Research

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE

March 11, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:05 a.m., Wednesday, March 11, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator William H. Hernstadt
Senator Jean E. Ford
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

SENATE BILL NO. 355--Limits duration of and expands permitted reasons for temporary furloughs of prison inmates.

Senator Ford advised the committee S. B. No. 355 was drafted at her request. During the 1979 session, the Senate Committee on Judiciary passed this bill but it did not pass in the Assembly Judiciary. She stated another effort is being made to pass the bill this session.

Mr. Charles Wolff, Director of the Department of Prisons, stated he was testifying in support of S. B. No. 355. This bill provides for family visitation. One of the reasons for the bill is for the opportunity of inmates to obtain medical treatment which is not afforded by the state, such as at the Veterans Administration Hospital. Regarding family visits, he has worked with that legislation before and felt it is a good concept. The inmate has a chance to renew family ties, seek employment and generally adjust to society prior to his release. Mr. Wolff gave the committee information written by two inmates, both counsel substitutes, one in the female facility and one in the Northern Nevada Correctional Center. See

Exhibit C attached hereto. These reports put in perspective how the inmates feel about the legislation of S. B. No. 355 and which Mr. Wolff endorses. Mr. Wolff stated he had worked with this system in Nebraska and Virginia which had much broader visitation and furlough privileges than those proposed in this bill. Nebraska has a 30-day furlough plan, but do not feel it is necessary, a 72-hour program would be sufficient. The inmate would be allowed to go go a family home but not allowed to leave the state. He stated under Section 2, (a), should read, are limited to the confines of the state and the duration of 72 hours, a change is needed to reflect this.

Chairman Close asked at what point are family visits allowed. Mr. Wolff stated it would be at the end of the sentence, except for emergencies, about the last year. Senator Wagner questioned the new language regarding the 72 hour time limit. Mr. Wolff said 72 hours would cover anything except medical. It was a decision of the committee to limit the time to 72 hours.

Mr. Don Winne stated he had been in law enforcement for a number of years with the state and has studied the federal system. He would urge the consideration of S. B. No. 355. One reason is for economy, he has been involved for a number of years in sending people to jail, he quit that career because he was sending people to postgraduate schools of crime. Rehabilitation should be emphasized and an incentive program should be provided in prison to get people started on their rehabilitation. A program to allow an inmate to go home, seek employment, and adjust to society before release is very beneficial. Inmates should be given some kind of hope and although 72 hours is a short period, is a good beginning. He urged the passage of S. B. No. 355.

Ms. Judy Cherry stated she was testifying in behalf of herself and the families of inmates in the prison. She urged the passage of S. B. No. 355 to provide family visitation rights. Inmates are not able to relate to the outside or what is happening with their familes. Having furloughs would help in the adjustment period when an inmate is released.

Senator Raggio asked Mr. Wolff if problems have been encountered if a pregnancy results from family visitation. Mr. Wolff stated it could pose problems, a wife may have to go on welfare but so far has not been a real problem with having furloughs. A female inmate who comes in pregnant may give up the baby for adoption or a family member may take the baby. Consideration may be given for parole but only if the female inmate is close enough to be given a parole legally.

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Mr. Bud Campos, Department of Parole and Probation, stated he basically supported S. B. No. 355, he felt the program is as good as the classification system. The critical factor is who is let out on furlough.

SENATE BILL NO. 354--Exempts department of parole and probation from requirements of Nevada Administrative Procedure Act.

Mr. Bud Campos stated S. B. No. 354 would exempt the Department of Parole and Probation from the Administrative Act of putting out policies and procedures to open meetings and subject those to review by the Legislative Counsel Bureau and the Secretary of State. He pointed out most of the agencies exempted are law enforcement type agencies, the reason for exemption is because they do not want their clientele to know the rules. The Department of Parole and Probation deals with convicted persons and there are numerous regulations which should not be made known to them. The Administrative Act is designed to have citizens able to have input regarding matters which will affect them. The Department of Parole and Probation was exempted until the time they were taken out from under the Board of Parole Commissioners. The Commissioners, while with the Department of Parole and Probation, always did publish their rules. After revising the manual for the department, Mr. Frank Daykin said there was not one rule which needed to be under the administrative act. The manual is constantly being changed and it is difficult to go through the administrative procedures act each time. As the act is written now, it is very vague and in trying to find out what does or does not fall under that act, the people that should know cannot give definite answers. Mr. Campos felt the administrative act needs work. The Parole Department was exempted in 1977 from the act when the full time parole board was established, the department was automatically taken out from under the jurisdiction. The process is delayed when the manual is changed, sometimes up to three months when covered by the act and have to wait for a decision. Mr. Campos stated on one occasion a delay of 11 years was experienced, the first major policy revision manual was sent to the attorney general office for review prior to enacting it.

SENATE BILL NO. 356--Changes provisions relating to dishonorable discharges from probation.

Mr. Bud Campos stated as the law reads now, the courts have to issue a dishonorable discharge when a person's probation has been revoked, also when a probation would have otherwise expired, his whereabouts is unknown and a warrant has been issued for his arrest. He stated the language is backwards. When a person's probation is

revoked, there is no need to issue any kind of discharge. The revocation of the probation takes care of that probation, it is gone. Sometimes a person has successfully been a fugitive for a period of time and the probation would have expired, but because of the degree of criminality, the court may desire to have the warrant remain to keep him in a status to be arrested. The courts have determined that as long as a warrant is issued prior to the expiration of a term, the term in effect will not expire. He stated a person cannot be given an honorable discharge under this bill because it is covered in other statutes and are very specific. Another choice of discharge is none if probation has been revoked or may not discharge them and leave the case open.

SENATE BILL NO. 321--Clarifies certain provisions of law relating to estates of decedents.

The committee discussed S. B. No. 321 and the reasons why the bill was originally drafted. Chairman Close advised the committee he requested the bill, after discussion with Mr. C. D. Brown, Valley Bank of Nevada. See Exhibits D and E attached hereto. Mr. Frank Daykin, Legislative Counsel was asked to explain to the committee the changes in S. B. No. 321.

Mr. Frank Daykin stated in Section 3, 30 days ends the appeal period. Chairman Close asked Mr. Daykin if there is any reason to have the property distributed after the time for the final appeal having run. Mr. Daykin stated it was a possibility, the decision after a prior discussion between him and Chairman Close was that the distribution should not be held up, necessarily for 30 days after the closing, nor limit the time for taking an appeal to 10 days after the decree was entered. The creation of the gap was deliberate based on the theory in most estates an appeal would not be filed and no reason to hold it. It does create a gap because the fiduciary is discharged, then the successful appellate can go after the property but going after it in the hands of the distributee and not going after the executor's bond.

Senator Don Ashworth asked what would happen if the heir gets $10,000 and that sum is already spent. Mr. Daykin said the person entitled to the money has only a general judgment against the distributee which he may or may not be able to collect. The executor or administrator has no liability in that situation because he has been discharged and the sureties on his bond have been exonerated after he files all the documentation. It would have to be after the 10 days but could do it fairly promptly. To qualify the answer, if the particular circumstances underly-

ing the appeal were such and the supreme court so held that the executor had acted wrongfully, nothing would bar a cause of action from him against the executor for positive wrongdoing. However the sureties on his bond are still exonerated. He could have a liability after the exoneration of the bond, but only for his own positive wrongdoing, a rare situation, and would be a civil situation. The surety stands responsible for the executors handling of the assets and if the executor and distributee have conspired which amounted to an embezzlement by the executor, and the surety can be caught soon enough, he would be liable, if not, the executor would be civilly liable for his own conspiracy.

Senator Ford questioned in Section 1, lines 4 and 5, could the language read, upon the recording of the certified copy of the decree, rather than the expiration of 10 days. Section 3 allows him to record within the 10 days and if it is recorded on the second day, would it be permissible to allow distributing the estate once the recording has been made. Mr. Daykin said the purpose of the delay of 10 days was to permit a speedy appeal if a person wanted to take it. The recording in that situation could be a notice of list pendents would be immediately filed so the recording would not have the usual effect of notice to all the world the distributee had clear title.

Senator Don Ashworth said the individual executor could not come in on the day the decree is filed and have everyone waiting and give him all the receipts, file them and have him discharged that day. He has to have at least a 10-day period where people can appeal and keep him on the hook, to do it prior to that time. Mr. Daykin said in Section 3, there is 10 days to record the copy. In reference to Section 1, the time limit deals with the distribution upon the expiration of 10 days after the entry of the decree. In the meantime, if there was a decree of distribution which conveyed real property, he should have recorded that decree, this is not inconsistent because real property is there and an appeal, notice of list pendents, would be filed immediately by the other claimant if he was aware of his rights.

Chairman Close said the only way an executor can completely protect himself, assuming S. B. No. 321 is passed, is to wait until the expiration of 30 days following the order of distribution. Mr. Daykin agreed, this would protect him from any possibility of an appeal. It would be a matter of policy judgment whether all estates will be held for 30 days after order of distribution. Chairman Close said, in normal cases, there is no problem. If there is a concern, the executor can protect himself by holding for 30 days. Mr. Daykin agreed with Chairman Close and said he

thought that was the line of reasoning followed when discussing the proposed amendment, 10 days for distribution and 30 days for appeal.

Senator Keith Ashworth asked if the 10 days after the order of distribution put in for that purpose, could that 10 days be extended to 30 days. Mr. Daykin stated the 10-day period was to allow an appeal, it was to protect the would-be appellate. The 30-day delay, if occurred would be to protect the executor. Senator Don Ashworth said as a practical matter, what is going to happen is that in dealing with the only person living, a spouse, and banks are involved, the fund will be held for 30 days. Mr. Daykin agreed and added it will improve the situation.

Senator Hernstadt stated in reference to exonerating sureties and bonds, many wills provide there will be no bonds. He asked what happens so far as the executor is concerned. Mr. Daykin stated he is discharged, but not until the running of statute of limitations, discharged from his own wrongdoing. He said the real point of discharge of an executor is as against creditors, that is the main concern.

Chairman Close asked if this can be done for 10 days and the executor cannot be protected until 30 days have expired, the language on lines 5 and 6, Section 1, states without unnecessary delay. Mr. Daykin stated that becomes, as under the present statute, hortatory. Hortatory means words of encouragement but not command.

Senator Raggio told Mr. Daykin a bill* was being processed to amend the constitution with respect to life without possibility of parole. He asked if it would be possible to enact a statute which mandates the court to instruct the jury that a life sentence without possibility of parole does not preclude the possibility of commutation of sentence or action by a pardon board and so forth in a death sentence. Can the court fully inform the jury that commutation of those sentences is possible. Mr. Daykin said yes, he was not aware of it being ruled upon, but is within the power of the legislature to require the giving of certain instructions in a criminal case. Where an instruction would be proper, since for the death penalty there is a divided proceeding in which guilt is first determined and then the issue of penalty is determined, only in these instances where the jury sets the penalty, this would be a proper instruction, proper charge to the jury at the penalty hearing.

Senator Raggio further asked if this would give rise to grounds for an appeal on the part of the defendant who suffered a capital

* AJR. 30 of the 60th Session

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punishment verdict, to say that the giving of such an instruction gave a tendency for the jury to favor the death penalty rather than life without possibility of parole, because commutation would be available. Mr. Daykin replied the commutation of the death sentence is available anyway. Senator Raggio stated the Board of Pardons has the authority to commute any sentence, including a death sentence or life without possibility of parole. Mr. Daykin stated he would have research done to see whether the problem has been raised in any other jurisdiction and how it has been handled. The problem has not been present in Nevada because the instruction to the jury has not been required. Senator Raggio stated there have been a few cases where the Supreme Court touched on some remarks ordered on suggesting that executive clemency may be available. Mr. Daykin said the prudent prosecutor avoids those remarks in the present state of the law.

SENATE BILL NO. 321--Clarifies provisions of law relating to estates of decedents. (Exhibit F)

Senator Wagner moved to Do Pass S. B. No. 321 and it become effective upon passage and approval.

Senator Raggio seconded the motion.

The motion carried unanimously.

SENATE CONCURRENT RESOLUTION NO. 27--Requests supreme court to provide special provision for appeal in probate matters. (Exhibit G)

Chairman Close advised the committee the reason for S. C. R. No. 27, is that now if appeals run after 30 days, there is potential conflict between S. C. R. No. 27 and the 30 days. S. C. R. No. 27 under Rule 4 (a), states notice of appeal within 30 days after date of service of written notice of the entry of judgment. This is not done in probate matters. This resolution will request the Supreme Court to provide in Rule 4 (a), the Nevada Rules of Appellate Procedure for appeals in probate matters.

Senator Don Ashworth moved to adopt S. C. R. No. 27.

Senator Raggio seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 354--Exempts department of parole and probation from requirements of Nevada Administrative Procedure Act.

Discussion of S. B. No. 354 resulted in the following action:

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SENATE BILL NO. 354 (Exhibit H)

Senator Don Ashworth moved to Do Pass S. B. No. 354.

Senator Raggio seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 355--Limits duration of and expands permitted reasons for temporary furloughs of prison inmates.

Senator Wagner suggested an amendment removing the brackets on line 13, page 1, putting an after state.

Senator Wagner moved to amend and Do Pass S. B. No. 355.

Senator Ford seconded the motion.

Senator Raggio stated he would amend S. B. No. 355 to allow the medical services, but not the conjugal visits.

Senator Raggio moved to amend S. B. No. 355 to allow the medical services, but not the conjugal visits.

Senator Don Ashworth seconded the motion.

Senator Ford asked for time to review the information handed out by Warden Wolff. Senator Don Ashworth stated the terms are very short in prison and now they are being able to live like anyone else. Chairman Close suggested on line 7, an amendment be made to read, visit families in the last three months, or last six months. It was decided the minutes from last session on S. B. No. 438 which is a similar bill be reviewed by the committee before a vote is taken on S. B. No. 355.

SENATE BILL NO. 356--Changes provisions relating to dishonorable discharges from probation. (Exhibit I)

Senator Don Ashworth moved to Do Pass S. B. No. 356.

Senator Wagner seconded the motion.

The motion carried unanimously.

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SENATE BILL NO. 358--Prohibits murderer from succeeding to community property. (Exhibit J)

Senator Don Ashworth moved to Do Pass S. B. No. 358.

Senator Keith Ashworth seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 245--Allows certain justices of the peace to have partners who practice law. (Exhibit K)

Chairman Close said it should preclude him from practicing before that particular judge, any judge in that district, there are two Justice of the Peace. He cannot practice before the justice court in that township. There are no J. P.s in Washoe or Clark County that have partners, they are prohibited from practicing. Senator Raggio suggested an amendment which precluded his appearing before that judge. Senator Ford said the language should read, that he would never be able to appear before any court which his partner the judge presides.

Senator Don Ashworth moved to amend and Do Pass S. B. No. 245.

Senator Raggio seconded the motion.

The motion carried.

SENATE BILL NO. 270--Permits persons to register their willingness to serve as resident agents of foreign corporations with secretary of state.

Senator Keith Ashworth advised the committee Senator Blakemore raised the question, if the secretary maintains a list and that list becomes available to anyone requesting it, an attorney will have to pay $500 to have his name included on the list. Senator Hernstadt suggested the person suggesting the bill wanted to foreclose the lawyers and trust companies and set it up in his newspaper in Las Vegas and make a business for himself.

Senator Hernstadt moved to have the exemption on lines 3 through 5 deleted on S. B. No. 270 and the bill become effective upon passage and approval.

Senator Don Ashworth seconded the motion.

The motion carried unanimously.

The committee further discussed S. B. No. 270 and the fees to be charged for putting a name on the list to serve as a resident agent. Senator Keith Ashworth was against lowering the fee. The following action was taken.

SENATE BILL NO. 270

Senator Wagner moved to have the fee reduced from $500 to $250 on S. B. No. 270.

Senator Raggio seconded the motion.

The motion carried. (Senator Keith Ashworth voted no.)

Senator Don Ashworth asked for a committee introduction on a bill. He had received a letter from Chuck Johnson, Attorney, Las Vegas requesting a bill regarding the presumption still would be in community property, that there is no right of survivorship. He stated you could rebut that presumption by putting on the deed that it is community property with right of survivorship just like joint tenancy property. The reason is because in the internal revenue code, if there is joint tenancy property and it is not probated, you do not get a step-up basis on both halves. This has not been changed.

Senator Don Ashworth moved to have the bill drafted.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 188--Specifies generic drugs which may be substituted for proprietary drugs.

Chairman Close advised the committee that when the amendment was drafted, the bill drafter indicated the language in Section 8 conflicts with lines 21 through 27 on page 3, therefore, they are deleting the new language in Section 8 and taking out the brackets.

SENATE BILL NO. 247--Limits length of probation and use of presentence reports and provides for disposal of certain confiscated property.

Chairman Close asked the committee to look at page 3 of S. B. No. 247. An amendment has been requested and it appears the language has duplicated the amendment, one amendment has been put out for

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one section dealing with weapons and one section dealing with other things such as tools and things of that nature. The reason is that they do not want to give tools to some of the police agencies.

SENATE BILL NO. 101--Removes limitations on interest rates for loans.

Chairman Close asked the committee to review the amendment to S. B. No. 101. The only change is that Section 8 was not eliminate. He told the bill drafter to take that section out. Brackets were put around section 8, the amendment puts a bracket starting on line 31, after the word less, then the bracket is deleted on line 34. The closing bracket is on line 36. It will read, a person shall not engage in the business of lending in amounts of $10,000 or less except as provided in and authorized by this chapter. Chairman Close said the language being removed states they cannot contract or receive more than the law allows. When the amendment is changed, it will be distributed to the interested parties.

Chairman Close asked for a motion to approve the minutes of March 2 and March 5, 1981.

Senator Don Ashworth moved to approve the minutes of March 2 and March 5, 1981.

Senator Wagner seconded the motion.

The motion carried unanimously.

There being no further business, the meeting adjourned at 10:20 a.m.

Respectfully submitted:

Shirley LaBadie

Shirley LaBadie, Secretary

APPROVED BY:

Melvin D. Close Jr.

Senator Melvin D. Close, Chairman

DATE: March 24, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Wednesday, Date 3-11-81, Time 8:00

S. C. R. 27--Requests supreme court to provide special provision for appeal in probate matters.

S. B. NO. 321--Clarifies certain provisions of law relating to estates of decedents.

S. B. NO. 354--Exempts department of parole and probation from requirements of Nevada Administrative Procedure Act.

S. B. NO. 355--Limits duration of and expands permitted reasons for temporary furloughs of prison inmates.

S. B. NO. 356--Changes provisions relating to dishonorable discharges from probation.

S. B. NO. 358--Prohibits murderer from succeeding to community property.

ATTENDANCE ROSTER FO[illegible] COM[illegible]TTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: March 11, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
[illegible]	[illegible]		[illegible]
Chris Wicker	Pollocks		885-5069
Brad Langos	Parole & Prob.		5[illegible]9
Don Winne	Self		882-1069
J M. Vargas			— 6 —

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DATE: March 10, 1981

TO: Martha Conard, Superintendent

EXHIBIT C

FROM: Diane Moncrief, Law Clerk

SUBJECT: SB No. 355 - Amended Furlough Statute NRS 209. 501

On behalf of the inmate population we would like to submit to you some of the following reasons we believe the furlough program should be expanded:

1. In regard to inmates being able to obtain medical services. (1) Inmates who have had serious medical problems before incarceration would feel much more secure in being able to return to their own doctor who has a knowledge of their past medical history.

2. Medical problems arise in here, and to some medical staff an inmate is just faking or is put off as though it were not important enough to check out. This creates alot of stress and strain, besides a feeling of helplessness on the part of the inmate. If he/she were allowed to consult a physician on their own and be responsible for incurred medical expenses, this would be less of a hardship on the prison's medical budget.

3. Many inmates are covered by medical insurances by their family or spouses. In the event of a major sugery or serious illness this also could be taken care of privately and eliminate heavy medical costs to the prison. Along with that they would also have their family present to support them in this time illness.

4. Visits with family/children on the outside would be very beneficial, not only for the inmate but the family, especially children. It is very heartbreaking to have your family and children come into this prison and be shook down as if they were also criminals. Many families will not come back because of this very reason, it is too upsetting for them. Being able to go on a furlough and to visit would (1) Help to maintain and keep close family relationships (2) It would help to eliminate tension that builds and sometimes erupts into violence among inmates. (3) It would help to eliminate sexual harrassment and activity by inmates of the same sex if they had a goal to work toward in order to be entitled to this privelege, (4) It would give the inmate a sense of hope and something to work toward, in otherwise, incentive, (5) Furloughs of this type would help to provide an element of trust, respect, and self-esteem between inmate and prison officials.

Jeanne Parlett
Olivia Moncray
[illegible]
[illegible]
Joean Stevens
Mary L. Jones
Gail Porter
Marie Page
Cathy Nesbitt
Dorinda Otley
Louise White
Martha Stewart
Terry Otis
Bert Johnson
Sharon Wilkite
Kathy Taylor
Reba L. Carter
Sheri Davis
Loressa T. Tinley
Bobbie Vaughn
Jean Belcher
Dorothy M. Smith
Marjorie Carter
Shirley Chapman
Emily S. Stewart
Jane Sorenson
Sharon Hicks
Brenda Bolden
Wilma Gix

Marilyn Mail
Mary Curran
Judy Tonahill
Donna Johnson
Bev Seymour
Ruth Reglin
Carol M. Lamb
Willie Feazell
Paulette Fuller
Margie Coleman
Juanita Harrison
Joanne Barnes Dune
Delois Dickson
Stephanie Flagg
Thelma Hunt
Theresa Crowhead
Vera Moore
Rose Hayes
Carolyn J. McGregor
Cathy Worth
Valda Swanson
Alma Torres
Carmen Ramirez
Janice Shabazz
Cindy Marlowe
Lorraine Rhoden
Mary L. Chambers
Sandra Jones
Linda Walker

Dennis Clavey
[illegible] Kollinion
Noel Maughardt
Evelyn Fowler
Diane Franklin
Georgia Green
Laura [illegible]
[illegible]
[illegible]
Bernadette Pasqua
[illegible] Kelly
Jacquie Rosalas
Rose Mary Amaya
Debbie Stana
Pinnie L. [illegible]
Mary Jane McGlynn
[illegible] Mathis
Jacqueline King
Joyce Dorsey
Valda Suarez
Cheryl Hope
Gina Anderson
Valerie Norris
Mary Mullen
Pam Anderson
Jennie Brown
Betty Mitchell
Terry E. Brooks
Nadine Carey
Armentha D. Richardson

Rosalie Goodson
Vivian Dense
Brigitte Barron
Mary [illegible]
[illegible] Dukes
Mary Allen
Shirley Stewart
Martha Carter
Mary Griffin
Helen Harkey

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March 11th, 1981

Robert L. Stickney
Inmate Counsel Substitute
Post Office Box 607, NNCC
Carson City, Nevada 89701

Director Charles L. Wolff, Jr.
Nevada Department of Prisons
Administration
P.O. Box 607
Carson City, Nv. 89701

RE: S.B. 355, SUBSTANTIVE CHANGES FROM NRS 209.501

Dear Mr. Wolff:

On March 10, 1981, S.B. 355 was presented to me by you at a meeting in Superintendent Slansky's office. At that time, you requested that I compile a visual list of the impact on the inmate population, coupled with major changes proposed by S.B. 355.

It should first be noted that this bill mainly proposes to limit the duration of and expand the permitted reasons for temporary furloughs of prison inmates which would modernize our current system. With reference to our current system, temporary furloughs (NRS 209.501) will remain intact. However, the reasons for temporary furloughs will be expanded to include "visit family" and "obtain medical services not otherwise available" and temporary furloughs will be limited to "a duration of 72 hours, except for medical furloughs". S.B. 355 interposes these changes throughout the entire bill.

Since opinion may vary as to what is or isn't an item of substance, I have, of necessity, approached your request by listing tenets and briefly mentioning how S.B. 355 deals with them so that you can get a flavor for the bill and the impact which it has before giving your testimony before our legislature. These tenets are intended only to highlight the impact of S.B. 355 and not as a thorough analysis to that end.

In my opinion, Senate Bill 355 emphasizes the following tenets:

1. Rehabilitation of the offender is affirmatively promoted by continuing normal community contacts.

2. Negative and frequently stultifying effects of family emergencies can be dealt with, thus removing a factor that often complicates the reintegration of the offender into the community;

3. An affirmative correctional tool, a tool which is used not because it is of maximum benefit to the offender (though, of course, this is an important side product), but because it is of maximum benefit to the society which is sought to be served;

4. Medical and dental services not otherwise available are diversified so as to facilitate individualized care and treatment of the offender;

5. A means of lowering medical costs and expediting care and treatment, particularly with the use of the Veterans Administration; and

6. Will allow an offender to leave the institution before his release so that he may renew family ties, seek employment, and generally make his return to the community as pleasant and easily as possible.

Certain states, such as Minnesota, Florida, Tennessee, Louisiana, Pennsylvania, Washington and a host of others have statutory provisions providing for temporary furloughs which appear to be somewhat analogous to S.B. 355. Due to my limited research, I have attached but a few analogous statutory provisions for your study.

The basic idea underlying a temporary furlough is quiet simple, but one item of legislation that could leave the most direct impact on the inmate population. By the same token, it is to say that temporary furloughs are a good bit more than the "matter of grace" or "leniency" which characterizes the philosophy of the general public and many of our legislatures on the subject.

I hope this information meets your needs to consider recommending passage of Senate Bill 355.

Sincerely,

Robert L. Stickney

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havior time to be treated as a deduction from the term of that sentence.

On the strength of a 1967 case, *McCartney v. United States*, 382 F.2d 116 (9th Cir.), counsel for the government argued below that upon reconviction credit is to be given for "good time" earned only if the sentencing judge so states. North Carolina v. Pearce, *supra*, was decided in 1969, however, and in ruling that credit must be given for time served under a prior sentence for the same offence, the Supreme Court said: "Such credit must, of course, include the time credited during service of the first prison sentence for good behavior, etc." 395 U.S. at 719 n. 13, 89 S.Ct. at 2077.

[2] Mathematically, appellant's 16-year sentence on count 1 of the 1964 indictment could not have included credit for the four years he served under the earlier sentence for the same offense *plus* the 480 days accrued good behavior time, since the maximum permissible penalty upon reconviction was 20 years. Thus, the sentence on count 1 of the 1964 indictment must be reduced by the 480 days of good behavior time appellant earned while serving the sentence under the 1960 indictment. *See North Carolina v. Pearce, supra*, 395 U.S. at 718-719, 89 S.Ct. 2072.

LEGISLATIVE DEVELOPMENTS

Prison Reform Laws Pass 1972 Session of Tennessee General Assembly

W. Henry Haile, Assistant Attorney General of Tennessee, Supreme Court Bldg., Nashville, Tenn. 37219, reports the enactment of several laws by the 87th General Assembly relating to corrections. The text of his summary of those laws is as follows:

Full Time Parole Board

The funds and procedure for establishing a full time parole board were enacted by the General Assembly. This board will consist of three members appointed by the Governor. The purpose of the board will be to give each person that comes before it the best possible hearing consideration. In each case, the individual's character, circumstance, need and potential will be considered by the board by means of a complete case study furnished by the Division of Probation and Parole.

Regional Correctional Centers

The Department of Correction has been given in its budget appropriation, $5,000,000 to begin the planning and construction of two Regional Correctional Centers. These are the first of a series of Regional Correctional Centers to be built across the State. It is the intention of the Department to complete several of these institutions during the next three years. These institutions will have a two-fold purpose, the elimination of the large population in the Main Prison and the retention of prisoners near their own community and family.

Temporary Release or Furlough Tenn.

One item of legislation that will leave the most direct impact on the inmate population will be the Furlough law. This provides for a three (3) day furlough for inmates who have ninety (90) days remaining in term of incarceration or who have serious illness or death in their immediate family.

This will now allow the Department to permit an inmate to leave the institution before his release so that he may renew family ties, seek employment, and generally make his return to the community as pleasant and easily as possible.

Arts and Crafts

The General Assembly in this session has passed legislation which will enable all inmates, adult and juvenile, to make casual sales of arts and crafts to the public thus enabling an expansion of this program by using the revenues to buy additional materials and equipment which will enable all inmates to participate in this program. It is well established that arts and crafts are one of the most therapeutic of activities carried on in institutions.

Inspection of Mail

The Department sought and received a change in the law covering inspection of mail. The mandatory requirement has been changed to make such inspection discretionary with the Commissioner. Now mail will not be read or censored; only inspected for contraband.

Education Requirement

Under the new statute the department will require that communication skills be taught to all inmates who do not have such skills, or who do not meet certain education levels. We will now give every inmate at least the basic skill of reading and writing. Such skills are essential for any type of success.

Of Release Money

We will also increase the amount of money given to an inmate when released. This will be increased from $10.00 to $30.00 for Parolees and $75.00 for those who are released without further supervision.

Work Release

The criteria for eligibility for work release has been broadened to include certain second-term inmates. This means many inmates who are serving a second term in prison are now eligible to be considered for the work release program. This program lets a man work and support himself rather than remain in prison.

Juvenile Release Law

The release procedure dealing with juveniles has been changed to permit a superintendent to release any child in his custody by giving 15 days notice to the committing court.

Inmate Incentive Program

The General Assembly has enacted into law statutes which permit inmates to earn credit toward the reduction of their sentence by enrolling in academic and vocational

whose civil rights have been restored be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit or certificate is required to be issued by the State of Florida solely because of a prior conviction of a felony. However, a person may be denied employment by the State of Florida or any of its agencies or political subdivisions or a person who has had his civil rights restored may be denied a license, permit or certificate to pursue, practice or engage in a occupation, trade, vocation, profession or businesss by reason of the prior conviction of a felony if the felony for which convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, profession or business for which the license, permit or certificate is sought.

Section 2. This act shall not be applicable to any law enforcement agency, however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

Section 3. Any complaints concerning the violation of this act shall be adjudicated in accordance with the procedures set forth in Chapter 120, Florida Statutes, for administrative and judicial review.

Section 4. Section 112.01 Florida Statutes is specifically repealed. All other acts or parts of acts inconsistant with this act are repealed.

Section 5. This act shall take effect immediately upon becoming law."

Florida

Chapter 71-112—Furloughs.

The authority to approve furloughs is shifted to the director of the Division of Corrections from the Probation and Parole Commission. The length of time is amended to read "for a specified period" instead of "for a period not to exceed twenty-four hours exclusive of travel time." Finally, the reasons for furloughs are broadened by the addition of the language "otherwise aid in the rehabilitation of the inmate." Previously, the reasons were "visiting a dying relative, attending the funeral of a relative, arranging employment or for a suitable residence for use when released, or for another compelling reason consistent with the public interest."

Chapter 71-113—Standards for Local Facilities.

The authority of the state to set rules and regulations prescribing standards and requirements for local facilities is broadened by adding the following matters:

(c) *The confinement of prisoners by classification; such rules being established with the participation of "local detention units" and the final approval of the "division"; and providing, whenever possible for classifications which separate males from females, juveniles from adults, felons from misdemeanants, those awaiting trial from those convicted, and in addition will provide for the separation of unusual prisoners, such as the mentally ill, alcoholic, narcotic addict, sex deviates, suicide risks, and any other classification which the local unit and the division may deem necessary for the safety of the prisoners and the operation of the facility.*

California Adopts Statewide Standards and Inspection for Local Detention Facilities

Assembly Bill No. 2698 (Chapter 1789, 1971 Laws) was approved and filed December 16, 1971. It provides for standards for jails to be set by the State Board of Corrections, biennial inspections, and biennial reports to the legislature on facilities that have not complied with the minimum standards. The full text of the Act is as follows:

SECTION 1. Section 6030 of the Penal Code is amended to read:

6030.

(a) The Board of Corrections * * * shall establish minimum standards * * * for local * * * detention facilities by July 1, 1972. The Board of Corrections shall review such standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local detention facilities, and personnel training.

(c) In establishing minimum standards, the Board of Corrections shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in local detention facilities:

The Department of Corrections, the Department of the Youth Authority, local juvenile justice commissions, local correction officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections, the Department of the Youth Authority, local correctional officials, and other interested persons.

SEC. 2. Section 6031 is added to the Penal Code, to read: 6031.

The Board of Corrections shall inspect each local detention facility in the state by January 1, 1974, and shall inspect each such facility biennially thereafter.

SEC. 3. Section 6031.1 is added to the Penal Code, to read: 6031.1.

Inspections of local detention facilities shall be made biennially. Inspections shall include, but not be limited to, the following:

(a) Health and safety inspections conducted pursuant to Section 459 of the Health and Safety Code.

(b) Fire and life safety inspections pursuant to Sections 13145 and 13146 of the Health and Safety Code.

(c) Fire suppression preplanning inspections by the local fire department.

(d) Security, rehabilitation programs, recreation, treatment of persons confined in local detention facilities, and personnel training by the staff of the Board of Corrections.

Reports on each facility's biennial inspection shall be furnished to the official in charge of the local detention facility, the local governing body, the grand jury, and the presiding (b) sole judge of the superior court in the county where the detention facility is

[*Text*]

. . . It is apparent . . . that this action can only be maintained realistically as a class action, the class consisting of those persons who at any given point of time are confined in the Lucas County Jail. . . .

The official policy of the State of Ohio is that the standard of punishment which prevailed in medieval times are to be followed in dealing with those convicted of crimes. Insofar as possible, they are to be removed to remote places, and confined in harsh and forbidding prisons. In constructing its newest prison facility, the State selected one of its most sparsely populated areas as a site, and a medieval French prison as the basic model for the building.

We may suppose that the constitutional provision against cruel and unusual punishment was directed against such activities. In any event, when the total picture of confinement in the Lucas County Jail is examined, what appears is confinement in cramped and overcrowded quarters, lightless, airless, damp and filthy with leaking water and human wastes, slow starvation, deprivation of most human contacts, except with others in the same subhuman state, no exercise or recreation, little if any medical attention, no attempt at rehabilitation, and for those who in despair or frustration lash out at their surroundings, confinement, stripped of clothing and every last vestige of humanity, in a sort of oubliette.

. . .

Obviously, if confinement in the Lucas County Jail is a cruel and unusual punishment forbidden to be employed against those who are in jail to be punished, it is hard to think of any reason why it should be permitted for those who are only in jail awaiting trial. . . .

LEGISLATIVE DEVELOPMENTS

Furlough and Post-Release Financial Assistance Reforms Adopted by Washington Legislature

During the 1971 Extraordinary Session, the Washington Legislature granted new power to the Secretary of the Department of Social and Health Services in the areas of work release and furloughs for state prison inmates. Revised Code of Washington 72.65.130 was revised to read:

"The secretary is authorized to grant furloughs to persons convicted of a felony and serving a sentence for a term of confinement in a state correctional institution, except those persons who are serving mandatory minimum terms of confinement as now or hereafter provided by law. Any furlough granted by the secretary shall authorize the release of the convicted person from confinement by the superintendent of a state correctional institution and may require the supervision of the prisoner by a state probation and parole officer at a place designated in the order of furlough within this state for a period not to exceed thirty days under such terms and conditions as the secretary may deem appropriate: *Provided*, That no more than sixty days of furlough shall be granted in any one year."

The act outlines the procedure for initiating a furlough in the following way:

"Any prisoner eligible to be granted a furlough by the secretary may make application to the superintendent of the state correctional institution of confinement upon forms supplied by the department. The application shall set forth the place of proposed residence of the applicant and the names of the persons with whom the applicant will be residing and the relationship to the applicant; a proposed plan or program to be followed during the period of furlough and the reasons why the applicant believes such plan or program will be of aid in his rehabilitation and enhance his prospects for a successful parole if granted by the board of prison terms and paroles. The application shall also include a statement to be executed by such prisoner that if his application be approved and he is granted a furlough, he agrees to abide by all terms and conditions of the furlough plan adopted for him.

The application shall also contain such other information as the secretary may require. The superintendent of the state correctional institution to whom application has been made by a prisoner for a furlough shall review the prisoner's conduct, attitude and behavior within all of the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material and shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust if granted a furlough by the secretary. After having made such determination, the superintendent, in his discretion, may, subject to the concurrence of the secretary, deny the prisoner's application for a furlough or recommend to the secretary that the prisoner be granted a furlough."

The act also sets out the type of order required for the implementation of a furlough program in an individual case:

"The secretary, after such investigation as he may deem necessary, may approve, reject, modify, or defer action on a recommendation for furlough. In the event of approval, the secretary shall adopt a furlough plan for the prisoner, and the terms and conditions of such furlough plan shall be set forth in the order of furlough with such other terms and conditions as may be deemed necessary and proper under the circumstances. The order of furlough may grant more than one furlough at such intervals and with such conditions as may be deemed appropriate and such furloughs may be granted on the basis of a single application. The order of furlough shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions of the order of furlough."

In the area of post-release financial assistance the Secretary was given new power by the Legislature to give an

The eight guidelines in Memorandum #72-6 are:

1. Local law enforcement officers from furlough applicants' destinations and areas of commitment will be notified at least forty-eight hours in advance of the commencement of a furlough, thereby allowing law enforcement agencies to provide the department with advice of any furlough problems that they may envision.

2. Only those residents of the adult correctional institutions that are in minimum security classification or are eligible for minimum custody will be considered eligible for furlough except for emergency situations.

3. Any resident of an adult correctional institution who has been committed for a crime involving violence or for a sex crime will not be eligible for furlough without extremely careful and special screening.

4. No resident of an adult correctional institution will be granted a furlough sooner than six months after incarceration at the institution recommending furlough or in the case of a short sentence (where a resident will be eligible for release in less than twelve months) sooner than six months prior to his expected release or scheduled parole hearing.

5. All residents requesting furlough will be required to have a responsible person as a sponsor during the furlough, and Probation and Parole or other departmental staff will be responsible for contact with such responsible persons to ensure the validity of furlough objectives.

7. Violation of any law or any furlough condition shall be grounds for immediate furlough revocation and shall ordinarily be grounds for denial of a future furlough.

All adult correctional institutions shall immediately implement team review of all furlough applications, and such team review shall involve consideration of the opinions of line staff. Additionally, departmental management will continue screening all furlough applications, will accelerate the ongoing research study of the furlough program and will report the results of their findings.... Washington

LITIGATION

Federal Action Seeks to Secure Access to Counsel for Inmates Confined in Arizona Prison Adjustment Center

Pina v. Arizona. No. CIV 72-236 PHX. (U.S. Dist. Ct. Ariz.) Plaintiffs' Counsel: Edward Morgan, Octavio Marquez, 45 W. Pennington, Tucson, Ariz. 85701; Andrew Silverman, 1015 North 4th Ave., Tucson, Ariz. 85705; Wayne R. Godare, 2016 East 9th St., Tucson, Ariz. 85719; Fay Stender, 5406 Claremont Ave., Oakland, Calif. 94618; William Kunsler, Center for Constitutional Rights, 558 Ninth Ave., New York, N.Y. [Here reported: Complaint 5/-/72.]

According to the complaint, on or about May 1, 1972, certain inmates at the Arizona State Prison selected several fellow inmates as representatives to convey peacefully a list of grievances to prison authorities. Thereupon, the warden summarily locked those inmates suspected of being the representatives in solitary confinement. A group of Arizona attorneys unsuccessfully sought permission to visit the inmates in solitary confinement to determine whether they desired the assistance of counsel. Attorneys Fay Stender and William Kunstler and writer Jessica Mitford also unsuccessfully sought to visit the prison and the inmates in solitary confinement.

The complaint alleges that (1) the confinement in the Adjustment Center and other punitive isolation cells was without hearings or fact-finding procedures required by Arizona State Prison Inmate Rule Book and the Prison Disciplinary Board Procedures; (2) inmates are confined without having committed any cognizable prison offense; (3) the inmates are subjected to unhealthful and inadequate diets, deprivation of exercise, sanitation and degrading living conditions; and (4) the good time and parole status of the inmates is jeopardized.

The complaint seeks orders (1) restraining the confinement of the inmates without compliance with prison rules or solely for suspected participation in the presentation of grievances to prison authorities; (2) requiring the prison authorities to allow all named counsel to visit with inmates in isolation; (3) requiring restitution of good time; and (4) prohibiting reprisals against any of the named plaintiffs.

A stipulated temporary restraining order has been entered giving counsel of record access to inmates and prohibiting censorship of mail from the inmates to counsel.

Pretrial Detainees in Hinds County Mississippi Jail Seek Federal Relief from Punitive Treatment

Obadele v. McAdory. No. 72J-103(N). (U.S. Dist. Ct. So. Dist. Miss.) Plaintiffs' Counsel: Dorothy Graham, Maureen G. Malone, Community Legal Services, P.O. Box 22571, Jackson, Miss. 39205; John C. Brittain, Jr. Lawyers' Committee for Civil Rights Under Law, 233 North Farish St., Jackson, Miss. 39201. [Here reported: Complaint 5/24/72.]

The Complaint begins with a "Description of the Problem" of prisons and jails generally and in particular the Hinds County Jail where "presumably innocent plaintiffs ... are condemned to the degrading and demoralizing experience of long hours of idleness and harassment, unrelieved by any meaningful spiritual, educational, or recreational opportunities," in a "punitive and regimented environment."

Named as defendants are the sheriff, charged by Mississippi law with control of the jail; the deputy sheriffs assigned to the jail; a misdemeanant selected as a trusty; members of the County Board of Supervisors, charged by Mississippi law with the duty of inspecting the County jail; the presiding judge of the County Circuit court, charged by Mississippi law with removal of an accused from an unsafe jail; and the governor of the State, charged by Mississippi law with the removal from office of sheriffs for neglect of duty. The action is brought as a class action both as to the plaintiff class of pretrial detainees and as to the defendants as representatives of all who will be selected in the future to fill their respective positions.

Valley Bank of Nevada
Trust Department
Post Office Box 15427
Las Vegas, Nevada 89114

November 28, 1980

EXHIBIT D

Melvin D. Close, Jr. Esq.
700 Valley Bank Plaza
Las Vegas, Nevada 89101

Subject: Requirements to Close Probate Estates

Dear Mel:

This letter is in conformity with our several discussions on the subject of the procedures to be followed by Valley Bank of Nevada's Trust Department as Administrators or Executors of an Estate to terminate same to prevent the possibility of appeals being taken from Final Orders after an Estate is closed.

It appears to me that our procedures are clear in the event a person should file written objections to an Account and contest same pursuant to NRS 150.170. Assuming a Final Accounting is filed as Executor and an interested party files written objections upon the Hearing, and an Order is entered thereon, presumably Notice of Decision would be served upon either the objector or the Executor pursuant to Nevada Rules of Appelate Procedure. These rules appear to spell out clearly the time limitation when appeals can be taken to the Nevada Supreme Court.

On the other hand, it does not seem clear to me, from an overall reading of Nevada Revised Statutes on Probate Law, the procedures and policies which we should adopt particularly with respect to a Petition to approve a Final Accounting and distribute the Estate.

Customarily, the practice of Nevada Corporate Executors, so far as I know, is that once an Order is entered upon an uncontested Petition that the Estate is distributed pursuant to the Court Order, Receipts Upon Distribution obtained and filed, and the Judge enters a Decree of Discharge.

November 28, 1980

Melvin D. Close, Jr. Esq.

Subject: Requirements to Close Probate Estates

However, I direct your attention to the following Sections of NRS which appear to me to be contradictory:

1) NRS 155.190.7 describes an Order settling an Executor's Account as being an appealable Order.

2) NRS 155.180 states that the Nevada rule of Civil procedure regulates procedures in Civil cases applying to Estates.

3) NRS 151.110 directs the Executor to distribute the Estate without any unnecessary delay upon the Court issuing an Order decreeing distribution. This section further states that any person having the right to assets distributed by Court Order may make demand, presumably immediately, and further with respect to conveying of real property the Executor is given ten days to record a Decree with the County Clerk.

4) NRS 151.230 provides relief to the Executor, upon producing a voucher and Receipts of Distribution "the Court shall enter a Decree discharging the Executor by his surities from all liability thereafter to be incurred."

As a non-lawyer all of the above seems contradictory and confusing and I would appreciate it if your office would review this situation and give us a written opinion on future procedures to be adopted by us.

Cordially yours,

C. D. Brown
Sr. Vice President and
Sr. Trust Officer

is

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OF COUNSEL
EDWARD W. LeBARON, JR.
LYLE RIVERA

December 15, 1980

EXHIBIT E

Mr. Frank Daykin
Legislative Counsel Bureau
Legislative Bldg.
Carson City, Nevada

Dear Frank:

Enclosed please find a copy of a letter from Don Brown, Senior Vice President and Senior Trust Officer of the Valley Bank of Nevada, relative to a problem I have run into in a matter of probate. The only other thing I would bring to your attention is that the probate statutes permit an appeal, but there is nothing in the statutes relative to the time within which an appeal may be taken, except for Nevada Rules of Appellate Procedure Rule 4 (2), which provides that you can file an appeal within 30 days after the date of service of written Notice of Entry of Judgment or Order appealed from. Normally, such orders are not filed in probate matters. There is also a question as to whom the Notice should be sent, whether it be just the executor or all of the heirs of the estate.

It is my feeling that the notice should be served only upon the Executor or upon persons who have requested special notice, and that formal written notice of entry of judgment or order should not be a requirement in probate procedure.

After you have had a chance to give this some thought, I would appreciate your call so that we can discuss the matter.

Sincerely yours,

Mel

Melvin D. Close, Jr.

Enclosure

EXHIBIT F

S. B. 321

SENATE BILL NO. 321—COMMITTEE ON JUDICIARY

FEBRUARY 26, 1981

Referred to Committee on Judiciary

SUMMARY—Clarifies certain provisions of law relating to estates of decedents. (BDR 12-769)

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 estates of decedents; clarifying the time within which an appeal may be made; establishing a waiting period for the distribution of an estate; clarifying the effect of discharging fiduciaries to the estate from liability; and providing other matters properly relating thereto.

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

SECTION 1. NRS 151.110 is hereby amended to read as follows:

151.110 1. Where the accounts of an executor or administrator have been settled and a decree for the distribution of the estate made by the court, the executor or administrator shall, *upon the expiration of 10 days after the entry of the decree,* without any unnecessary delay, distribute the estate remaining in his hands as directed by the decree.

2. In the decree, the court shall name the persons and the proportion or parts to which each [shall be] *is* entitled, and [such person shall have the right to] *each may* demand and recover his [or her] respective share from the executor or administrator, or any other person having the same in possession.

3. The executor or administrator shall, within 10 days after the entry of a decree of distribution conveying any real property, record with the county recorder of the county in which the decree was entered a certified copy of the decree.

SEC. 2. NRS 151.230 is hereby amended to read as follows:

151.230 *1.* When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, on the order of the court, all the property of the estate to the persons entitled, and has performed all acts lawfully required of him, the court shall make a decree discharging him and his sureties from all liability thereafter to be incurred.

2. The provisions of this section do not bar a successful appellant from a decree for the distribution of an estate from the recovery of any property distributed to an heir, devisee or legatee pursuant to the decree.

SEC. 3. NRS 155.190 is hereby amended to read as follows:

155.190 In addition to any order or decree from which an appeal is expressly permitted by this Title, an appeal may be taken to the supreme court *within 30 days after its entry,* from an order or decree:

1. Granting or revoking letters testamentary or letters of administration.
2. Admitting a will to probate or revoking the probate thereof.
3. Setting aside an estate claimed not to exceed $1,000 in value.
4. Setting apart property as a homestead, or claimed to be exempt from execution.
5. Granting or modifying a family allowance.
6. Directing or authorizing the sale or conveyance or confirming the sale of property.
7. Settling an account of an executor, administrator or trustee.
8. Instructing or appointing a trustee.
9. Instructing or directing an executor or administrator.
10. Directing or allowing the payment of a debt, claim, legacy or attorney's fee.
11. Determining heirship or the person to whom distribution [should] *must* be made or trust property [should] *must* pass.
12. Distributing property.
13. Refusing to make any order [heretofore] mentioned in this section or any decision wherein the amount in controversy equals or exceeds, exclusive of costs, $1,000.

EXHIBIT G

S. C. R. 27

SENATE CONCURRENT RESOLUTION NO. 27—COMMITTEE ON JUDICIARY

FEBRUARY 26, 1981

Referred to Committee on Judiciary

SUMMARY—Requests supreme court to provide special provision for appeal in probate matters. (BDR 770)

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

SENATE CONCURRENT RESOLUTION—Requesting the supreme court to provide a special provision for appeal in probate matters.

WHEREAS, Rule 4(a) of the Nevada Rules of Appellate Procedure applies to all appeals in civil cases; and

WHEREAS, This rule requires the filing of a notice of appeal within 30 days after the date of service of written notice of the entry of judgment or order appealed from; and

WHEREAS, In matters of probate a written notice of the entry of an order or a decree is not usually provided; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the Nevada legislature requests the supreme court to provide specially in Rule 4(a) of the Nevada Rules of Appellate Procedure for appeals in probate matters.

EXHIBIT H

SENATE BILL NO. 354—COMMITTEE ON JUDICIARY

MARCH 3, 1981

Referred to Committee on Judiciary

SUMMARY—Exempts department of parole and probation from requirements of Nevada Administrative Procedure Act. (BDR 18-782)

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 administrative regulations; exempting the department of parole and probation from the requirements of the Nevada Administrative Procedure Act; and providing other matters properly relating thereto.

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

SECTION 1. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

(a) The governor.
(b) The department of prisons.
(c) The University of Nevada System.
(d) The department of the military.
(e) The state gaming control board.
(f) The Nevada gaming commission.
(g) The state board of parole commissioners.
(h) *The department of parole and probation.*
(i) The welfare division of the department of human resources.
[(i)] *(j)* The state board of examiners acting pursuant to chapter 217 of NRS.

2. The department of education is subject to the provisions of this chapter for the purpose of regulation-making but not with respect to any contested case.

3. The special provisions of:

(a) NRS 439A.105 for the review of decisions involving the issuance of letters of approval for health facilities and agencies;
(b) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the employment security department;
(c) Chapters 616 and 617 of NRS for the determination of contested claims; and

(d) Chapters 704 and 706 of NRS for the judicial review of decisions of the public service commission of Nevada,

prevail over the general provisions of this chapter.

4. The provisions of this chapter do not apply to any order for immediate action, including but not limited to quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the state board of agriculture, the state board of health, the state board of sheep commissioners or any other agency of this state in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control.

EXHIBIT I

S. B. 356

SENATE BILL NO. 356—COMMITTEE ON JUDICIARY

MARCH 3, 1981

Referred to Committee on Judiciary

SUMMARY—Changes provisions relating to dishonorable discharges from probation. (BDR 14-135)
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 probation; changing the awarding of a dishonorable discharge from a mandatory action to a discretionary action; and providing other matters properly relating thereto.

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

SECTION 1. NRS 176.245 is hereby amended to read as follows:

176.245 Every defendant:

1. Whose probation has been revoked; or

2. Whose term of probation has expired, whose whereabouts are unknown, and for whose arrest a warrant has been issued,

[shall] *is not eligible for an honorable discharge and may* be given a dishonorable discharge.

EXHIBIT J

S. B. 358

SENATE BILL NO. 358—COMMITTEE ON JUDICIARY

MARCH 3, 1981

Referred to Committee on Judiciary

SUMMARY—Prohibits murderer from succeeding to community property. (BDR 12-134)

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 succession; extending the ban on succession by a murderer to include community property; and providing other matters properly relating thereto.

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

SECTION 1. NRS 123.250 is hereby amended to read as follows:

123.250 1. Upon the death of either husband or wife:

(a) An undivided one-half interest in the community property is the property of the surviving spouse and his or her sole separate property.

(b) The remaining interest is subject to the testamentary disposition of the decedent, in the absence thereof goes, *except as provided in section 3 of this act,* to the surviving spouse, and is the only portion subject to administration under the provisions of Title 12 of NRS.

2. The provisions of this section apply to all community property, whether acquired prior or subsequent to July 1, 1975.

SEC. 2. Chapter 134 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

SEC. 3. *No person convicted of the murder of the decedent is entitled to succeed to any portion of the decedent's estate. The portion to which he would otherwise be entitled to succeed goes to the other persons entitled to it under the provisions of this chapter.*

SEC. 4. *With the exception of NRS 134.010 and section 3 of this act, the provisions of this chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.*

SEC. 5. NRS 134.030 is hereby amended to read as follows:

134.030 [When] *Except as provided in section 3 of this act, when* any person having title to any estate which is his or her separate property, not otherwise limited by contract, [shall die] *dies* intestate as to such

estate, it [shall descend and] *descends and must* be distributed, subject to the payment of his [or her] debts, in the manner provided in NRS 134.040 to [134.130,] *134.120*, inclusive.

SEC. 6. NRS 134.130 and 134.220 are hereby repealed.

EXHIBIT K

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S. B. 245

SENATE BILL NO. 245—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Allows certain justices of the peace to have partners who practice law. (BDR 1-849)

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 justices of the peace; allowing certain justices of the peace to have partners who practice law; and providing other matters properly relating thereto.

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

SECTION 1. NRS 1.270 is hereby amended to read as follows:

1.270 [No] *1. Except as provided in subsection 2, no* judge or justice of the peace [shall] *may* have a partner acting as *an* attorney or counsel in any court in this state.

2. A justice of the peace who is permitted by NRS 4.215 to practice law may have as a partner, and may share fees, commissions or expenses with, any person acting as an attorney or counsel in any court in this state, but such a partner may not practice law before that justice of the peace.