

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Dodge
Senator Raggio
Senator Sloan
Senator Ford
Senator Don Ashworth

ABSENT: None

AB 160 Provides for establishment of criteria for repayment by offenders for damage to state property.

Charles L. Wolff, Jr., Director, Nevada Department of Prisons informed the Committee that this would place into statute something that is presently being done by procedure. In cases where an inmate has been found guilty of destroying state property, his account is frozen. On the basis of that, whatever income he generates while he is in the prison system is credited against the cost of replacing the item that has been destroyed.

Mr. Wolff stated that during the period from February 1978 through December 1978, 44 inmates were assessed a value of \$10,537 by the disciplinary committee for property that had been destroyed.

Senator Dodge asked what criteria was used to base the deductions on.

Mr. Wolff responded that the fair market value of the item was used.

Senator Close asked if there were any way the prisoner could contest the fine assessed.

Mr. Wolff replied that when a prisoner is written up on a disciplinary report, he is given a formal hearing before the disciplinary committee. He stated that that is a 3 member committee consisting of the Program Director, a Captain, and one other member such as a counselor, school teacher, or sergeant. He further stated that the disciplinary hearing follows the due process clause that is presently in the law.

Assemblyman Lloyd W. Mann, District 2, testified in support of this measure. He concurred with Mr. Wolff's remarks.

Senator Raggio moved that AB 160 be reported out of committee with a "do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

AB 169 Defines kidnapping for sexual assault as kidnapping in the first degree.

Steve McMorris, State District Attorney's Association, testified in support of this measure. He stated that this bill had been sponsored by the Association and that it had the full support of the law enforcement community. He informed the Committee that this bill came about because of a recent case in which a man took a woman to California and raped her. Under the present law, they were only able to prosecute him for second degree kidnapping.

Mr. McMorris stated that it was the Association's position that the penalty is not severe enough for the crime.

Senator Dodge moved that AB 169 be reported out of committee with a "do pass" recommendation.

Seconded by Senator Sloan.

Motion carried unanimously.

AB 181 Includes theft of automobile regardless of its value in grand larceny.

Michael Malloy, Assistant District Attorney, Washoe County, testified in support of this measure. He stated that there was a real problem in getting expert testimony on the value of a vehicle. Value has to be proven affirmatively as one of the elements of the charge before an individual can even be bound over for trial. He stated that value cannot be presumed or assumed, even if the vehicle was a Rolls-Royce.

Mr. Malloy informed the Committee that he believed there could be a potential problem by the use of "automobile." It was his feeling that this would limit it to passenger cars only. He suggested that the language be amended to conform with the rest of the NRS by using "motor vehicle."

The Committee concurred with that proposed amendment.

Senator Raggio expressed concern that this might be in conflict with the unlawful taking of a motor vehicle statute (joy riding).

Mr. Malloy responded that the larceny statute requires intent on the part of the perpetrator to permanently deprive; that has been interpreted as a requirement of the law by the Supreme Court.

Steven McMorris, State District Attorney's Association concurred with Mr. Malloy's testimony.

Senator Sloan moved that AB 181 be reported out of committee with an "amend and do pass" recommendation.

Seconded by Senator Ford.

Motion carried unanimously.

AB 185 Clarifies grounds for dismissal of complaint in criminal cases in justices' courts and on appeal.

Tom Susich, Assistant District Attorney, Douglas County, informed the Committee that this was a housecleaning measure. He stated that under the present statute, a criminal defendant can move to dismiss a misdemeanor complaint if the complaint contains more than one count. The intent of the statute was that you could not charge more than one offense within a count of a criminal complaint.

Senator Raggio moved that AB 185 be reported out of committee with a "do pass" recommendation.

Seconded by Senator Ford.

Motion carried unanimously.

SB 19 Raises monetary limit of jurisdiction of justices' courts.

For testimony and discussion of this measure, see the minutes for the meetings of January 25, January 30, January 31, and February 13, 1979.

Senator Close informed the Committee that Frank Daykin, Legislative Counsel Bureau, had reviewed the amendments and found that jury trials cannot be eliminated in small claims civil actions unless it is by constitutional amendment.

It was the decision of the Committee to pass SB 19 out of Committee as amended. (Formal action taken February 13)

SB 103 Requires bail to continue through different proceedings on same charge.

For testimony and discussion on this measure, see the minutes for the meetings of January 31, and February 2, 1979.

The Committee reviewed the final amendments and concurred with them. (Formal action taken on February 2, 1979)

SB 154 Limits permissible delay between arrest, arraignment and filing of criminal complaint.

For testimony and discussion on this measure, see the minutes for the meetings of February 6 and February 7, 1979.

The Committee reviewed the final amendments and concurred with them.

Senator Hernstadt moved that SB 154 be reported out of committee with an "amend and do pass" recommendation.

Seconded by Senator Ford.

Motion carried. The vote was as follows:

AYE:	Senator Close	NAY:	Senator Sloan
	Senator Hernstadt		
	Senator Dodge		
	Senator Raggio		
	Senator Ford		
	Senator Don Ashworth		

BDR 8-1460 Specifies rights and liabilities of lessor and lessee upon termination or expiration of the lease of a motor vehicle.

Following a brief discussion, it was the decision of the Committee to not recommend this measure for Committee introduction.

SB 26 Increases maximum contractual rate of interest.

For testimony and discussion on this measure, see the minutes for the meetings of February 8, and February 13, 1979.

Senator Close stated that it was his understanding that it was the desire of the Committee to amend this bill by excluding mortgage companies, making it effective upon passage and approval, and by defining usury in accordance

234

with Regulation Z of the federal regulations.

Senator Hernstadt reiterated his opposition to making this applicable only to lending institutions.

Senator Close will have amendments drafted which will encompass the Annual Percentage Rate of Regulation Z into the definition of usury.

No action was taken at this time.

SB 99 Consolidates various provisions relating to wrongful death actions.

For testimony and discussion on this measure, see the minutes of the meetings for January 31, February 8, and February 14, 1979.

The Committee discussed the letter from Peter Neumann, Nevada Trial Lawyers (see attached Exhibit A) regarding punitive damages in cases where the defendant dies.

Senator Raggio concurred with Mr. Neumann's remarks.

Senator Dodge stated that he was opposed to this and that he would much prefer to tie down the amount of damages that can be awarded in every defensible way possible. He suggested that the Committee invite discussion from insurance companies to find out if it presents a problem.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley
Cheri Kinsley, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman



Feb. 15, 1979

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Sen. Mel Close
Senate Judiciary Committee
Nevada State Senate
Carson City, Nv.

Re: SB 99, As Amended by BDR 3-274
(Amendment No.63)

(Proposed amendments to the amended bill)

Dear Senator Close:

NTLA would respectfully suggest to the Judiciary Committee that the enclosed proposed changes be incorporated into the above bill.

The wrongful death statute is a complex matter. But the amendment number 63 is definitely helpful to the problems of "conscious pain and suffering" of the decedent before death, and the "grief & sorrow" damages for the survivors.

The problem NTLA sees is that under the Bill as Amended, the legislature is in effect creating a new cause of action -- in favor of the "Estate" (personal representative of the Estate) of the decedent --- which is in addition to the cause of action in favor of the "heirs."

Insurance companies will have trouble with the concept of settling with the "heirs" in those cases where the "estate personal rep." might still be able to sue.

But in any event, NTLA would prefer to see the "heirs" be allowed to maintain their action for both the economic and the non-economic or intangible damages, in those cases where there is an "heir." Otherwise, there is going to be a possible conflict between the "heir" and the "personal rep. of the estate" in cases where they both wind up suing the defendant.

The pencilled-in changes in the Amended Bill are an attempt to solve this potential problem with the bill; however, you might want to simply re-draft the whole bill using your own choice of language.

By the way, taking away punitive damages in cases where the defendant dies is not necessary: the Supreme Court has already done so in the 1978 case of Sarah Allen vs. Estate of Ruark. NTLA would prefer to not re-inforce that decision by legislation -- leaving instead the question at least open to another Supreme Court someday in the future. There are some pretty good reasons for the proposition that punitive damages ought to be taxed against some estates, in the right cases. It isn't a problem, now, so why codify an questionable decision?

Thank you for your patience and consideration on this bill.

E X H I B I T A

Affiliate of the Association of Trial Lawyers of America

248

ASSEMBLY BILL NO. 160—ASSEMBLYMEN MANN, SENA, BRADY, HARMON, JEFFREY, GETTO, MARVEL, CAVNAR, RUSK, MELLO, DINI, MAY, CRADDOCK, WESTALL, TANNER, WAGNER, WEBB, BERGEVIN, ROBINSON, FIELDING, WEISE, COULTER, STEWART, HORN, VERGIELS, MALONE, POLISH, FITZPATRICK AND HAYES

JANUARY 22, 1979

Referred to Committee on Judiciary.

SUMMARY—Provides for establishment of criteria for repayment by offenders for damage to state property. (BDR 16-83)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to prisons; providing for the establishment of criteria for a reasonable deduction from the personal funds of an offender to pay for state property which has been willfully damaged or destroyed; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 209 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 *The board shall establish by regulation criteria for a reasonable*
- 4 *deduction from money credited to the account of an offender who has*
- 5 *willfully damaged or destroyed state property during his incarceration,*
- 6 *on account of the harm done.*

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A. B. 169

ASSEMBLY BILL NO. 169—ASSEMBLYMEN
BARENGO AND HAYES

JANUARY 23, 1979

Referred to Committee on Judiciary

SUMMARY—Defines kidnaping for sexual assault as kidnaping
in the first degree. (BDR 16-790)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to crimes against the person; defining kidnaping for the purpose
of sexual assault as kidnaping in the first degree; and providing other matters
properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. NRS 200.310 is hereby amended to read as follows:
2 200.310 1. Every person who shall willfully seize, confine, inveigle,
3 entice, decoy, abduct, conceal, kidnap or carry away any [individual
4 human being] *person* by any means whatsoever with the intent to hold
5 or detain, or who holds or detains, [such individual] *the person* for ran-
6 som, or reward, or for the purpose of committing *sexual assault*, extortion
7 or robbery upon or from [such individual,] *the person*, or to exact from
8 relatives, friends, or other person any money or valuable thing for the
9 return or disposition of such kidnaped person, and every person who
10 leads, takes, entices, or carries away or detains any minor with the intent
11 to keep, imprison, or confine it from its parents, guardians, or any other
12 person having lawful custody of such minor, or with the intent to hold
13 such minor to unlawful service, or perpetrate upon the person of such
14 minor any unlawful act [shall be deemed] *is* guilty of kidnaping in the
15 first degree.
16 2. Every person who shall willfully and without authority of law
17 seize, inveigle, take, carry away or kidnap another person with the intent
18 to keep such person secretly imprisoned within the state, or for the pur-
19 pose of conveying such person out of the state without authority of law,
20 or in any manner held to service or detained against his will, [shall be
21 deemed] *is* guilty of kidnaping in the second degree.

ASSEMBLY BILL NO. 185—COMMITTEE ON JUDICIARY

JANUARY 24, 1979

Referred to Committee on Judiciary

SUMMARY—Clarifies grounds for dismissal of complaint in criminal cases in justices' courts and on appeal. (BDR 15-800)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to procedure in criminal cases in justices' courts; clarifying the grounds for dismissal of a complaint in justice's court and on appeal; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 185 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 *Any complaint, upon motion of the defendant, may be dismissed by*
4 *the justice of the peace upon any of the following grounds:*
5 1. *That the justice of the peace does not have jurisdiction of the*
6 *offense.*
7 2. *That more than one offense is charged in any one count of the*
8 *complaint.*
9 3. *That the facts stated do not constitute a public offense.*
10 SEC. 2. NRS 189.070 is hereby amended to read as follows:
11 189.070 [The complaint, on] *Any complaint, upon motion of the*
12 *defendant, may be dismissed upon any of the following grounds:*
13 1. *That the justice of the peace did not have jurisdiction of the*
14 *offense.*
15 2. *That more than one offense is charged [therein.] in any one count*
16 *of the complaint.*
17 3. *That the facts stated do not constitute a public offense.*