in taking away a person's conditional liberty, his freedom, it is necessary to bring those people who are directly related into that hearing and give testimony.

ASSEMBLY BILL 459

Authorizes arresting officer to release under certain circumstances person arrested without warrant.

Mr. Bud Campos stated the intent of this bill is to give an officer authority to release an individual following an arrest if he determines there is no tangible violation. Mr. Campos said this was something that had been done out of tradition but last year one of the District Attorney's questioned our authority to "play judge" and release someone after they had made an arrest without some legislative authority to do so. Research was done and it was felt the first thing that should be done would be to tie in with the same authority that all police officers have following an arrest if they did not find the person arrested not guilty. Mr. Campos said the "no charges filed" is normally

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the way the release goes when the police do it. It would be extremely difficult to go to the judge or original jurisdiction and ask permission to release someone because usually the place someone is being supervised is not the place he was sentenced. In regard to utilizing the jail as some sort of punishment if the individual is not doing quite what is expected of him, he may be arrested on Friday and released on Monday. This is not the intent of the department and any time this type punishment is brought to the attention of the department corrective steps are taken to stop it.

Mr. Steve McMorris, District Attorney for Douglas County, stated he had no objections to the insertions in these sections but referred to the bottom of Page 1, Number 5, stating that this was similar to 849 D of the California Penal Code. Mr. McMorris suggested that if this statement is included, the last sentence in 849B which states "thereafter such arrest shall not be deemed an arrest but a detention only" should also be included. This way it is made perfectly clear that the person does not have an arrest on his record, they will have a release form which will state to that effect and thus not cloud the person's record with what appears to be an arrest. Mr. McMorris said that 849B was a very common practice in California and felt that if a person can't be formally charged this is a good idea to protect people. If a person is arrested now in the State of Nevada, this will reflect as an arrest on their record. Mr. Malone said that the person had to be booked first before it would appear on his record.

Mr. Larry Ketzenberger, Las Vegas Metro Police Department, said that if after a person is detained and it is later found to be the wrong individual, he will be released. The present policy is that if someone is arrested with probable cause and find out that before he is taken to jail that circumstances and facts were not what were thought, he is released in the field rather than carry out the booking. An incident report will be written so that in the event there is a suit brought later on the facts and circumstances known to the officers at the time of the detainment are available to someone for their defense. Mr. Ketzenberger said that if a person is actually taken to jail and booked and is later determined through investigation that he is going to be released without filing a charge, then his record should reflect that an arrest had been made. In regard to a false arrest the records will show that there were no charges filed.

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Mr. McMorris said the way the bill was drafted now it addresses anyone who in fact has been booked and through the process. In most instances the District Attorneys are called and told that a certain person is in custody, they review the case and decide whether or not to release the person.

Mr. Malone asked how this arrest would be taken off the records if the person had been booked for two or three days and it was decided to release him with no charges filed? Mr. Ketzenberger said that there is a law in the State of Nevada whereby a person may petition the court to have their arrest record sealed. Currently all records show that there was an arrest and a release. If the language of the law were changed, instead of the last entry pertaining to the release saying no charges filed, it would say, "deemed not an arrest, detainment only". Mr. Ketzenberger felt this was a play on words.

Mr. Ketzenberger could see nothing wrong with the way the bill was written, he felt this does perhaps serve to eliminate a question that has been raised in the minds of peace officers in the past in that once they put hands on a person are they obligated to take him in and book him. This explains "no" you are not obligated to do this.

Mr. Bill Macdonald, District Attorney, Humboldt County, felt this was a good piece of legislation but would support Mr. McMorris' position with respect to including the balance of the California provision because:

1. Large number of officers are afraid to release someone after they have taken them into custody without having the District Attorney or the court tell them to release the person. Would like to see complaint filed to protect them from liability.
2. If a person had problems in a particular community and was released before being booked, if the date is known by another person, that person can find out from the agency that you were detained even if you were not booked. This record is made to protect the agency.

ASSEMBLY BILL 460

Excludes time spent as escaped prisoner as time served on term of imprisonment.

Mr. Bud Campos felt that this bill addressed the problem that when a person absconds supervision, that from the time that person absconds to when he or she is back in custody they do not get credit for that period of time as part of their original sentence. As the bill originally read, it only applied if the person left the State of Nevada when in fact it should include the person who absconds our supervision whether he's left the state or not.

ASSEMBLY BILL 461

Provides for determining for certain purposes terms of imprisonment of prisoners serving multiple sentences.

Mr. Bud Campos said AB 461 would effect the prison, the Department of Parole & Probation and the Board of Parole Commissioners. It addresses the current problem of the way consecutive sentences are handled. The way they are handled under current laws as far as parole eligibility is concerned, a prisoner would serve 2 1/2 years on the first 10, then could be paroled to the second 10, serve 2 1/2 years on that, then be paroled to the consecutive 5 and then when eligible the CS 5 could be finally paroled to the last CS 5 which would be eligible to be paroled to the community. Their interest is the fact that when this occurs, one condition is that that individual obey all institutional rules and so on. Mr. Campos said that at the present time over 100 persons in prison fall in this category, this represents 8% of the prison population.

Mr. Bryn Armstrong said he was ambivalent towards this bill. Mr. Armstrong felt that the only thing that could be said for the present system is that the prison uses the current set up where you advance from one sentence to another as a management tool. Mr. Armstrong said that prisoners would be under the jurisdiction of the state for a substantially longer period of time under this bill.

Mr. Geno Menchetti, Attorney General's Office, said this bill was presented to the law enforcement community and the law enforcement community does support this bill.

ASSEMBLY BILL 456

Increases threshold of amount required for felony in crimes against property.

Mr. Bill Macdonald, District Attorney, Winnemucca, said that increasing the felony threshold is one that is long overdue. He said it was very important to increase the threshold from \$100 to \$250 and hoped to see all \$100 thresholds increased to \$250 if in fact AB 456 (Committee Minutes) does not do so.

AB 456

Mr. Mike Malloy, Washoe County District Attorney's Office, said that regarding the need for more JP's because there being more misdemeanor cases the contrary would be true. Mr. Malloy said that unfortunately the bill does not include amendments for NRS 205.275 which is "possessing, receiving stolen property". NRS 205.300, which is embezzlement, has the same threshold value, should be added to this bill and 205.130, which is the "non-sufficient funds" statute should also be added to this bill. Mr. Malloy anticipated some resistance from some members of the business community simply because they wanted to impress on the public that if you steal something worth \$100 it's a felony and make it therefore psychologically more meaningful to the person who is likely to steal. The person who is likely to steal will get more justice at the misdemeanor level than at the felony level at these low price ranges simply because with the misdemeanor the punishments are going to be more meaningful than the district courts have been handing out.

Mr. Bob Miller was in favor of this bill because he felt that we have the responsibility to realize the law in the first place and therefore the exact value of the money now as it was at the time it was enacted. At the time the original \$100 threshold was enacted \$100 was worth significantly more than it is today. The intent of the legislation is not to set an amount that discourages grand larceny as opposed to petty larceny, it's to realize what an appropriate amount for determining the two is. Prosecution, amounts of theft within that area of \$100 to \$200 receive little if no attention. That amount is an area where its almost impossible to convince a jury that they should be bothered even hearing the case. Judges are reluctant to hear a grand larceny when you are talking \$100 to \$115 and will put direct or indirect pressure on the prosecutor to plea bargain the case. The petty larceny cases receive tremendous emphasis. Therefore a primary emphasis is given in municipal courts towards punishments and priority on these type cases. At the present time in justice court any first offender in a petty larceny goes to court counseling. Those people who are repeat offenders are usually felons already.

Mr. Steve McMorris, stated that the District Attorneys' Association is sponsoring this bill and it has been submitted to the law enforcement communities. Mr. McMorris said we ought to deal in realistic terms and in reality if someone does not have a prior record and is involved in the theft of a \$125 item, he could not foresee it being a felony but rather a misdemeanor. Mr. McMorris felt it very important that the Committee pursue tying in 205.300 and 205.275 "embezzlement and receiving stolen property", because those two sections make cross-reference back to the larceny statute as to what the penalty is going to be.

AB 456

Mr. Bud Campos spoke in favor of the bill for the following reason:

1. Feel that if grand theft occurs in area of less than \$150, nothing happens, there are many other priorities and this type case keeps getting put off and in the end nothing happens. Many business men do not bother reporting crimes because they feel nothing will happen except they might be harassed into making or writing statements and going in as a witness. The JP or municipal court level is much easier to process and much cheaper to the taxpayer and the end result is that overall more will happen to the perpetrator than the system we now have.

Mr. Geno Menchetti said he had done some researching and found that the threshold was \$50 in 1911; in 1947 it was changed to \$250 and in 1949 changed to \$100. Mr. Menchetti felt that district courts often time do not have the time to handle these cases.

ASSEMBLY BILL 457

Enables court to order restitution as additional penalty for crimes against property.

Mr. Bill Macdonald felt this bill would enable the courts to order restitution as an additional penalty and felt this was an excellent provision. Mr. Macdonald recommends we go one step further in that permitting judges to require restitution, that person who has been convicted not be permitted to have his civil rights restored, his records sealed and the various things that can be done years on down the line, until he has made restitution, until he has paid his fine.

Mr. Bob Miller felt these could be compared with the bills that were discussed by Assemblymen Wagner and Price, giving back to the person who was victimized what was taken from him and what is the result. Mr. Miller suggested an amendment making it mandatory in any felony conviction to provide an amount between \$250 and \$5000 to be determined by the judge and placed with the Department of Human Resources, for the purpose of paying back or paying the expenses of the person who was victimized.

Mr. Campos felt this bill did not address probation and could confuse the intent of this bill. Mr. Campos said that all courts over the State of Nevada do order restitution as a condition of probation. Mr. Campos added to the effect that nothing in this section shall prohibit district courts from ordering restitution upon conviction of any crime as a condition for probation. If a

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person does not make restitution and is capable of doing so probation can be revoked. Mr. Campos felt that the way the statute is worded he was not sure what a court could do if a person did not make restitution. He felt this could interfere with what is now a successful process. At this time the Nevada Supreme Court has said that the courts can only in effect revoke probation for non-payment of restitution if it can be established that they were capable of paying but did not pay.

Mr. Stan Warren, Nevada Bell, gave his support of the bill and felt that any time you can attempt to regain some restitution for the damages done to a utility plant, it will be in the subscribers interest in the long run.

In answer to Mr. Stewart's question as to what would happen if restitution were not made, Mr. Miller felt that the only thing that could be done at the present would be to adjudicate the person in contempt of court.

AB 456

Mr. Larry Ketzenberger said that he had spoken with four district attorneys and would like to suggest an additional statement in the wording of the first section of 205.220 to the effect of the determination of the value in a larceny shall be determined to be its fair market value. Mr. Ketzenberger also suggested that Committee adopt a uniform charging policy in various jurisdictions.

AB 457

Mr. Sena made the motion Do Pass As Amended deleting "against property". Mr. Malone seconded the motion. Chairman Hayes stated she would check with Legal Counsel on the language of this amendment. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Coulter, Malone, Prengaman, Sena - 6

Nay - Banner - 1

Absent - Brady, Fielding, Horn, Polish - 4

AB 458

Mr. Stewart made the motion Do Pass; Mr. Malone seconded the motion. Chairman Hayes said we would hold this bill; Mr. Stewart withdrew his motion.

AB 460

Mr. Stewart made the motion Do Pass; Mr. Sena seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Malone, Prengaman,
Sena - 7

Nay - 0

Absent - Brady, Fielding, Horn, Polish - 4

AB 461

Chairman Hayes said that AB 461 would be held for a day or two.

ASSEMBLY BILL 227

Removes distinctions based on sex from statutes
regulating prostitution.

Mr. Prengaman made the motion Do Pass; Mr. Coulter seconded the motion. The Committee approved the motion on the following vote:

Aye - Hayes, Stewart, Banner, Coulter, Malone, Prengaman,
Sena - 7

Nay - 0

Absent - Brady, Fielding, Horn, Polish - 4

ASSEMBLY BILL 246

Removes distinction based on sex from NRS 194.010.

Mr. Stewart made the motion Do Pass; Mr. Coulter seconded the motion. The Committee approved the motion on the following vote:

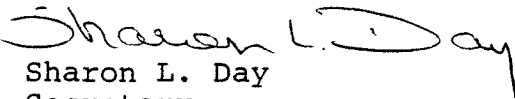
Aye - Hayes, Stewart, Coulter, Malone, Prengaman - 6

Nay - Banner - 1

Absent - Brady, Fielding, Horn, Polish - 4

Chairman Hayes adjourned the meeting at 10:12 a.m.

Respectfully submitted,


Sharon L. Day
Secretary