MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 9, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:05 a.m., Monday, March 9, 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 Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

SENATE BILL NO. 307

Removes requirement for presentence report in certain cases.

Mr. Bud Campos, Department of Parole and Probation stated the first part of S. B. No. 307 would eliminate the presentence report where the sentence is fixed by a jury, which is done only in capital type cases. There would be no necessity to provide a presentence report in sentencing, in that case, it would not do the court any good. However a presentence report in a case fixed by the jury would be one of the most used reports that the department ever writes. The prison will be working on that case for a number of years and the only reference in later years is the presentence report. If the case becomes before the Board of Pardons, the presentence report would be the one used. In a capital case, it is usually ten years before it is reviewed by the pardons board. There would not be a substantial savings by doing away with the presentence report.

Senator Raggio informed the committee this was one of a number of amendments requested by Judge Thompson of the 8th Judicial District Court. Judge Thompson felt the mandatory language in NRS 176.135

should not precept the court. The purpose of the presentence report is to aid the court in sentencing, if it is used at some future time, is a secondary matter. Mr. Campos stated it may be secondary but it is mandatory by law that the prison be provided with a report. Senator Raggio stated he was giving the reason behind the bill. The court's position is that the presentence report does not aid the court in fixing a sentence and the court desires the latitude and flexibility in requiring the report in some cases.

Mr. Campos stated, in the second part of the bill relating to the waiver with consent of the court, this would be okay if the court consents for the reasons mentioned. In many cases, judges would consent just to get the case resolved. In 1967 when the presentence court became mandatory in all cases, the reason was because judges were allowing waivers in too many cases. People were being placed on felony probation that were fugitives from justice. He stated in some instances numerous presentence reports are done on an individual in a short period of time and is a dupliciation of effort. Mr. Campos stated he did not like to see a defendant waiving, it is not a right of the defendant, it is a tool of the court. He stated it would be interesting if this legislation is approved, to come back in a few years and report to see what has happened.

Chairman Close stated a 90-day time period could be put in the requirement. Mr. Campos stated there would be no problem because if there is a waiver by the defendant, the attorney is agreeing so there would be no objection to having a current description. Mr. Campos stated a year would be more suitable.

Senator Hernstadt asked if this legislation was processed, would this allow people to be released that have records and should be detained on other convictions that have not been processed. Mr Campos stated this has happened in the past and could in the future.

SENATE BILL NO. 310--Revises procedures for release without bail.

Senator Wagner advised the committee she had introduced S. B. No. 310. She furnished each member of the committee information on O.R., (own recognizance). She stated the law in Nevada is one of the most moderate or weakest in the nation. See additional remarks of Senator Wagner attached hereto as Exhibit C. Senator Wagner stated S. B. No. 310 puts some standards in the law but changes it very little, it only clarifies the existing provisions already in the law.

Mr. Mike Melner, Attorney, Reno, Nevada, American Civil Liberties Union, stated in terms of the bail bond situation, it seems to be discriminatory. A study done in the Reno City Jail indicated of the total incarcerations during one particular month, 291 of them are from the majority group, such as caucasian, 100 or 25.7% from the minorty group, which includes all others, the majority groups are more able to make bail bonds or cash bail while the minority groups are not able to do so. It is a much worse ratio for O. R. because there is no clear standard. One of the good things about the bill is the ability of the court system to estabish a standard for O. R. and have some kind of guidance for the judiciary and for the police departments and sheriffs. His group supports the legislation. He further stated although minorities make up 25.7% in Reno, only 7.8% released on O. R. were minorities. In terms of making bail bond, although the minorities are 25.7% of the incarcerations, only 11.8% make bond, cash bail, only 16.7%.

Senator Raggio asked Mr. Melner if his group supported the standards listed on page 2 of Exhibit C. He stated he felt they were appropriate standards, and strong standards are needed. Senator Wagner told the committee that in the information she handed out, there are copies of the Federal and Oregon statutes regarding standards.

Ms. Kathy McPherson, American Friends Service Committee, stated about 50% of the population in the jail is unsentenced pre-trial detainees. The average cost for booking is $24 per case and $19 a day to house these people, these were 1977 figures. If these people were released, there would be a substantial savings. Mr. Melner added if the right people were released, savings would result if they are back working, supporting a family and would be put back in the community. If the wrong people are released, that would be a problem, but they may get out on bail anyhow.

Senator Raggio questioned letting people back on the streets that may commit further crimes. Mr. Melner answered the standards which are established should be sensitive enough to keep those people incarcerated. Senator Wagner stated in the program in Clark County which was mandated by the court because of the overcrowding in the jail, the show rate for the 1,100 people released on their own recognizance is 96.8%. That compares more favorably from those released on bail.

Mr. Dennis Linscott, A-1 Bail Bonds, Las Vegas, Nevada, stated that S. B. No. 310 is not needed. The need of the bill, according to the author of the bill is to reduce the cost of incarceration of the pre-trial detained defendant. The private enterprise system of the bail bond industry which does not cost the state or county is in existence. The bail bond industry through established agencies can perform the functions of releasing the detainees, at no cost

to the people, and through the fact of forfeiture, can produce income to the county or state. Additional staff and people are going to be needed to make investigations if this legislation is passed. He further stated S. B. No. 310 does not provide for the need to keep detainees available for further adjudication. The bail bond industry can do the investigation, recover the individual to custody and it does not cost the state anything except possibly a fairly small cost of administering the bail bond industry through the Department of Insurance and that is somewhat covered by the premium tax. Mr. Linscott asked that S. B. No. 310 be set aside and that the bail bond industry be used more fully. He stated O. R. programs are expensive and he also was concerned that in Clark County, 3.6% of the people are not appearing. The system has been in existence 120 days and the majority of the people in the system have yet to get somewhat beyond the preliminary hearing. He stated in another year, those figures with O. R. will be twice that of the ones with bail regarding the loss factor.

Mr. Linscott stated that the charges of the industry are state set, 10% and have been so for 13 years. Senator Ford asked about the program in the Clark County Courts several years ago under a federal grant which was dropped. Mr. Linscott stated that system was the O. R. system as originally developed, to handle the indigent, who did not have the money to purchase a bail bond. The indigent was allowed O. R. and he felt it was a good system. However it did not work when it was first developed. The system now is that bail bonds are sold to people who can afford them, they are being let out on O. R. and the indigent is still staying in jail.

Senator Wagner asked what has happened in the 29 other states which have O. R. in relation to the bail bond industry. Mr. Linscott said the bail bond industry is fighting for its life.

Senator Hernstadt asked about the possibility of a more affluent person convicted of a capital crime, providing bail and committing a further offense when released. Mr. Linscott pointed out with that individual more people are aware he is on bail, more people are watching him and he is less likely to commit a further crime. He stated he wrote approximately $1,200,000 worth of bail, paid off $200,600, or five individuals. At the end of the year, he had a net remaining outstanding liability of $418,000. He stated in Washoe County there is good control between the courts, in Las Vegas, more people and more problems between the courts and bondsman in reference to the detainee.

Chairman Close stated several years ago when bond was forfeited, the county paid double the money to the bondsmen, hundreds of thousands of dollars outstanding. Mr. Linscott said the position of the bondsman is that the money is owed, he felt the money should be paid with the proper process, forfeiture and the 90 days to recover the individual, and that is the primary purpose, to get the individual back into custody.

Senator Raggio asked the procedures if a defendant fails to appear and the court orders the bail forfeit. Mr. Linscott stated he has 90 days to return the individual to custody. If he does not appear after 90 days, the district attorney office can move for judgment, the court can accept judgment, issue an execution of judgment, 10 days thereafter, payment is due, in full to the court. He stated a person that puts up cash bail has the same right to have an execution of judgment entered on that sum of money. The bail bond law, NRS 178, specifies the exact procedure as to the system.

Mr. Curtis Tuck, Publisher, Bail Bond Business, in Fallon, Nevada, stated he was in opposition to S. B. No. 310. He advised the committee regarding the rates for bail bond, under $500, the rates are higher than 10%. The state set rates are for a $100 bond, $20; for $200, $30; $300, $40; for $400, $50. Mr. Tuck said he felt this bill would set a precedence and open the door for additional county expenses in the cow counties. None of the sheriff offices in northern Nevada have the staff to handle additional duties. He stated he did not feel the standards are clear as to how to O. R. an individual. Mr. Tuck said the judges have the latitude to give O. R.'s now, the change is making additional work. He stated he felt the legal profession and the bail bondsmen are at odds, he was of the opinion that the lawyers are behind these bills. Lawyers have been complaining of other people getting the money and are trying to get the bail bondsmen out of the business.

Mr. Larry Ketzenberger, Metropolitan Police Department, Las Vegas, Nevada, stated the department supports S. B. No. 310, primarily for the purpose that it allows the courts to release under O. R., a person who has a prior conviction for any offense. A conviction for a minor offense eliminated an individual from being considered under the guidelines allowed by law. Las Vegas is under a court mandate to keep the jail population as low as possible, for that reason the passage of S. B. No. 310 would assist in that effort. He stated additional staff would not be needed in his department on O. R. releases within the agency on misdemeanors. A federal grant funds a pre-trial release program and is administered by the 8th Judicial District. Persons are employed to evaluate an arrest. He felt most agencies could handle any added duties.

Mr. Rudy Shafter, a former bail bondsman in Wisconsin and Oregon, stated that Wisconsin had a bail bond law and had a penalty of six months for jumping bail on a misdemeanor and five years for jumping bail on a felony. Oregon does not have a penalty and the situation has been a travesty because an individual is picked up for jumping a bail, is brought in and released again and still has not paid the bail. If a penalty is not set up in the statutes, there is no reason for a person to show up in court.

SENATE BILL NO. 306--Extends limitation on commencement of criminal action for gross misdemeanor.

Mr. Robert Manley, Attorney General Office, stated at the present time, gross misdemeanors are bracketed with felonies for all purposes. A gross misdeameanor carries a maximum of one year in the county jail, a felony carries one year or more in the state prison. They are both handled the same. His office feels that gross misdemeanors are more serious than misdemeanors and should be put in the category of felonies as to the statute of limitations. The limitation is three years for felony crimes in the nonviolent area and is unlimited in certain violent crimes. He suggested the one year limitation be increased to two years for gross misdemeanors, misdemeanors would be left at one year. He suggested the language "secret manner" should be defined more thoroughly. Senator Raggio stated the language regarding "secret manner" is consistent throughout the jurisdictions and was left vague and leaves open the opportunity to file charges in most cases. He felt the language should be left alone. Mr. Manley stated he disagreed with Senator Raggio.

Mr. Bill Curran, Clark County District Attorney Office, stated he basically supported the statements of Mr. Robert Manley.

SENATE BILL NO. 306 (On Agenda)

Senator Keith Ashworth moved to Do Pass S. B. No. 306.

Senator Raggio seconded the motion.

The motion carried. (Senator Hernstadt was absent for the vote.)

SENATE BILL NO. 307 (On Agenda)

Senator Don Ashworth moved to indefinitely postpone S. B. No. 307

Senator Hernstadt seconded the motion.

The motion carried unanimously.

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SENATE BILL NO. 309--Eliminates requirement of endorsement of each jury instruction in criminal trial.

Mr. Bob Shriver, Nevada Trial Lawyers, stated he was in favor of S. B. No. 309, it conforms civil with criminal which was passed out of Senate Judiciary as S. B. No. 227, on March 6, 1981.

Senator Raggio moved to Do Pass S. B. No. 309.

Senator Don Ashworth seconded the motion.

The committee discussed S. B. No. 227, passed in committee on March 6, 1981 and discovered S. B. No. 309 and S. B. No. 227 were similar bills in the same section of NRS. It was decided S. B. No. 309 was not needed.

Senator Raggio withdrew his motion to Do Pass S. B. No. 309.

SENATE BILL NO. 309

Senator Hernstadt moved to indefinitely postpone S. B. No. 309.

Senator Keith Ashworth seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 310--Revises procedures for release without bail.

Senator Keith Ashworth moved to indefinitely postpone S. B. No. 310.

Senator Ford asked if there is a penalty in the law for jumping bail. Mr. Bill Curran, Clark County District Attorney Office stated failure to appear after omission of bail is a separate crime. However it has never been prosecuted successfully. Chairman Close stated a statute was passed several years ago that a county could not collect forfeited bail from bail bondsmen. Judges exonerated numerous cases, one particular judge did so his last day of office in the amount of $100,000. Senator Wagner felt the value of passing the bill would be to set up standards. She said the bill needs to be amended if it is passed because of some conflicts which were not caught in the drafting of the bill. NRS 178.502 was read to the committee dealing with bail. Senator Keith Ashworth felt too many people are being turned out on O. R. and still committing crimes.

The committee suggested an amendment on page 2, line 13, to add the language, upon such condition, to conform the bill. Chairman Close felt language should be put in the bill that an unreliable

person should not be given a second O. R. Senator Hernstadt suggested on Page 2, Section 2, subparagraph 4, between (b) and (c), the language should be put in that if a person fails to appear, that is a separate offense. Chairman Close stated if a person is given O. R., leaves the area and the state is required to spend money to bring him back, that person should be responsible for that expenditure. The committee agreed to include this in the bill. Senator Wagner asked that the amendments be reviewed to S. B. No. 310. Chairman Close stated on line 13, page 2, following the word court, the language upon such conditions as may be prescribed to insure his appearance, will be added. Lines 14 and 15. Add in, if you are once released on O. R. and fail to appear on O. R. or bail, you are not eligible for O. R. Senator Wagner stated she felt the committee was making the bill more restrictive than it was originally.

Senator Raggio moved to get the amendments drafted to S. B. No. 310 and brought back into the committee for approval.

Senator Don Ashworth seconded the motion.

The motion carried unanimously.

The following Bill Drafting Requests were presented and received for committee introduction:

BDR 14-1128 (Senator Hernstadt) (S.B. 384)

Prohibits prosecuting attorneys from bargaining for pleas in prosecutions for certain offenses.

BDR 41-1047 (Senator Raggio). (S.B. 385)

Amends provisions relating to issuance and expiration of work permits for gaming employees.

Senator Raggio asked the committee for permission to have three bills drafted, requested by Mr. Thomas Erwin, Attorney, Reno. One is to amend the procedure for change of venue, another for an amendment of NRS to facilitate searches for wills and one for an amendment to clarify the remedies of an estate upon breach of a purchaser to complete a sale of real estate by the estate. (See Exhibit D, E and F).

Senator Don Ashworth moved for committee approval to get the bills drafted.

Senator Wagner seconded the motion.

The motion carried unanimously.

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Chairman Close asked the committee to review the amendments to S. B. No. 226, attached hereto as Exhibit G. A change should be made to specify a parent, a brother, etc., in Section 1. N. R. S. 149.045 was read to the committee. Chairman Close stated this section would be added to with the language that a petitioner must list the spouse and all adult children and last known address. Chairman Close stated he would get the necessary changes and bring it back to the committee.

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

Chairman Close asked the committee to review the amendments to S. B. No. 36, attached hereto as Exhibit H. Discussion by the committee resulted in the suggestion Warden Wolff be supplied with a copy of the amendment and background material from Will Crocket, Deputy Legislative Counsel and respond to the committee in writing his feelings on the amendment.

SENATE BILL NO. 282--Establishes immunity from liability for certain persons and authorizes creation of centers for collection and distribution of donated food.

Senator Ford advised the committee the bill was much more than requested from the bill drafter. She said no one, including the county wants to get in the area of organizing a community food bank. It was suggested Section 3 and 4 be deleted. Discussion by the committee resulted in the following action on S. B. No. 282.

Senator Don Ashworth moved to amend and Do Pass S. B. No. 282.

Senator Raggio seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 279--Repeals statutory provisions for use of grand juries.

Senator Raggio moved to indefinitely postpone S. B. No. 279.

Senator Keith Ashworth seconded the motion.

The motion carried unanimously.

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SENATE JOINT RESOLUTION NO. 25--Proposes constitutional amendment to abolish grand juries.

Senator Don Ashworth moved to indefinitely postpone S. J. R. No. 25.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 13--Adds supervised work as optional condition of probation or punishment for misdemeanor.

Senator Raggio moved to Do Pass S. B. No. 13.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 149--Revises provisions relating to abuse and neglect of children.

Chairman Close advised the committee he had met with the Welfare Department and the suggested changes to the bill are as follows:

Page 1, line 11, strike or attorney general on behalf of a state agency. Line 12, strike or attorney, on line 13, general on behalf of a state agency, on line 15, strike physician, line 20, after the word serious, add the word bodily. On page 2, line 1, after the word or, add bodily, line 3, strike physician, line 11, strike physician. Strike Section 4, Section 5, and Section 8 on page 4 and 5. Strike Section 9, on page 5 and to line 9, on page 6. On page 7, strike Section 11, on page 8, strike Section 12. In Section 13, strike lines 37 through 40, page 8. On line 41, page 8, after the word an, should read a severe. Strike the sentence starting on line 44 through line 46. On line 50 after the word child, add in the following language, because of the faults or habits of the parent, guardian or custodian of the child or the refusal when able to do so to provide them. On page 9, line 6 and 7, delete Physical injury includes an injury sustained as a result of excessuve corporal punishment. On line 6, after bodily function, insert or bodily organ. On line 22, strike the and after the word photographing, insert or, on line 21, after encouraging, insert a child to engage in. On page 11, delete lines 23 through 29.

Chairman Close advised the committee he had a letter from Ms. Claudia Cormier, Deputy Attorney General which states it will take more attorney generals to work this out. (See Exhibit I

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attached hereto.) He also had a letter from Washoe County Welfare Department indicating their position on S. B. No. 149. (See Exhibit J attached hereto.)

Senator Wagner asked why the word physician was deleted in the bill. Chairman Close read the letter from the Washoe County Welfare Department, Exhibit J, which explained the reason for the deletion. Discussion by the committee resulted in a decision to leave the word physician in the bill.

Senator Wagner asked what the purpose of the bill will be after the changes requested. Senator Ford stated that it is clearly spelled out in the juvenile court law. Before child abuse has only been covered in a separate section under general crime areas.

Discussion of the committee of Section 6, lines 8 through 14, resulted in the decision to leave the brackets in as the bill is printed. By leaving the brackets in, the new language on page 3, lines 14 through 19, refers to NRS 200.5011.

Senator Hernstadt suggested the word videographing be inserted in Section 7, page 9, line 22 for further clarification and coverage.

SENATE BILL NO. 149

Senator Hernstadt moved to amend and rerefer to the Senate Committee on Judiciary, S. B. No. 149.

Senator Ford seconded the motion.

The motion carried unanimously.

Discussion and voting on the bills was concluded.

Senator Don Ashworth moved to approve the minutes of February 26, 1981 and March 3, 1981.

Senator Raggio seconded the motion.

The motion carried unanimously.

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There being no further business, the meeting adjourned at 11:00 a.m.

Respectfully submitted:

Shirley LaBadie, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: March 11, 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on JUDICIARY, Room 213.

Day Monday, Date 3-9-81, Time 8:00 a.m.

S. B. NO. 306--Extends limitation on commencement of criminal action for gross misdemeanor.

S. B. NO. 307--Removes requirement for presentence report in certain cases.

S. B. NO. 309--Eliminates requirement of endorsement of each jury instruction in criminal trial.

S. B. NO. 310--Revises procedures for release without bail.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: March 9, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
BARBARA DURKIN	PAROLE + PROBATION 508 N. CURRY CC		885-5040
Jack M. Vargas	Self - Concerned Motorist		- 0 -
Bob SURVER	NEV. TRIAL LAWYERS 500 S. Division		882-3577
Kathie McPherson	American Friends Service Committee		358-6800
JEFF LEATHLEY	Mac's Bail Bonds 800 Isbell Carson City		882-1555
DENNIS LINSCOTT	A-1 Bail Bonds 427 Las Vegas Blvd So.		382-5807
Pete Haller	Nevada Insurance Co		882-1943
Curtis W. Tuck	Fallon Bail Bonds - Lobster [illegible]		423-6041
MIKE MELNER	AMERICAN CIVIL LIBERTIES UNION		323-3873
Bud Lamos	Parole + Probation		5040
Kristen Averworth	San Ardmore H.S. 2237 Pinto Ln		810-6125
Anne Cranmer	Invited by Senator Wm Richardson		

ANALYSIS OF SENATE BILL 310

EXHIBIT C

Existing Law

Existing law provides for release on their own recognizance, by sheriffs, of persons with "clean" records charged with misdemeanors. It also provides for release on their own recognizance, by magistrates, or other specified judicial officers, of persons charged with felonies.

Subsection 3 of NRS 178.484 provides that a person with no prior conviction for any offense who is charged with a misdemeanor may be released without bail at the discretion of the sheriff, or chief of police, or his designated deputy, pursuant to guidelines established by a court of competent jurisdiction, by filing an agreement to appear at the time and place specified in such agreement.

Subsection 1 of NRS 178.502 provides that the magistrate or court or judge or justice * * * may authorize the release of the defendant without security upon his written agreement to appear at a specified time and place and upon such conditions as may be prescribed to ensure his appearance.

S.B. 310

Senate bill 310:

1. Permits a court to release a person without bail upon a showing of good cause.

2. Allows a court to investigate a person for the purpose of determining whether to release him without bail.

3. Permits a sheriff or chief of police to release without bail a person charged with a misdemeanor upon a showing of good cause.

4. Requires that before any person may be released without bail he must file a signed document containing specified information.

Comments and Notes

1. The American Bar Association has standards, approved on February 12, 1979, relating to pretrial release. These standards include provisions relating to release by a law enforcement officer acting without an arrest warrant, issuance of summons in lieu of arrest warrant, release by judicial officer at first appearance or arraignment, and the release decision.

Standard 10-5.1, "Release on defendant's own recognizance," says:

> (a) It should be presumed that the defendant is entitled to be released on his or her own recognizance. The presumption may be overcome by a finding that there is a substantial risk of nonappearance or a need for additional conditions as provided in standard 10-5.2.
>
> (b) In determining whether there is a substantial risk of nonappearance, the judicial officer should take into account the following factors concerning the defendant:
>
> (i) the length of residence in the community;
>
> (ii) employment status and history;
>
> (iii) family and relationships;
>
> (iv) reputation, character, and mental condition;
>
> (v) prior criminal record, including any record of appearance or nonappearnace while on personal recognizance or bail;
>
> (vi) the identity of responsible members of the community who would vouch for the defendant's reliability;
>
> (vii) the nature of the offense presently charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of nonappearance; and
>
> (viii) any other factors pertaining to the defendant's ties to the community or bearing on the risk of willful failure to appear.
>
> (c) In evaluating these and any other factors, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge.

(d) In the event the judicial officer determines that release on personal recognizance is unwarranted, the officer should include in the record a statement of the reasons for this decision.

The commentary for the standard, says, in part:

> This standard creates a presumption that every defendant should be released on his or her own recognizance unless there is good reason not to permit such release based either on the danger that the defendant poses to the community or on the defendant's propensity for flight. As defined in standard 10-1.3(c), release on personal recognizance encompasses the conditions that the defendant appear at all appropriate times, refrain from criminal law violations, and refrain from threatening or otherwise interfering with potential witnesses. Only if the presumption favoring release on these conditions has been overcome can the judge impose additional nonmonetary conditions, when the judge fears either flight or recidivism, or monetary conditions, when necessary to prevent flight.
>
> By creating a presumption in favor of personal recognizance, this standard conforms to the federal Bail Reform Act, other model pretrial release codes, and statutory provisions in at least eighteen states that have mandated a similar presumption.

2. The pretrial service release center in Washington, D.C. advises that 29 states have laws containing a presumption in favor of personal recognizance. Attachment A is table, obtained during a telephone conversation between the research division and Liz Gaynes of the Pretrial Services Release Center [telephone (202) 638-3080], showing the release on recognizance provisions in all 50 states and Washington, D.C. The table lists each state and shows those states with presumption provisions. The table also

illustrates those states which provide for a priority listing of conditions of release based on the potential risk of nonappearance or need for additional conditions.

Under this system, only those conditions which are necessary to ensure appearance can be imposed.

3. The Clark County court system has a release on recognizance program, which has been in operation since September 1978, for nonviolent offenders. According to the director of the program, Jerry Phillips, 1,177 defendants have been released on recognizance under the provisions of the program. Mr. Phillips advises that 3.2 percent of the defendants have failed to appear for their court date. He notes that this compares with about a 15 percent "failure" rate for persons who are released on bail. Attachment A is a copy of 18 § USCA 3146, "Release in noncapital cases prior to trial." Attachment B is a copy of Oregon's statutory provisions (see ORS 135.230 et. seq., "RELEASE OF DEFENDANT") relating to release on bail or recognizance.

DAR/llp
Enc.

TABLE I

RELEASE ON RECOGNIZANCE PROVISIONS
IN THE STATES

State	Presumption of Release on Recognizance Yes	Presumption of Release on Recognizance No	Priority of Release Conditions Yes	Priority of Release Conditions No	Statutory or Case Law Reference
Alabama	None				
Alaska	X		X		Alaska Statute 12.30.010-12.30.080
Arizona	X		X		Arizona Revised Statutes 13:1571-13:1577 Arizona Rules of Criminal Procedure 7.1 through 7.7
Arkansas	X		X		Arkansas Statutes Annotated 43:609, 43:613, 43:622, 43:701-701-724 Arkansas Rules of Criminal Procedure 8.3 through 8.5 and 9.1 through 9.3
California					Scott, 613 Pacific 2nd 210
Colorado					Colorado Revised Statutes 16-4-101 through 16-4-111
Connecticut	X				Connecticut General Statutes 54:1-b 53, 63, 69
Delaware	X				Delaware Code Title 11, 2101 through 2115 Delaware Common Pleas Court Criminal Rule 46
District of Columbia	X		X		D.C. Code 23:1321 through 23:1332
Florida					Florida Statutes Annotated 903.02 and following Florida Rules of Criminal Procedure 3.130
Georgia					Georgia Code 27-901 to 915 and 1402
[illegible]aii	None				
Idaho	Unknown				
Illinois	X				Illinois Revised Statutes 38.102-6, 110-1 to 11--15
Indiana					Indiana Code 35-1-18.5 and following
Iowa	X		X		Iowa Code 811.1 through 811.9
Kansas	X		X		Kansas Statute 22:2801-22:2905
Kentucky	X		X		Kentucky Revised Statutes 431:510 through 431:530 Kentucky Rules of Criminal Procedure 3.06 and 4.00 through 4.30
Louisiana	None				
Maine	X		X		Maine Revised Statutes Title 15 §942 Maine Rules of Criminal Procedure 46
Maryland					Maryland Annotated Code, Article 27 §§ 638a and 638b
Massachusetts	X		X		Massachusetts General Laws Annotated 276.42 and 276.58
Michigan	X		X		Michigan Supreme Court Rule GCR 1963, 790

TABLE I
(continued)

State	Presumption of Release on Recognizance Yes	Presumption of Release on Recognizance No	Priority of Release Conditions Yes	Priority of Release Conditions No	Statutory or Case Law Reference
Minnesota	Unknown				Minnesota Statutes 629.01-629.72 Minnesota Rules of Criminal Procedure 6.02
Mississipi					Mississippi Code Annotated 99-5-1 through 99-5-35 Lee v. Lawson 375 Southern 2nd 1019
Missouri	X		X		Missouri Revised Statues 544.040 and 544.455 Missouri Supreme Court Rules 21.12, 21.14, 3201 through 3218
Montana					Montana Revised Code Annotated 95-1101 through 95-1123
Nebraska	X		X		Nebraska Revised Statutes 29:901 through 29:910
NEVADA					
New Hampshire	X		X		New Hampshire Revised Statutes Annoted 597:1-42
New Jersey					New Jersey Rules of Criminal Procedure 3.26.1 to 3.26.7
New Mexico	X		X		New Mexico Statutes Annotated 41-23-21 through 41-23-26 New Mexico Criminal Procedure Rules 21-26
New York					New York Criminal Procedure Law 500.10 and 500.30
rth Carolina	X		X		North Carolina General Statutes 15a-531 to 15a-534
North Dakota	X		X		North Dakota Rules of Criminal Procedure 46-29-08-26
Ohio	X		X		Ohio Rules of Criminal Procedure 46
Oklahoma	None				
Oregon	X		X		Oregon Revised Statutes 135-230 through 135-295
Pennsylvania	None				Const. Statutes 51 through 95 Pennsylvania Rules of Criminal Procedure 4001 through 4018
Rhode Island	None				Rhode Island General Laws 12-13-1 to 12-12-20
South Carolina	X		X		South Carolina Code 17-15-10 through 17-15-220
South Dakota	X				South Dakota Comp. Laws Annotated 23a-43-1 to 23a-43-32
Tennessee	X		X		Tennessee Code Annotated 40-1201 to 40-1247
Texas	None				Texas Criminal Procedure Code Annotated Title 17 §§ 1-38

TABLE I
(continued)

State	Presumption of Release on Recognizance Yes	Presumption of Release on Recognizance No	Priority of Release Conditions Yes	Priority of Release Conditions No	Statutory or Case Law Reference
Utah					Utah Code Annotated 77-43-1 to 77-43-30
Vermont	X		X		Vermont Statutes Annotated Title 13 7551 through 7573
Virginia	X		X		Virginia Code 19.1-109 to 19.1-124
Washington	X		X		Washington Revised Code 10.19.010 through 10.19.130
West Virginia					West Virginia Code 62-1c-1 through 62-1c-19
Wisconsin	X		X		Wisconsin Statutes 969:01 through 969:14
Wyoming	X		X		Wyoming Statutes 7-10-101 through 7-10-121 Wyoming Rules of Criminal Procedure 8

Research Division
DAR/jld: 3-6-81

Cross References

Jurisdiction of Supreme Court to review state court judgments or decrees, see section 1257 of Title 28, Judiciary and Judicial Procedure.

Library References

Bail ⇐44. C.J.S. Bail § 23 et seq.

Notes of Decisions

1. Release of defendant

United States Supreme Court could not have admitted to bail, before expiration of his New York sentence, person convicted in New York of unlawful possession of heroin, where offense was not bailable. Sibron v. State of N. Y., N.Y. 1968, 88 S.Ct. 1889, 392 U.S. 40, 20 L.Ed.2d 917.

A plaintiff in error, chargeable with an offense bailable by the laws of the state, shall not be released until final judgment or until a bond shall be given. Hudson v. Parker, Ark.1895, 15 S.Ct. 450, 156 U.S. 277, 39 L.Ed. 424.

§ 3145. Parties and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

On Preliminary Examination, Rule 5(b).
Before conviction; amount; sureties; forfeiture; exoneration, Rule 46.
Pending sentence, Rule 32(a).
Pending appeal or certiorari, Rules 38(b), (c), 39(a), 46(a, 2).[1]
Witness, Rule 46.

June 25, 1948, c. 645, 62 Stat. 821.

[1] Rules 38(b), (c), 39(a), abrogated, Dec. 4, 1967, eff. July 1, 1968. See Federal Rules of Appellate Procedure, 28 U.S.C.A.

§ 3146. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash

or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided*, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 214.

Historical Note

Codification. A prior section 3146, Act Aug. 20, 1954, c. 772, § 1, 68 Stat. 747, which prescribed penalties for jumping bail, was eliminated by Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 214, and is now covered by sections 3150 and 3151 of this title.

Effective Date. Section 6 of Pub.L. 89–465 provided that: "This Act [enacting this section and sections 3147–3152 of this title, amending sections 3041, 3141–3143 and 3568 of this title, and enacting provisions set out as a note under this section] shall take effect ninety days after the date on which it is enacted [June 22, 1966]: *Provided*, That the provisions of section 4 [amending section 3568 of this title] shall be applicable only to sentences imposed on or after the effective date."

Short Title. Section 1 of Pub.L. 89–465 provided: "That this Act [enacting this section and sections 3147–3152 of this title, amending sections 3041, 3141–3143 and 3568 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Bail Reform Act of 1966'."

Purpose of Bail Reform Act of 1966. Section 2 of Pub.L. 89–465 provided that: "The purpose of this Act [enacting this section and sections 3147–3152 of this title, amending sections 3041, 3141–3143 and 3568 of this title and enacting provisions set out as a note under this section] is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest."

Legislative History. For legislative history and purpose of Pub.L. 89–465, see 1966 U.S.Code Cong. and Adm.News, p. 2293.

Library References

Bail ⇐42, 59. C.J.S. Bail §§ 33 et seq., 59.

Notes of Decisions

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1. Construction

Contentions relating to various practical considerations flowing from court's interpretation of this section to require review by judicial officer of conditions imposed for defendant's release prior to motion addressed to district court were more appropriately to be considered by Congress than court. Grimes v. U. S., C.A.D.C.1967, 394 F.2d 933.

Clarity of provisions of this section and section 3147 of this title concerning review of conditions imposed by judicial officer on release of one detained on felony charge prior to indictment eliminated necessity for resorting to examination of legislative history of the act. Shackleford v. U. S., 1967, 383 F.2d 212, 127 U.S. App.D.C. 285.

2. —— With other laws

The Bail Reform Act of 1966, sections 3146–3152 of this title, and the District of Columbia Bail Agency Act must be read

a written order holding the defendant for further proceedings on the charge. [Formerly 133.820]

135.190 [Repealed by 1973 c.836 §358]

135.195 Commitment. If the magistrate orders the defendant to be held to answer, he shall make out a commitment, signed by him with his name of office, and deliver it with the defendant to the officer to whom the defendant is committed or, if that officer is not present, to any peace officer, who shall immediately deliver the defendant into the proper custody, together with the commitment. [Formerly 133.830]

135.200 [Repealed by 1973 c.836 §358]

135.205 Indorsement in certain cases. When the magistrate delivers the defendant to a peace officer other than the one to whom he is committed, he shall first make an indorsement on the commitment directing the officer to deliver the defendant and the commitment to the custody of the appropriate sheriff. [Formerly 133.840]

135.210 [Repealed by 1973 c.836 §358]

135.215 Direction to sheriff; detention of defendant. The commitment shall be directed to the sheriff of the county in which the magistrate is sitting. Such sheriff shall receive and detain the defendant, as thereby commanded, in the jail of his county or, if there is no sufficient jail in the county, by such means as may be necessary and proper therefor or by confining him in the jail of an adjoining county. [Formerly 133.850]

135.225 Forwarding of papers by magistrate. When the magistrate has held the defendant to answer, he shall at once forward to the court in which the defendant would be triable the warrant, if any; the information; the statement of the defendant, if he made one; the memoranda mentioned in ORS 135.115 and 135.145; the release agreement or security release of the defendant; and, if applicable, any security taken for the appearance of witnesses. [Formerly 133.860]

RELEASE OF DEFENDANT

135.230 Release of defendants; definitions. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

(1) "Conditional release" means a nonsecurity release which imposes regulations on the activities and associations of the defendant.

(2) "Magistrate" has the meaning provided for this term in ORS 133.030.

(3) "Personal recognizance" means the release of a defendant upon his promise to appear in court at all appropriate times.

(4) "Release" means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(5) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(6) "Release criteria" includes the following:

(a) The defendant's employment status and history and his financial condition;

(b) The nature and extent of his family relationships;

(c) His past and present residences;

(d) Names of persons who agree to assist him in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

(7) "Release decision" means a determination by a magistrate, using release criteria, which establishes the form of the release most likely to assure defendant's court appearance.

(8) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(9) "Surety" is one who executes a security release and binds himself to pay the security amount if the defendant fails to comply with the release agreement. [1973 c.836 §146]

135.235 Release Assistance Officer. (1) The presiding circuit court judge of the judicial district may designate a Release As-

sistance Officer who shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(2) The Release Assistance Officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding circuit court judge of the judicial district, make the release decision.

(3) The presiding circuit court judge of the judicial district may appoint release assistance deputies who shall be responsible to the Release Assistance Officer. [1973 c.836 §147]

135.240 Releasable offenses. (1) Except as provided in subsection (2) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2) When the defendant is charged with murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(3) The magistrate may conduct such hearing as he considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty. [1973 c.836 §148]

135.245 Release decision. (1) Except as provided in subsection (2) of ORS 135.240, a person in custody shall have the immediate right to security release or shall be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before his arraignment, the magistrate shall advise the person of his right to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon his personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on his personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) Before the release decision is made, the district attorney shall have a right to be heard in relation thereto.

(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant. [1973 c.836 §149]

135.250 General conditions of release agreement. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that he will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(b) Submit himself to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that he will:

(a) Duly prosecute his appeal as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the cause reversed and remanded for a new trial, immediately appear as required by the trial court. [1973 c.836 §150]

135.255 Release agreement. (1) The defendant shall not be released from custody unless he files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits security in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

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(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

(3) "Custody" for purposes of a release agreement does not include temporary custody under the citation procedures of ORS 133.045 to 133.080. [1973 c.836 §151]

135.260 Conditional release. Conditional release may include one or more of the following conditions:

(1) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting him in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event he fails to appear in court. The supervisor, however, shall notify the court immediately in the event that the defendant breaches the conditional release.

(2) Reasonable regulations on the activities, movements, associations and residences of the defendant.

(3) Release of the defendant from custody during working hours.

(4) Any other reasonable restriction designed to assure the defendant's appearance. [1973 c.836 §152]

135.265 Security release. (1) If the defendant is not released on his personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than $25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that he appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made deposit, unless the court orders otherwise, 90 percent of the sum which has been deposited and shall retain as security release costs 10 percent of the amount deposited. The amount retained by a clerk of the court shall be deposited into the county treasury, except that the clerk of a municipal court shall deposit the amount retained into the municipal corporation treasury. However, in no event shall the amount retained by the clerk be less than $5 nor more than $100. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the accused or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as he considers necessary. [1973 c.836 §153; 1979 c.878 §1]

135.270 Taking of security. When a security amount has been set by a magistrate for a particular offense or for a defendant's release, any person designated by the magistrate may take the security and release the defendant to appear in accordance with the conditions of the release agreement. The person designated by the magistrate shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense. [1973 c.836 §154]

135.280 Forfeiture and apprehension. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in subsection (6) of ORS 133.030 may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the security to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, his sureties, the order of forfeiture. If the defendant does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault, the court shall enter judgment for the state against the defendant and, if applicable, his sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or his sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the district attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The cash shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security release was taken if the offense was defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 484.150 for a traffic offense.

(b) Money deposited pursuant to ORS 488.220 for a boating offense.

(c) Money deposited pursuant to ORS 496.905 for a fish and game offense.

(5) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was a crime defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was a crime defined by a statute of this state. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions. [1973 c.836 §155]

135.285 Release decision review and release upon appeal. (1) If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

(2) After judgment of conviction in municipal, justice or district court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. [1973 c.836 §156]

135.290 Punishment by contempt of court. (1) A supervisor of a defendant on conditional release who knowingly aids the defendant in breach of the conditional release or who knowingly fails to report the defendant's breach is punishable by contempt.

(2) A defendant who knowingly breaches any of the regulations in his release agreement imposed pursuant to ORS 135.260 is punishable by contempt. [1973 c.836 §157]

135.295 Application of ORS 135.230 to 135.290 to certain traffic offenses. ORS 135.230 to 135.290 do not apply to a criminal proceeding or criminal action by means of which a person is accused and tried for the commission of a traffic offense as defined by subsection (10) of ORS 484.010. [1974 s.s. c.35 §1]

EXHIBIT D

PROPOSAL: Amendment of NRS 13.050 to clarify the procedure for the change of venue.

A. PRESENT LAW:

NRS 13.050(1) provides that if the county designated in the complaint is not the proper county for venue, the action may be tried therein unless the defendant before the time for answering expires demands in writing that the trial be had in the proper party. NRS 13.050(2) provides that the court may, on motion, change the place of trial in the following cases:

(a) When the county designated in the complaint is not the proper county.

B. DISCUSSION:

The provisions of NRS 13.050(1) and (2) are unclear regarding the method whereby objection is made to venue. NRS 13.050(1) refers to "demand in writing that the trial be had in the proper party" whereas NRS 13.050(2) refers to a motion.

C. PROPOSAL:

NRS 13.050(1) and (2) should be amended to be consistent with each other and the applicable Nevada Rules of Civil Procedure. Preferably, NRS 13.050(1) and (2) should provide that if the county designated for that purpose in the complaint is not the proper county, the action shall, notwithstanding, be tried therein, unless the defendant before the time for answering expires, files a motion objecting to venue in accordance with applicable Nevada Rules of Civil Procedure and Local Rules of Practice, and in the form of motions pursuant to NRCP Rule 12(b)(5) and 12(h) and that absent the timely filing of such motion, that any and all objection to the stated venue shall be waived. The latter would be consistent with the waiver of certain defensive motions provided for in NRCP Rule 12(h)(1). NRCP 12(h)(1) presently provides for wavier of the obligation to renew if not made pursuant to NRCP 12(b).

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EXHIBIT E

PROPOSAL: Amendment of NRS 136.060 to facilitate searches for wills.

A. PRESENT LAW:

NRS 136.060(1) provides that if it is alleged in any petition that any will of a deceased person is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring that person to produce it at a time to be named in the order.

NRS 136.070(2) provides that any person named in a will to execute it, though not in possession of the will, may present a petition to the district court having jurisdiction, praying that the person in possession of the will be ordered to produce and file the will.

B. DISCUSSION:

The law presently does not provide for service or publication of notice of a Petition for Search for Will. Certain District Court judges have expressed reluctance to enter an ex parte order authorizing the search for the will and the production of the same if found. Because the provisions of NRS 136.050 provide that any person with a will in his possession shall within 30 days after knowledge of the death of the person who executed the will, deliver it to the Clerk of the District Court, it seems senseless to require that notice be served or publication made of a Petition for Search for Will.

C. PROPOSAL:

The provisions of NRS 136.060 and 136.070 should be amended to provide that a person named in a will to execute it or any other person having knowledge of the existence of a will, though not in possession of the will, may present an ex parte petition to the District Court, without service of notice or publication, and if the court shall be satisfied that the allegations therein are correct, the court shall be authorized to enter an ex parte order authorizing a search for the will and requiring service of the same upon the person having possession of the will and requiring that person to produce it and file the same with the clerk of the court.

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EXHIBIT F

PROPOSAL: Amendment of NRS 148.300 to clarify the remedies of an estate upon breach of a purchaser to complete a sale of real estate by the estate.

FISCAL NOTE: Effect on local government: No. Effect on the State or on industrial insurance: No.

A. PRESENT LAW:

NRS 148.300 provides that if, after the confirmation of sale, the purchaser neglects or refuses to comply with the terms of a sale, the probate court, on motion of the executor or administrator, may vacate the order of confirmation and order a resale. NRS 148.300 also provides that if the amount realized on such resale does not cover the bid and the expenses of the previous sale, such purchaser is liable to the estate for the deficiency.

NRS 123.250 provides that only the decedent's undivided one-half interest in the community property of a married decedent is subject to administration under the provisions of Title 12 of the Nevada Revised Statutes.

B. DISCUSSION:

NRS 148.300 is consistent with the common law and statutory provisions of other states. NRS 148.300, however, is unclear with regard to the proper court in which to determine the liability of the breaching purchaser for the expenses of the previous sale and the deficiency to the estate if the amount realized on a resale does not cover the bid and expenses of the previous sale.

In the decision, Estate of Williamson, 150 Cal. App. 2d 334, 310 P. 2d 77 (1957), the purchaser's liability for deficiency upon resale and "expenses" of the first sale are defined, however, in that decision it was held that the executor may not retain the amount, if any, by which the down payment exceeds the damages caused by the vendee, such retention being an unjust enrichment.

The California Supreme Court has stated that any action on the purchaser's claim that the damages caused by his breach were less than the down payment must be brought not in the probate court, but in the court of general jurisdiction. Texas Co. v. Bank of America, 5 Cal. App. 2d 35, 53 P. 2d 127 (1935), wherein the California Supreme Court held that the probate court is without jurisdiction to proceed in a manner different than that provided by statute. It appears that the Nevada Supreme Court would find the same result. Singleton's Estate, 26 Nev. 106, 64 P. 513 (1901).

The present statute does not provide the probate court with jurisdiction to determine the breaching purchaser's liability to the estate for the deficiency resulting from the breach of the sale and the necessity of a resale. Also, NRS 123.250(1)(b) appears to prohibit the exercise of such jurisdiction by the probate court with regard to the community property interest of the surviving spouse in community property for which the decedent's one-half interest is subject to the jurisdiction of the probate court.

C. PROPOSAL:

NRS 148.300 should be amended to add a provision authorizing the probate court to exercise jurisdiction to determine the breaching purchaser's liability to the estate for the deficiency if the amount realized on the resale does not cover the bid and the expenses of the previous sale. Such amendment should specifically refer to NRS 123.250(1)(b) and authorize the probate court to exercise jurisdiction for the determination of the purchaser's liability to the surviving spouse for the deficiency to the surviving spouse if the subject matter of the sale is community property owned jointly by the estate and the surviving spouse of the decedent.

The proposed amendment promotes certainty in the administration of probate and precludes the necessity of duplicative litigation, either in the court of general jurisdiction or partly in the probate court and partly in the court of general jurisdiction.

Conversely, NRS 148.300 could be amended to provide that upon the neglect or refusal of the purchaser to comply with the terms of the sale, all claims regarding the expenses of the previous sale and the deficiency upon the resale, including the claims of the surviving spouse owning a community property interest in the property, be litigated and resolved in an independent action commenced and maintained in a court of general jurisdiction.

1981 REGULAR SESSION (61st) EXHIBIT G

ASSEMBLY ACTION		SENATE ACTION		Senate AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Senate
Lost	☐	Lost	☐	Bill No. 226 ~~Joint Resolution No.~~
Date:		Date:		
Initial:		Initial:		BDR 13-643
Concurred in	☐	Concurred in	☐	
Not concurred in	☐	Not concurred in	☐	Proposed by Committee on Judiciary
Date:		Date:		
Initial:		Initial:		

Amendment Nº 148

Amend section 1, page 1, by deleting lines 15 and 16 and inserting:

"(1) Upon the spouse and adult children of the incompetent who are known to exist, or, if there are none, the parents, brothers and sisters of the incompetent;".

Amend the bill as a whole by adding a new section to be designated as section 2, following section 1, to read as follows:

"Sec. 2. NRS 159.053 is hereby amended to read as follows:

159.053 1. [The] A copy of the citation [shall] must be served [by the sheriff of the county where the person to be served is found, or by his deputy, or by any citizen of the United States over 21 years of age, not a party to or interested in the proceeding. Where the service of citation is made outside of the United States, after any order of publication, it may be served either by any citizen of the United States over 21 years of age or by any resident of the country, territory, colony or province who is over 21 years of age and not a party to or interested in the proceeding.] on each person specified in subsection 2 of NRS 159.047 by certified mail, with a return receipt requested, at least 20 days before the hearing.

2. [If personal service of the citation is had within the state in which the proceeding is pending, it shall be served at least 20 days prior to the date set for the hearing.

3. If any person] If none of the persons on whom the citation is to be served [resides out of the state, has departed from the state, cannot,] can, after due diligence, be [found within the state or conceals himself to

To: E & E
LCB File
Journal
Engrossment ✓
Bill

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Drafted by WC:ab Date 3-5-81

1 (a)

avoid the service of citation, and where it] served by certified mail and this fact is proven, by affidavit, to the satisfaction of the court , [or judge, that a petition for appointment of a guardian has been filed and that the person to be served with a citation is one of the persons set forth in NRS 159.047,] service of the citation [shall] must be made in the manner provided by N.R.C.P.4(e). In all such cases, the citation [shall be served upon such person] must be published at least 20 days [prior to] before the date set for the hearing.

[4. Service of citation is not necessary] 3. A citation need not be served on a person or an officer of an institution who has signed the petition or a written waiver of service of citation or who makes a general appearance.

[5.] 4. If the proposed ward is receiving [moneys] money paid or payable by the United States through the Veterans' Administration, a copy of the citation [shall] must be mailed to any Veterans' Administration office in this state.

5. Notice shall be deemed sufficient if each person who is specified in subsection 2 of NRS 159.047 and known to exist, and not excepted by this section, is mailed a copy of the citation at his last-known address by means of certified mail with a return receipt requested, and either a postal receipt has been returned evidencing delivery or the letter has been returned marked undelivered, but if none of the family members to whom notices have been mailed have been served, as evidenced by the returned letters, notice shall be deemed to be sufficient only upon proof of publication of the citation."

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EXHIBIT H

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		..Senate..AMENDMENT BLANK
Adopted	☐	Adopted	☐	AMENDMENTS to Senate
Lost	☐	Lost	☐	Bill No. 16 ~~Joint Resolution No.~~
Date:		Date:		
Initial:		Initial:		BDR 16-58
Concurred in	☐	Concurred in	☐	
Not concurred in	☐	Not concurred in	☐	Proposed by Committee on Judiciary
Date:		Date:		
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 substantial bodily harm results or assault with intent to commit a felony."

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To: E & E
LCB File
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Bill

Drafted by WC:ab Date 3-5-81

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
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ANDREW P. GROSE, *Research Director* (702) 885-5637

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

Will G. Crocket
Deputy Legislative Counsel

WGC:ab

EXHIBIT I

RICHARD H. BRYAN
ATTORNEY GENERAL

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
WELFARE DIVISION
HEROES MEMORIAL BUILDING
CAPITOL COMPLEX
CARSON CITY 89710
TELEPHONE (702) 885-5035

WILBUR H. SPRINKEL
CLAUDIA K. CORMIER
SHARON L. McDONALD

February 10, 1981

MEMORANDUM

TO: MEL CLOSE, CHAIRMAN
SENATE JUDICIARY COMMITTEE

FROM: CLAUDIA K. CORMIER, DEPUTY ATTORNEY GENERAL

SUBJECT: SB 149 - ISSUE OF CONCURRENT JURIS TO DISTRICT ATTORNEY AND ATTORNEY GENERAL WITH REGARD TO PETITIONS TO ESTABLISH CHILDREN AS "NEGLECTED CHILDREN"

With reference to sections 2 and 8(3) of SB 149, I am advised that in 1979 1,703 cases of child abuse or neglect statewide were "substantiated cases," which presumably resulted in the filing of petitions to establish the children involved as "neglected" children.

Of that figure, 1,194 occurred in Clark County and 509 occurred in Washoe County and the rural areas (combined).

If the Attorney General's office was asked to assume the full caseload statewide, the impact would be substantial. It is estimated that at least one additional Deputy Attorney General would be required in Clark County to absorb the increased caseload of more than 1,000 cases. As regards the northern part of the State, two existing Deputy Attorney General positions may be able to absorb part of the 500 caseload increase.

Please don't hesitate to contact me if you require any additional information.

CKC:dcm

WASHOE COUNTY
"To Protect and To Serve"

DEPARTMENT OF WELFARE

WELLS AVE. AT NINTH ST.
POST OFFICE BOX 11130
RENO, NEVADA 89520
PHONE: (702) 785-5611

February 18, 1981

EXHIBIT J

The Honorable Sue Wagner
Nevada State Senate
Carson City, Nevada

Dear Sue:

Because you are a member of the Senate Committee on Judiciary, I wanted you to know Washoe County Welfare's position on SB 149.

Page 1, Section 3. The change is to include physicians, State Welfare Division employees, and county agency employees as persons who "may" take children into protective custody to prevent the child's imminent death or serious harm.

We object to the inclusion of physicians and State Welfare Division and county agency employees because of the potential abuse of this provision even if the language says "may." Whenever we find it necessary to take children into protective custody, law enforcement officers have been cooperative about going out with us. Currently, when we receive a direct referral from an officer of the law they seldom have court orders even if the case was not a "dire" emergency. Protecting parents' rights and controlling the use of this law will be even more difficult with the inclusion of so many others who may take children into protective custody.

Page 2, Section 4. The change is to require us to file a petition if we hold children for more than 48 hours in shelter care. Another change is that we could not hold a child in protective custody for more than 10 days unless we file a petition with a recommended plan.

We estimate that this would double the number of petitions for temporary custody from 125 to approximately 250 because currently we do not file petitions on voluntary placements (for up to 30 days with an additional 30-day extension) and on cases where the prospects are good for returning

the child to the home of his parent(s) or relative(s) within a reasonable period of time (approximately four weeks).

These changes would require an additional Social Worker, additional clerical hours, and increase the number of hours the District Attorney's representative spends in court from four hours a week to at least eight hours.

Page 7, Section 11. The change is to require the court to appoint a "guardian ad litem" for each child after a petition is filed alleging that he/she is neglected.

I rather like the concept, because there are times that the child would be better represented by a third party. However, I feel that the appointment of a guardian ad litem should be left to the discretion of the court rather than required by statute. As it is now, at times there are too many players involved and, depending on how the court implements this statute, it could cost the taxpayer quite a bit.

I plan to attend the hearing scheduled for 5:00 p.m., February 25. If you have any questions, please feel free to call me at 785-5611

Sincerely,

May S. Shelton, Director
Washoe County Welfare Department

MSS:ab

Atch.

EXHIBIT K

EXHIBIT L

EXHIBIT M