Present

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 23, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:30 a.m., Monday, March 23, 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

COMMITTEE MEMBERS ABSENT:

Senator Jean Ford (Excused)
Senator Sue Wagner (Excused)

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

ASSEMBLY BILL NO. 72--Further restricts liability of landowners to persons using their land for recreational purposes.

Mr. Jack Shaw, Administrator of the Division of State Lands, stated his purpose for discussing A. B. No. 72 is to explain their involvement the past two years with the access problem and other pieces of legislation involving access to and through both public and private lands. Being involved in the land administration, they endorse the little increased emphasis on limiting liability to land owners. He explained the amendment includes crossing over to public land as an exemption from liability. In trying to resolve access problems, many of the landowners were concerned that if they gave access, they would be liable because it was not specified. The Lands Division wants to endorse the concept in helping to resolve the many access problems that exist in Nevada.

Chairman Close asked whether the only amendment was to add an exemption from liability of crossing over the public land. Mr. Shaw explained that the bill previously had hunting, fishing, trapping, camping, but it did not explicitly say crossing over land to get to other public land.

Senator Raggio asked what the effect of the word "willful" would be on page 2, lines 3 through 5. Presently, the law does not limit liability if someone willfully or maliciously fails to warn against a condition. Mr. Shaw stated it was amended in the assembly, as indicated on line 1 on page 2 of the reprint. The only change is for crossing over to public land throughout A. B. No. 72.

Mr. Shaw stated the big concern in Nevada is that all main accesses to the mountains are on private land because that is where the streams were and where the homesteads were and the ranches started.

Chairman Close asked that with the way A. B. No. 72 reads now, if someone crossed over private land to go to public land the landowner would be exempt from liability; however, if someone crossed over one parcel of private land to get to another parcel of private land, there might be liability. Mr. Shaw indicated that could be true but eliminating the words "to public land" could solve the problem.

Senator Hernstadt asked whether A. B. No. 72 was really necessary. Mr. Shaw replied that it does clarify many concerns of the landowners. There was a committee that met to discuss existing access problems and one of the main concerns was whether the freedom from liability was clear. He stated the proposed wording certainly was one of the wishes of the landowners and, in his opinion, does clarify part of the problem. It would guarantee freedom from liability for the landowner if someone crosses over his property.

Mr. Matt Benson, on behalf of the Nevada Cattleman's Association, stated he was quite interested in the private land issue that was brought up by Senator Close. He said they are in support of A. B. No. 72 and agreed that landowners were always afraid of a libility case where someone is injured crossing over their property to get to public land. They felt they had to be protected some way because of the increase in the number of people crossing over private land to get to public land. Mr. Shaw stated he did not know if he could agree with the word "willful" on page two, as brought up by Senator Raggio. If

a dangerous condition was known to a landowner but not made known to someone crossing over his land, he could be liable. A number of things could happen that the landowner did not know about. Other than that portion, Mr. Shaw stated the aim of A. B. No. 72 is good and it will solve a lot of problems where ranchers are now stopping people from getting to public lands.

Chairman Close referred to a letter from Assemblyman Dean Rhoads, which is attached hereto as Exhibit C.

Senator Keith Ashworth stated he would be concerned if he gave someone permission to cross over his land and if that person was injured because of a condition he was unaware of or failed to make that person aware of, he would still be liable. He suggested taking out the word "willful."

Chairman Close stated the word "willful" had been removed at one time but that the Assembly had put it back in.

Senator Raggio stated that removing the word "willful" would give the property owner more protection.

ASSEMBLY BILL NO. 72 (Exhibit E)

Senator Raggio moved to Do Pass Assembly Bill No. 72.

Senator Hernstadt seconded the motion.

The motion carried. (Senators Ford and Wagner were absent for the vote.)

SENATE BILL NO. 36--Relaxes requirements for assignment of prisoners to honor camps.

Chairman Close stated Mr. Charles Wolff, Director of Department of Prisons, had further comments regarding the amendments to S. B. No. 36. See Exhibit D attached hereto.

Mr. Wolff stated the wording "has not committed a battery within the last one year" was a compromise to eliminating the line altogether. The change should make it possible for the prison to recruit enough people to fill the honor camps.

Senator Raggio stated what bothers him is that if a person has a history of sexual assault, remains in prison a few years and even though he has not committed any batteries within the last

year he still should not be eligible for an honor camp.

Mr. Steve Robinson stated that in their memo dated March 16, 1981, they added that a prohibition would be acceptable to the effect that inmates who have been convicted of sexual crimes would not be workable for the program. Essentially, that is administrative practice with the department now.

Senator Raggio replied that it is not part of the law and if there is change in administration in later years, they may change their practice. He said he would not like to see an honor camp discredited because the wrong people were being included in the program.

Mr. Wolff stated he would not object to having a sexual restriction put into the law. Also, in reply to Senator Raggio's question, people who are unstable, who act out within the institution, people guilty of sexual crimes, individuals with strong phychological problems, people guilty of harsh crimes of violence and people guilty of a particular offence where an injury or death occurred to a victim would not be included in the honor camp program. He felt the classification process should preclude people from going to an honor camp routinely. The word "assault" does not allow him to take advantage of the people who would work out perfectly well in an honor camp setting and would do a good job, which would allow them to expand a program that is realistic and economical. He stated prior to this legislation, they were routinely classifying people to forestry recruits living inside the institution and working outside on a daily basis with a good degree of success.

ASSEMBLY BILL NO. 87--Increases penalties for certain false imprisonment and batteries; prohibits sexual conduct between prisoners and employees of department of prisons.

Mr. Charles Wolff, Director of the Department of Prisons, explained that A. B. No. 87 adds three things they found were not covered well in the existing statutes. Section 1 is the sexual prohibition between prisoners and employees; section 2, lines 20 through line 10 on page 2 is the area of the penalty for taking hostages; and lines 38 through 46 cover battery on anyone in a prison or jail in the state of Nevada.

Senator Hernstadt asked what the need or purpose was for the bill. Mr. Wolff replied there are no penalties now. Their procedures and rules prohibit sexual conduct between employees

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and prisoners, but there are no penalties assessed. The present bill would make that conduct a misdemeanor. He stated it is not a frequent occurrence, but it is something that does occur from time to time and has a potential of occurring. That is why they requested the legislation.

Senator Hernstated wanted to know why they have not been prosecuting under the existing homosexuality statutes, since it is a felony. Mr. Wolff stated there would be no problem in the prosecution if it was observed; however, they have not had a case or they would prosecute. He is not worried about that aspect. The problem is with the male and female sexual conduct. It would be easier to administrate the system if there were penalties involved. It would give them a much stronger contributing force if they wanted to effect a termination on a permanent employee.

Senator Raggio asked if the bill would have the effect of reducing certain cases from what is now a felony to a misdemeanor, as in the case of certain homosexual acts which are a felony, if the bill was passed and it occurred in the prison.

Chairman Close asked if there were not certain shakedowns that occur involving the pubic area which would be prohibited with the language in the bill because it would be unlawful and normal examinations could not be done. He stated homosexuality is not defined in any of the statutes and neither is sodomy.

Senator Hernstadt asked what the penalty is now for the person who has held some of the prison personnel hostage for a period of time. Mr. Wolff stated there are a variety of charges but he did not know what the ultimate charges would be. More than likely it would be kidnapping with the use of a deadly weapon.

Senator Hernstadt asked what is contained in A. B. No. 87 that is not covered in the existing statutes. Mr. Wolff explained there is no consideration in the existing statutes with regard to hostage taking, and A. B. No. 87 does give them something to work with. Kidnapping on the premises is very difficult to prove. When a person is not removed from the actual premises where they were taken into custody, there is nothing in the existing statutes to cover the situation. A. B. No. 87 would give them some definition with regard to hostage taking.

Senator Keith Ashworth referred back to Section 1 and asked Mr. Wolff what they do about sexual conduct between prisoners and prisoners. Mr. Wolff replied that is covered under the existing statutes.

Chairman Close asked why the sexual conduct of two prisoners would be a violation of the law but the conduct of a prisoner and a guard would not be a crime and violate the law.

Ms. Brooke Nielsen, Deputy Attorney General, Criminal Division, stated that if the prisoner-guard was a homosexual act, it would be covered under the homosexual or other sexual crimes that are already on the books. However, if it is a hetero-sexual act, it is not criminalized at all under Nevada law. Sex between a man and woman in the usual sense is not a crime. The purpose of A. B. No. 87 is to give the administration some control over this type of activity between staff members and prisoners. As to whether the bill would have an effect of reducing what is already criminalized under homosexuality and other sexual crimes to a misdemeanor would have to be researched to see if there is a conflict with some of the other sexual crimes that are on the books and that are felonies. She stated she would provide additional information after doing some research on that subject.

Senator Hernstadt asked whether the first section could be limited to sexual conduct between persons of the opposite sex so the homosexual law would be left intact. That would cover heterosexual acts between employees and a prisoner. Ms. Brooke stated that could well be the solution if the appropriate language could be drafted.

Senator Raggio asked what purpose there was in making the offense a misdemeanor, as far as the prisoners are concerned. A prisoner is in prison on a felony charge so if he engages in some conduct with a guard, how would it change the status of the prisoner. Mr. Wolff replied as far as the prisoner is concerned, nothing more would happen; however, it is not the prisoner he is trying to get but the employee. If an employee is guilty of that type of conduct, he would not want him employed.

Chairman Close stated there must be a regulation which says if a guard is involved in sexual conduct with a prisoner, whether homosexual or heterosexual, that has to be grounds for dismissal.

Mr. Wolff replied they then have to go through the appeal process. If an individual has been found guilty of a misdemeanor, it is grounds for termination because that is procedure. They do terminate employees when they have been found guilty of a misdemeanor or a felony. It would give them more strength administratively to handle the problem.

Senator Hernstadt asked if it was easier to put the employees in jail than to go through the administrative procedures.

Senator Raggio asked whether any misdemeanor is subject to employee dismissal. Mr. Wolff replied it is if they are found guilty. An employee would have much less chance of retaining employment if they were found guilty of a misdemeanor than if the problem were handled administratively through the administrative process.

Senator Raggio asked if they would be subject to dismissal if they were found guilty of reckless driving. Mr. Wolff stated it is a consideration but certainly not grounds for dismissal from employment.

Mr. Wolff stated he felt sexual acts between employees and prisoners should not be condoned in a prison setting.

Chairman Close stated it is hard to imagine that A. B. No. 87 is needed because there must be another way of handling the problem. Sexual conduct between male and female prisoners would not be covered under the bill.

Mr. Wolff stated he does not consider that a problem in the prison system today; however, he does consider the employee-inmate relationship a problem.

Ms. Nielsen said she felt the committee should also consider the deterent effect of criminalizing this type of sexual activity. If an employees knows he could be prosecuted for a misdemeanor besides losing his job, it would be more of a deterent. Senator Raggio stated he felt the penalty was pretty weak if that was what they are trying to do.

Chairman Close asked Mr. Wolff to describe the situation set forth in lines 43 through 46 wherein a battery is committed by a prisoner with the use of a deadly weapon, whether or not there has been substantial bodily harm.

Ms. Nielson stated it is the difference between what is considered a severe injury and minor injuries, such as abrasions and cuts. A battery would not be considered substantial bodily harm.

Chairman Close asked if it is the intent of the bill to put someone in prison for from 2 to 20 years if they are involved in a fight and there is an abrasion, cut or scrape. Ms. Nielson replied it would be if it is done by a prisoner in an institution.

Senator Hernstadt stated that in the original draft, it was a battery committed upon an employee of the department or an attorney or contractor working on the facility. The way the assembly amended the bill, they are saying just any battery.

Ms. Nielson explained the problem with the original draft was that it was limited to attorneys, staff members or contractors. The intent was to increase the penalty for batteries committed by prisoners on persons with whom they come into contact frequently. The problem with the original draft was they were limiting or excluding batteries committed upon people who may not fall into one of those specific categories. She agreed the way the present bill is drafted, it would be a felony for prisoners to engage in fights or to hurt each other, and that could be a problem. They were trying to expand the language to cover other situations but there should be a way to exclude prisoner-prisoner assaults or false imprisonment if such a situation occurs. She stated there have not been too many battery prosecutions between prisoners because it is usually handled through institutional discipline. As to the question concerning kidnapping covering the hostage situation, they have had trouble in the past and have had difficulty charging kidnapping in some of the hostage cases. Kidnapping requires actual movement of the person who is taken prisoner. There have been situations where a person is simply being held at a desk with a knife at their throat. They are held hostage yet it may not qualify as kidnapping. In their opinion, A. B. 87 is an improvement in the law and will give prosecutors a handle in any type of hostage situation which may not necessarily involve kidnapping.

Chairman Close stated the way A. B. 87 is written, it would be better to be charged with kidnapping than battery since kidnapping has a penalty of only 1 to 6 years. Ms. Nielson stated 2 to 20 years on line 46, page 2, is an enlargement of the penalty.

Senator Raggio stated all prison sentences have been consistent in the past and asked what the significance of the 2 to 20 years would be. Ms. Nielson stated because of the nature of the crime, where it occurs by a prisoner in an institution, it is their feeling a longer period would be justified in that situation as opposed to the usual 2 to 10 years. She agreed with Senator Raggio that the court would have to make the sentences concurrent under the circumstances anyway.

Senator Hernstadt asked how many disciplinary proceedings have been brought against employees for sexual conduct since Mr. Wolff has been warden. Mr. Wolff stated there have been about one a year, in varying degrees. He stated he is looking for a penalty which could be used as a deterent.

Chairman Close asked Mr. Wolff to review the bill again and bring back some suggested language, specifically concerning the definition of sexual conduct to make it comply with other areas in the NRS. Mr. Wolff was also requested to determine whether homosexuality would be included in Section 1; the reason for the proposed penalties; the language in the battery section and whether it would include fights between prisoners; whether there should be a misdemeanor penalty for sexual conduct, and whether prisoner relations should be included.

Ms. Nielson stated there may have been mistakes in the printing of A. B. No. 87. Page 2, line 1 talks about false imprisonment and it says, "By a prisoner in a penal institution..." They recommended to the assembly that they change "penal institution" to "a prisoner in lawful custody or confinement," which has been done in other parts of the bill. The reason is that penal institution might be construed just to mean state prisons, and that would not include county jails or municipal jails. Many of the hostage situations do occur in the other institutions. She would recommend it be changed to read, "By a prisoner who is in lawful custody or confinement..."

ASSEMBLY BILL NO. 202--Increases penalty for assault. (Exhibit F)

Mr. Bill Curran, of the Clark County District Attorney's Office, stated they are in favor of A. B. No. 202. It basically has the effect of raising the penalty for assault with a deadly weapon from a gross misdemeanor to a felony. Secondly, assault whether with or with a deadly weapon for a specified number of crimes as threatening to kill, sexual assault, mahem, robbery and so forth would be increased from a gross misdemeanor to a felony level. He stated especially in the area of assault with a deadly weapon, often times there is a very narrow difference between murder and assault with a deadly weapon, especially attempted murder. It is a fact of life that gross misdemeanors receive almost no consideration and no penalty. He felt they should be handled as a felony, not only because of the practical problem of treatment of gross misdemeanors under existing circumstances but also because of a situation where someone threatens with a gun or knife and is only charged with a misdemeanor.

Chairman Close asked what the difference would be between attempted grand larceny and the assault committed during the attempt to commit grand larceny. Mr. Curran replied the difference is the overt act that is required in an attempt. He stated the portion under Section 1 of NRS 200.400 is very rarely used.

Senator Hernstadt asked whether the committee felt the bill was really needed.

Chairman Close stated paragraph 2 on page 1 does not appear to read correctly. Since this is existing language, an opinion should be obtained from Mr. Daykin.

Assemblyman Jan Stewart stated they heard testimony from District Attorneys, and it was more or less based on the testimony of Bill Curran that the bill was passed in the assembly. He stated there may have to be some adjustments made, and he was not clear in his own mind as to the difference between attempts in some circumstances and assaults.

Senator Raggio stated his concern with A. B. 202 was they had at one time gone through all the violations on assault, attempts to commit crimes and had them pretty well sorted out. His concern with the amendments in the bill was having it affect other statutes with regard to definitions in other areas.

Mr. Frank Daykin, Legislative Counsel Bureau, stated his opinion would be that the definitions would not be changed but the scheme of penalties that the committee worked out and that the Legislature enacted during the last interim might be disrupted. He stated the difference between battery and assault, as the statute defines it, is that assault is an attempt coupled with present ability. An attempt would not necessarily imply that a person could carry out the threat. Assault is the higher crime.

Senator Raggio asked what the existing language on line 8, page 1, "for an offer or threat to kill..." would mean. Mr. Daykin stated threat to kill is clear enough but an offer, in his opinion, was kind of mocking language. He would suspect without having looked back that it comes from the crimes and punishment act of 1911, and it probably comes from the territorial act of 1861.

Chairman Close asked what the word "for" would mean in that context.

Mr. Daykin stated the word "for" means because of. Senator Close stated he did not think it was clear and asked whether it should be changed in the bill.

Mr. Daykin stated if someone offers to kill by saying he is willing to, it is a threat. On the other hand, if some says he would be glad to kill someone, it could be an offer. If at the moment either one is said there is the present ability to do it, and it is actually undertaken and not merely confined to words but it is actually attempted, then it is an offer. There has to be touching in battery. He felt it would be appropriate to change the language on line 8.

In assault with intent to kill, the threat if it were made would be one of the elements of proving intent. Section 2 does not cover just a threat, there has to be an assault. The punishment is not just for a mere threat, it is the punishment for an assault which is the attempt with the present ability. Mr. Daykin agreed with Senator Raggio that if the language were changed to "assault with intent to kill," the statute would be clearer and cover the same ground.

Senator Raggio asked if the language in the bill is adopted increasing the penalty whether simple assault would then be made a misdemeanor. Mr. Daykin stated simple assault is a misdemeanor if there is no deadly weapon. If there is a deadly weapon then by A. B. No. 202 on page 2, it is raised to the same penalty.

Senator Raggio asked whether that would be consistent and whether assault with the use of a deadly weapon or the present ability to use a deadly weapon would be the same felony as an assault with an attempt to commit any number of offenses, whether or not there was a deadly weapon. Mr. Daykin stated that is the law now and both situations are gross misdemeanors.

Senator Raggio asked whether the language on page 2, lines 6 and 7, was consistent with language in other statutes and whether it refers to having a gun and not using it. Mr. Daykin stated if the assault is not made with the use of a deadly weapon or the present ability to use a deadly weapon, it is a misdemeanor Senator Raggio asked whether an assault with present ability would mean there had to be an overt act. Mr. Daykin stated an assault means an attempt and there must be an overt act, but it does not have to amount to a battery. The battery is complete with touching. The attempt to maim or kill probably stops if it is not actually carried out.

Chairman Close suggested changing the language on line 8, deleting the new language on lines 10 through 12 and leaving the language as it appears on page 2.

ASSEMBLY BILL NO. 202

Senator Raggio moved to amend and Do Pass A. B. No. 202.

Senator Keith Ashworth seconded the motion.

The motion carried. (Senators Ford and Wagner were absent for the vote.)

ASSEMBLY BILL NO. 203--Establishes minimum punishment for certain attempts. (Exhibit G)

Assemblyman Jan Stewart stated there was a question as to whether it is assumed by everyone that an attempt to commit murder is a felony. Because there was no minimum, the punishment was always established in felony penalties of not less than 1 year. To clarify this, "not less than 1 year" was added so a judge could not impose a punishment of six months, which would be less than a felony.

ASSEMBLY BILL NO. 203

Senator Raggio moved to Do Pass A. B. No. 203.

Senator Keith Ashworth seconded the motion.

The motion carried. (Senators Ford and Wagner were absent for the vote.)

SENATE BILL NO. 250--Repeals provision regarding change of judge.

Chairman Close reviewed the language in the amendments to S. B. No. 250 with the committee. Line 15 on page 1 would read, "Except as otherwise provided in this subsection and subsection 3..." Line 18 would be changed to read 10 days instead of 3. On page 2, after line 2, language would be added as follows: "If a case is reassigned to a new judge and the time for filing the affidavit under subsection 1 and paragraph (a) under subsection 2 has expired, the parties have 10 days after notice of the new assignment within which to file the affidavit and the trial or rehearing of the case must be rescheduled to a date after the date of the 10-day period unless the parties stipulate to an earlier date."

Senate Committee on Judiciary
March 23, 1981

Senator Raggio asked why the 3 days were changed to 10. Chairman Close explained if the case has not been assigned to a new judge, there would not be enough time to file an affidavit.

ASSEMBLY JOINT RESOLUTION NO. 30*--Purposes to amend Nevada constitution by prohibiting commutation of sentences of death and life imprisonment without possibility of parole to sentences which would allow parole.

Senator Hernstadt asked Mr. Daykin what is being done with A. J. R. No. 30*. Mr. Daykin explained what was being questioned was the breadth of the law. The sentence of life without the possibility of parole may not be commuted to a sentence which would allow parole. There was some problem with respect to commuting to a sentence which would permit release.

Senator Hernstadt said Mr. Daykin wrote a letter to Senator Echols regarding sentencing. Mr. Daykin stated a life sentence could be commuted to a sentence which would permit release. Senator Hernstadt asked since the wording is "except as provided by law" whether it could be provided by law that the occurrence would not take place. Mr. Daykin replied that it could not because the only thing that could be provided by law would be that it might be commuted to a sentence which would permit parole. The constitution says the governor may commute punishments, except as provided in subsection 2. They are limited to the wording "may not be commuted to a sentence which would allow parole."

Senator Hernstadt asked whether an inmate in prison who has been sentenced to prison for life without the possibility of parole would be entitled to parole if A. J. R. No. 30* is passed and the people vote to approve it.

Mr. Daykin stated the Supreme Court did hold that parole or the possibility is one of the incidents of a sentence, even though unspoken. What they would hold with respect to executive clemency is something that would have to be found out when it was ruled upon. The Supreme Court has never ruled on it.

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted by:

Iris B. Parraguirre

Iris B. Parraguirre, Secretary

* of the 60th Session

APPROVED BY:

Mel D. Close

Senator Melvin D. Close, Jr., Chairman

DATED: 4-2-81

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date March 23, Time 8:30 a.m.

A. B. No. 72--Further restricts liability of landowners to persons using their land for recreational purposes.

A. B. No. 87--Increases penalties for certain false imprisonment and batteries; prohibits sexual conduct between prisoners and employees of department of prisons.

A. B. No. 202--Increases penalty for assault.

A. B. No. 203--Establishes minimum punishment for certain attempts.

[redacted]

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: 3-23-81

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
C. WOLFF	PRISOC	885-5069
S. ROBINSON	"	"
M. [illegible]	Nevada Cattlemen Assoc. Elko	738-3186
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	4170
Bill Curran	[illegible]	[illegible]

DEAN A. RHOADS
ASSEMBLYMAN
ELKO DISTRICT NO. 33
TUSCARORA, NEVADA 89834

COMMITTEES
MEMBER
WAYS AND MEANS
ECONOMIC DEVELOPMENT AND NATURAL RESOURCES
LABOR
LEGISLATIVE FUNCTIONS
SELECT COMMITTEE ON PUBLIC LANDS

EXHIBIT C

Nevada Legislature

SIXTY-FIRST SESSION

March 18, 1981

MEMO TO ASSEMBLYMAN ALAN GLOVER

FROM: ASSEMBLYMAN DEAN RHOADS

SUBJECT: AB 72 as amended

. Liability of land owners - Senate hearing Monday, March 16th Judiciary Committee

AB 72 is one of several bills that resulted from the interim study of problems of excess of public lands. Several meetings and hearings were held throughout the state. Interest and attendance was very good. We found that much access was blocked because of poor land management planning since Nevada became a state.

True, many of these accesses were blocked by private lands; also poor land management planning by federal land officials. When the private land acquisition was activated with the Homestead Act, and various transfers of land from federal to state and then to private, most of the land was naturally settled around the bottoms of mountains and in valleys, some cases almost totally surrounding very popular hunting areas.

For many years there has been no problem. However, for the last 20 years, problems arose because of the abuse of travel through these private lands. Also the fact that no orderly methods of access have been sought or accomplished to attain reasonable travel to these hunting and recreation areas. This bill AB 72 will strenthen the liability of land owners and hopefully encourage some to allow access across their private lands. The only change in NRS 41.510 would be on Line 3 which will include crossing over to public lands. It was found throughout our several meetings and hearings that this statute was not clarified as to crossing over private land to reach public lands. The section was not clear that it guaranteed liability damages to the owner.

The malicious but not willful or negligent addition to the bill has been amended out on Page 2 on the amended version of AB 72 which was accomplished in the Assembly. It should be pointed out that if

[redacted]

this law was on the books in 1864 when Nevada became a state, and if the Federal Government had also assumed the same types of requirements when land was passed from federal to private ownership, much of the access problem throughout the State of Nevada wouldn't be there today.

STATE OF NEVADA
DEPARTMENT OF PRISONS
OFFICE OF THE DIRECTOR

EXHIBIT D

MEMORANDUM

TO: Melvin D. Close, Jr., Chairman
Senate Judiciary Committee

DATE: March 16, 1981

FROM: Charles L. Wolff, Jr.
Director

SUBJECT: Amendments to SB 36

Senator, I have reviewed the amendments you have forwarded to me regarding SB 36.

As stated to you in my earlier testimony to the Committee, I believe that the wording on Section 1, lines 10 and 11, should read: "has not committed a battery within the last one year". In addition, a prohibition of inmates who have been convicted of a sexual crime would also be workable for the system.

As you know, the reason for the Department requesting this legislation, initially, was to broaden the pool of inmates available from which to choose for the honor camp programs. I have had difficulty in filling the legislatively approved slots and the principle reason for this has been the prohibition of any inmate with an assaultive background. The Attorney General's office has pointed out to me that the existing language of NRS 209.481, Section 1 could be construed to include a very minor altercation in the distant past of any inmate. On the other hand, the suggested amendments proposed by the bill drafter and the Committee would seriously restrict the pool of individuals from which I could choose to classify to the program. As pointed out in the testimony to you, I believe the classification system of the Department of Prisons has the capacity to choose the proper inmates for these honor camp programs and I would urge that the Committee consider my previously suggested language and the exclusion of sex offenders.

Charles L. Wolff, Jr.
Director

CLW/jw

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		.....Senate.....AMENDMENT BLA
Adopted	☐	Adopted	☐	AMENDMENTS to.....Senate.....
Lost	☐	Lost	☐	~~Joint~~
Date:		Date:		Bill No.....36.....~~Resolution No.~~.....
Initial:		Initial:		
Concurred in	☐	Concurred in	☐	BDR.....16-58.....
Not concurred in	☐	Not concurred in	☐	
Date:		Date:		Proposed by.....Committee on Judiciary.....
Initial:		Initial:		.....

Amendment Nº 149

Amend section 1, page 1, line 9, by deleting "or".

Amend section 1, page 1, line 10, by inserting after the semicolon:

"[Has been convicted of a sexual or other serious battery or assault during the period beginning 3 years before the date the prisoner entered prison;".

Amend section 1, page 1, line 11, by deleting the closed bracket.

Amend section 1, page 1, by inserting after line 14:

"3. As used in this section, "sexual or other serious battery or assault" includes sexual assault, lewdness with a child under the age of 14, murder, robbery, mayhem, kidnaping and any felony in which battery is an element, or an attempt to commit any of them, or battery in which substantia bodily harm results or assault with intent to commit a felony."

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DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
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March 4, 1981

To: Committee on Judiciary-Senate

Re: Amendment to S.B. 36, "serious physical or sexual assault"

The term "serious physical or sexual assault" requested by the committee in its amendment to S.B. 36 has been defined as "sexual or other serious battery or assault" and includes the major sex crimes and crimes against the person which result in or threaten serious bodily harm:

Sexual assault: a misnomer; actually, a sexual battery.

Lewdness with a child under the age of 14: a sexual battery of a minor, falling short of a sexual assault (i.e., sexual penetration, including cunnilingus and fellatio).

Murder: A killing (may or may not include a battery, e.g., a bludgeon, withholding medicine).

Robbery: an element of the crime of robbery is the use of force or violence (usually including a battery) or fear of injury (an assault to effectuate the commission of a serious felony).

Mayhem: a battery resulting in dismemberment or disfigurement.

Kidnaping: generally, holding a person for ransom or for the purpose of committing a major felony or for secret imprisonment--usually involving the use of force or violence or the threat of force (as in robbery) over a period of time, and is analogous to a simple assault or battery (not an element of the crime), detention and a felonious purpose.

Any felony in which battery is an element: includes battery with a deadly weapon, battery upon a peace officer and battery with intent to commit a crime.

Or an attempt to commit any of them: this is a codeword for a plea bargained case--the maximum penalty for an attempt is half the penalty for the crime--and includes attempted murder.

Battery in which substantial bodily harm results: a gross misdemeanor.

Assault with intent to commit a crime: assault (an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another) for a threat to kill, commit sexual assault, mayhem, robbery or grand larceny--a gross misdemeanor.

During the period beginning 3 years before the date the prisoner entered prison: if this were stated as date of imprisonment, it might be construed to mean the date of imprisonment for the term currently being served, which might exclude a person punished first for a sexual or other serious battery or assault and then paroled to a term for a crime against property, such as grand larceny.

Simple battery and assault, which are misdemeanors, have been excluded, as not within the specification of "serious." Please note that copies of the amendment have been made only for the committee; please notify me if copies for the floor are desired.

Very truly yours,

Will G. Crocket
Deputy Legislative Counsel

WGC:ab

EXHIBIT E

A. B. 72

ASSEMBLY BILL NO. 72—ASSEMBLYMEN RHOADS, BERGEVIN AND GLOVER

JANUARY 29, 1981

Referred to Committee on Judiciary

SUMMARY—Further restricts liability of landowners to persons using their land for recreational purposes. (BDR 3-70)

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 certain actions concerning persons; providing further restrictions on the liability of owners, lessees and occupants of premises to persons who use the premises for recreational purposes; 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 41.510 is hereby amended to read as follows:

41.510 1. An owner, lessee or occupant of premises owes no duty to keep the premises safe for entry or use by others for *crossing over to public land,* hunting, fishing, trapping, camping, hiking, sightseeing, or for any other recreational purposes, or to give warning of any hazardous condition, activity or use of any structure on [such] *the* premises to persons entering for [such] *those* purposes, except as provided in subsection 3. [of this section.]

2. When an owner, lessee or occupant of premises gives permission to another to *cross over to public land,* hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities, upon [such] *his* premises:

(a) He does not thereby extend any assurance that the premises are safe for [such] *that* purpose, constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted, except as provided in subsection 3. [of this section.]

(b) [Such] *That* person does not thereby acquire any property rights in or rights of easement to [such] *the* premises.

3. This section does not limit the liability which would otherwise exist for:

(a) [Willful or malicious] *Malicious, but not merely willful or negligent,* failure to guard, or to warn against, [a dangerous] *an unusually hazardous* condition, use, structure or activity.

(b) Injury suffered in any case where permission to *cross over to public land,* hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities, was granted for a consideration other than the consideration, if any, paid to the landowner by the state or any subdivision thereof.

(c) Injury caused by acts of persons to whom permission to *cross over to public land,* hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

4. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

EXHIBIT F

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT **A. B. 202**

ASSEMBLY BILL NO. 202—COMMITTEE ON JUDICIARY

FEBRUARY 24, 1981

Referred to Committee on Judiciary

SUMMARY—Increases penalty for assault. (BDR 16-739)
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; increasing the penalty for certain assaults; 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 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, except in the term "sexual assault":

(a) "Assault" means an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(b) "Battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of assault [for an offer or threat] *with intent* to kill, commit sexual assault, mayhem, robbery or grand larceny shall be punished for a gross misdemeanor.

3. Any person convicted of battery with intent to kill, commit sexual assault, mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

SEC. 2. NRS 200.471 is hereby amended to read as follows:

200.471 1. As used in this section, "assault" means an unlawful

attempt, coupled with a present ability, to commit a violent injury on the person of another.

2. Any person convicted of an assault *under circumstances to which subsection 2 of NRS 200.400 does not apply* shall be punished:

(a) If the assault is not made with use of a deadly weapon, or the present ability to use a deadly weapon, for a misdemeanor.

(b) If the assault is made with use of a deadly weapon, or the present ability to use a deadly weapon, [for a gross misdemeanor.] *by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.*

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EXHIBIT G

A. B. 203

ASSEMBLY BILL NO. 203—COMMITTEE ON JUDICIARY

FEBRUARY 24, 1981

Referred to Committee on Judiciary

SUMMARY—Establishes minimum punishment for certain attempts. (BDR 16-740)

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 punishment for attempts; revising the punishment for attempted murder and attempts of crimes which are punishable by life imprisonment to provide for imprisonment of not less than 1 year; 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 208.070 is hereby amended to read as follows:

208.070 An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

1. [If the crime attempted is] *If a person is convicted of attempted murder or an attempt to commit a crime* punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state prison for *not less than 1 year and* not more than 20 years.

2. In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both [such] fine and imprisonment; but nothing [herein shall protect] *in this section protects* a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed; and a person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion [shall discharge] *discharges* the jury and [direct] *directs* the defendant to be tried for the crime itself.

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