

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 6, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:35 a.m., Monday, April 6, 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 MEMBER PRESENT:

Shirley LaBadie, Committee Secretary

SENATE BILL NO. 449--Permits diversion of telephone lines in situations involving hostages and recording of conversations with permission of one party.

Mr. Larry Ketzenberger, Las Vegas Metropolitan Police Department, stated S. B. No. 449 was requested by his department, specifically the hostage negotiations team. He said over the past few years, several incidences have occurred in hostage situations and barricaded suspects where the telephone was the only means of communication with the suspect. The police are in a stressful situation and are concerned with the safety of the individual controlling the hostages and the hostages as well as the police officers involved. There have been times when the telephone contact with the suspect has been interrupted, or he has called other persons during negotiations with the police. Suspects can call outside, talk with other people or newspaper persons and make plans. The purpose of this bill is limit communications of the suspect to designated police officers who are trying to resolve the hostage situation in a successful manner as soon as possible. He stated he had talked to the Nevada Bell Telephone

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Company and they have a suggested alternative to this bill, it is to put the legislation in NRS 707, instead of NRS 179. His department had no objection to this request. See Exhibit C attached hereto. Mr. Ketzenberger said the proposed amendment is the exact language of the California statute. California has given the law enforcement officers authority, in hostage situations, to order a designated telephone company employee to arrange to cut, reroute, or divert telephone lines. During the 1979-1980 session, legislation was passed amending it to include the words barricaded and resisting apprehension through the use or threatened use of force.

Chairman Close asked who is deemed to be a supervising law enforcement officer. Mr. Ketzenberger replied it would be someone of the rank of lieutenant or above who is charged with supervising the actual hostage situation.

Senator Wagner questioned the proposed language in the amendment, compared with that written in S. B. No. 449. Mr. Ketzenberger stated it would be an advantage to the police department over the original draft, in the case where a subject is barricaded, that was not included in the original bill request. The proposed amendment will replace only Section 2 of S. B. No. 449. The new language in Section 3 would be retained.

Senator Ford asked about the language in the amendment which refers to previously designated telephone corporation security employee, when would this person be designated. Mr. Ketzenberger said it was his understanding it would be a previously designated individual, but the department would know ahead of time who to contact when a situation occurs. The amendment also provides for an alternate.

Mr. Stan Warren, Nevada Bell, replied to Senator Ford's question, as a general operating procedure in each area which a telephone company exists, there is a designated person to deal with the law enforcement people for whatever company serves that town. Mr. Warren added, in regard to the proposed amendment to Section 2, Washoe County Sheriff's Office had requested model legislation from Nevada Bell, which was prepared for them but nothing was done with it. This amendment is the by-product of the work done for them.

Senator Raggio stated he had a concern if the bill was placed in NRS 707 and Section 3 was left in the bill. It would allow the interception of any wire communication, even though covered in other statutes, with one party consent. He asked if this was the intent or intended the recording to be admissible only

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in these cases. Mr. Warren stated he was not taking a position on this. He wanted to separate these two in the different statutes so that if a person cooperates in a request for a wire-tap, there is a court order involved in it. There would not be a court order in the other section, in the hostage case.

Mr. Ketzenberger stated the intent of the hostage negotiators was to include it as a portion of this bill, however, he suggested it would be a good idea to enact this into law where one party to a telephone conversation can tape-record that conversation. People receiving harassing phone calls cannot obtain evidence without violating the law. People have taped phone calls and called the police department only to be told the evidence is not admissible, and if they take it as evidence they are guilty of a commission of a felony. Even the newspapers have violated this law occasionally during an interview on the telephone. This would allow recordings legally. Senator Wagner stated this was a broad policy question which was initially not addressed in S. B. No. 449.

Mr. Warren stated if the committee takes the proposed amendments, to the bill, he would be agreeable. If not and work with the original bill, he would like to have language added to designate a previously designated employee of, on page 1, section 2, line 6, after may direct. He stated he preferred the proposed amendments. Senator Raggio said he did not feel it was necessary to put into law, a previously designated employee. A smaller county may not have designated an alternate person in the case the first person is not available.

SENATE BILL NO. 451--Amends provisions relating to county and city jails.

Ms. Denell Hahn, Clark County Social Services, stated she is not in support of S. B. No. 451, particular subsections 4 and 5. These changes add to a difficult procedure for working at this time. The change transfers the payment responsibility for injuries incurred during an arrest for commission of a public offense from the police agency to the prisoner and the county. This is in Section 3.

Chairman Closè questioned why the prisoner should not be liable for payment of injuries. Ms. Hahn stated she did not feel the prisoner should not be responsible but it could be changed so even with the current responsibility of the holding agency paying for it, the prisoner could still be held responsible. At the current time the county can recover charges for pre-existing illness or self-inflicted illness. However it has been the rule

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that even the collection agencies have not been able to collect from the prisoners. The department spent \$400,000 carrying out that responsibility with no return. When a prisoner is injured while being placed under arrest, the holding agency is responsible for paying for the injuries. This change would make it a prisoner responsibility, and if he could not, a county obligation. If the prisoner sued the metropolitan police department for being injured under arrest, the county would have an interest in the collection against their insurance company. It would be better if the agency ordering medical care is obligated to pay for that care. There is a shared responsibility at this time where the county is by and large paying for pre-existing and self-inflicted injuries and the police are paying for injuries during arrests or if they are injured in jail.

Chairman Close asked how much money is being shifted from the metropolitan police department to the county, such as Clark County. Ms. Hahn answered if the department was to adopt the injuries during arrest, possibly \$150,000 to \$200,000 minimum. She said if the county pays for the prisoner medical care at the hospital in Clark County, the doctor does not get paid. The statute specifies the county pay for the health and care facility. If metropolitan is providing the care and contracting with the doctors, then the doctors do get paid. The doctors are becoming more reluctant to provide free medical care for certain categories of people. The legislation of S. B. No. 451 would shift part of the payment over to the county. The county pays for some portion of metropolitan's expenses, then pay again in the pre-existing and self-inflicted injuries.

Mr. Larry Ketzenberger, Las Vegas Metropolitan Police Department, stated S. B. No. 451 was drawn up and requested by his department. Part of reason being, during the last session changes were made to the good-time law for prisoners and a comment was made that the law as written was outdated because it made reference to prisoners being confined in dark and solitary cells and so forth. In conjunction with the need to depopulate the jails, it was requested to make the bill as inclusive as it is.

Mr. Ketzenberger stated a change had been requested in Section 1, subsection 1. Language was added, if a contract has been concluded between the United States and the sheriff of the county. The reason being a federal contract for keeping prisoners in a local jail is very detailed. The feeling of the department is that keeping federal prisoners in local jails helps impact them and brought about federal intervention in the form of lawsuits for overcrowding. It is the departments belief if a agency wants

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to put federal prisoners in its jail, it should have a contract with the federal government on that and is aware of the provisions and requirements which the government puts on local people for its prisoners which are in the local jails. As a result of a lawsuit against metropolitan police department, a resolution has been presented to the National Sheriff's Association suggesting until the federal government starts helping local government identify and solve its problems rather than spending tax dollars to prosecute local governments, then federal prisoners should not be kept in local jails.

Chairman Close asked on the average, how many federal prisoners are kept in the local jails. Mr. Ketzenberger replied, on the average, none. They go to California, Washoe County or the North Las Vegas Police Department. It is the department's belief local prisoners should be taken care of first.

Senator Raggio stated as he understood the present law as is written, it is required that federal prisoners be housed in the local jails. Because of the suit against metropolitan on an overcrowding jail and federal standards were not being met, it was decided federal prisoners should not be held there. The contract was never renewed. Mr. Ketzenberger said the purpose of the law is that the department will not be mandated under the statute to house federal prisoners unless there is a contract.

Mr. Ketzenberger referred to Section 2, this proposed language would allow the sheriff, chief of police or town marshal to establish a work-release program for those persons incarcerated over a period of time. Senator Ford asked why is it limited to prisoners who have been sentenced. Mr. Ketzenberger replied there is no authority under the law to require someone to participate or allow them to participate in any work-release program while they are in jail waiting for trial. He stated there is going be a problem over the next two years of overcrowding because the new jail will not be built. The work-release program will allow some of these people to go out in the community and help in the overcrowding. If the program is passed and the funds are available, there is a possibility of a lesser security facility to house these types of prisoners.

Mr. Ketzenberger stated Section 3 would require a prisoner to pay for injuries occurring during his arrest. It is the departments belief if he resists arrest and is injured, he is responsible for the costs, and not the taxpayers. County tax dollars are being used to support metropolitan police department and the same county tax dollars are also supporting Clark County

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Social Services and this law enables the department to try and recover costs. It should not be the responsibility of the metropolitan police department to pay those costs in every case. The tax dollars can go to either metropolitan to pay the bill or to Clark County Social Services, where it is necessary that the bill be paid and would allow to try and collect the costs from the prisoner himself.

Senator Keith Ashworth stated Clark County Social Services Department feels if the bill is being sent to Metropolitan to pay, then the city is paying a portion of the bill. Mr. Ketzenberger said that could be a part of the problem.

Senator Ford questioned Section 3, subsection 2 which made considerable changes as to the work release program. Mr. Ketzenberger said he had not intended it to be a mandate but remain permissive as to the labor of the prisoners. Senator Wagner asked why if the authority is there to allow prisoners to be used on projects, why have they not be used. Mr. Ketzenberger stated there is a lack of supervision and there is a law in NRS 211.160 which addresses a good and sufficient guard. It has been interpreted to mean it must be a police guard. There are people on misdemeanor charges in jail who could be assigned to a supervisor of a city or county public works department and not require a police guard.

Mr. Ketzenberger stated Section 4 is a clarification of language which deals with solitary confinement. It would make it more acceptable under current practices. Mr. Ketzenberger stated Section 5 had been changed to allow more time for those prisoners who work well in a detention facility or out performing public works for the community.

Mr. Ketzenberger referred to Section 5, subsection 4, stating this additional language was proposed by the people within the detention facility. Washoe County and others would like to delete this section or change it to mean, the hearing must at least meet reasonable standards. The courts are constantly changing the rules on what kinds of hearings must be held and what kind of procedural safeguards must be present. Mr. Bob Gali of Washoe County stated he would support the bill with this change.

Mr. Ketzenberger stated he would like the language changed in NRS 211.160. The present language states no prisoner shall go out to work without a good and sufficient guard, a legal opinion

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said that guard must be a police officer. A proposed amendment would provide for adequate supervision by a responsible individual by a city or county in charge of a work crew.

Senator Ford asked what the general law is regarding the sheriff adopting rules and procedures. Mr. Ketzenberger stated, even under due process, when good-time is taken away from a person, they are entitled to an appeal process. There must be a hearing held. Senator Ford asked about general operating procedures in the department, if the sheriff had the final say so. Mr. Ketzenberger said the rules are promulgated in an effort to provide an efficient operating atmosphere. He said he was unaware of any particular statute which is used in adopting rules.

Mr. Bob Lippold, Correctional Consultant, stated he was replying to Senator Ford's question regarding the adoption of rules. The prison, in developing its procedures, has them ultimately approved by the prison board. This procedure is just now getting started in terms of jails systems throughout the country. In the past the sheriff has been the single authority that has been able to do that. Case law has made it increasingly difficult for a sheriff to do. In other states the county commission is serving as the ultimate approval with the district attorneys making the decisions regarding the changes or procedures for the jail systems.

Mr. Lippold had a question regarding Section 2, subsection 2, (c) which requires that each prisoner who participates in the program reimburse the county, city or town for his room and board. He had a concern of this being enabling legislation as it is written. It is somewhat mandatory and implies all of his room and board. The salaries would not be sufficient to cover the costs of incarceration. Senator Wagner said testimony had been given that prisoners had not been receiving any salary because they have not been in a program.

Mr. Ketzenberger stated the department has not been using prisoners outside to work on public work projects in the community in the past. They have not had enabling legislation to allow to use a work-release program, however. Prisoners would be able to earn wages in the community but it should not be mandatory that he pay for all of the room and board but enables them to recover some of the costs which are deemed reasonable.

Mr. Lippold stated he had another concern with the bill, on line 19, page 2. It makes it mandatory and the legislation should be enabling. The legislation is directed towards giving the county the opportunity to develop alternative systems where prisoners can work in the community. If it becomes mandatory in this regard, then it is subject to lawsuit.

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Senator Ford asked Mr. Ketzenberger to respond to the implementation of the D. U. I. bill. She asked who would administer the program. Mr. Ketzenberger said he did not know if it would come under the detention facilities responsibility or if the court will set a mandatory public works project. It is conceivable if the D. U. I. legislation and S. B. No. 451 pass, working together, projects could be set up to let persons convicted on D. U. I. to spend time in jail as well as on public projects. Mr. Ketzenberger gave the committee a copy of proposed amendments to S. B. No. 451, attached hereto as Exhibit D.

ASSEMBLY BILL NO. 14--Extends liability of contractor in certain circumstances.

Mr. John Madole, representing Associated General Contractors, stated he is opposed to A. B. No. 14. He said this particular section of the law which is being amended, deals with the situation where a general contractor has a contract with an owner to perform a construction project, then any work being performed by a subcontractor is in his behalf. The person working for the subcontractor should be sure the general contractor has paid all debts. This bill would attempt to treat employees in the office of a subcontractor in the same category as those out on the job. He felt if the bill is passed with the proposed language, it would create more problems than it would solve. He suggested that the bill be killed.

Assemblyman Robinson stated he is the sponsor of A. B. No. 14. He said he had a constituent approach him and explained a situation where he and five other employees had worked for a subcontractor and had two weeks pay coming when the subcontractor went broke. The laborers on the job received their pay because of the existing law, where the primary contractor had to make up the pay. The labor commissioner called the office workers back in and had them research the payroll of the laborers so they could receive their salary under the provisions of NRS 608, then the office help was not paid. This bill would not help these people, but would prevent it from happening again. Since NRS 608.150 was passed, it has not come up. In the number of years the law has been in the statutes, only about six people have been affected, if it carries on proportionately, few people will be involved. Mr. Robinson stated the original bill was passed by organized labor and they do support A. B. No. 14. Unless the office help organizes a union, they do not have anyone fighting for them. If the subcontractor had been in business, the labor union could have gotten back wages for these people, otherwise there was no recourse.

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Senator Raggio asked how a general contractor pays the subcontractor and assures himself that his labor has been paid. Mr. Madole said generally through a certified payroll. If he is concerned about the subcontractor, he gets a documentation of every individual's social security number and number of hours worked and he is sure the wages have been paid.

Mr. Robinson asked that something be worked out in the prorata section of the bill. Also address the problem of a subcontractor putting himself or family members in the office on salary, there could be a possibility of deliberate abuse if there is not an exclusion of some kind.

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The committee discussion S. B. No. 449 and possible amendments from those proposed in Exhibits C. Chairman Close said on line 6, the language from California could be added, is barricaded and is resisting apprehension through the use or threatened use of force.

Senator Ford stated she felt the language referring to previously designated employee should be put in the bill. Senator Raggio replied, he felt it should read, the telephone company may designate a person as its security employee. He did not feel it should be mandated in the law.

Mr. Warren, Nevada Bell, stated he would like to help the committee clear up a few points on S. B. No. 449. He said the model legislation had been distributed to all of the telephone companies in the state. There would be an efficiency in going to a previously designated person, rather than pondering about who should be notified. The companies in the state agree and are willing or already have a previously designated person. Not by name but by title.

Chairman Close asked if the language which refers to cut, does it mean actually cutting the lines. Mr. Warren stated in essence the line is not actually cut, but divided or interrupted.

Mr. Warren stated he would prefer to have a new section added under NRS 707. If it was added in NRS 179 as in the proposed bill, there would be a possibility of it being misused or misunderstood.

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Chairman Close advised the committee discussion of S. B. No. 449 would be resumed on another day when all of the committee was available.

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

Respectfully submitted:

Shirley L. Lapidie
Shirley Lapidie, Secretary

APPROVED BY:

Melvin D. Close
Senator Melvin D. Close, Chairman

DATE: April 16, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date April 6, Time 8:30 a.m.

S. B. No. 449--Permits diversion of telephone lines in situations involving hostages and recording of conversations with permission of one party.

S. B. No. 451--Amends provisions relating to county and city jails.

A. B. No. 14--Extends liability of contractor in certain circumstances.

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DATE: April 6, 1981

EXHIBIT B

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME

ORGANIZATION & ADDRESS

TELEPHONE

Larry Ketzenberger LUMPV 386-3486

STAN WARRON New Bell 789-6102

JOHN MADOLE ASSOC. GEN CONTRS 372-6716

Derrell Hahn CLARK COUNTY SOCIAL SERVICE 376-4221

DOROTHY SMITH Retired EMPLOYEE STATE 382-6131

Wesley Benton Hrs/school

Robert Macky Hrs/s O.F.C. 885-4130

ALICE Godwily Retired - STATE Dept of Gen. 739-9221-6

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W.T. ...

AMENDMENT TO

NEVADA REVISED STATUTES, CHP. 707

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

Section 1, Chap. 707 of NRS is hereby amended by adding Section 707.330 as follows:

707.330 AUTHORITY OF LAW ENFORCEMENT OFFICER TO ORDER TELEPHONE COMPANY EMPLOYEE TO CUT TELEPHONE LINES IN EMERGENCY HOSTAGE OR BARRICADE SITUATIONS. GOOD FAITH AS COMPLETE DEFENSE.

Notwithstanding any other provision in this chapter where telephone company lines or equipment are involved, whenever the supervising law enforcement official having jurisdiction has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, such official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person from any person other than a peace officer or a person authorized by the peace officer.

The telephone corporation shall designate a person as its security employee and alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

Good faith reliance on an order by a supervising law enforcement official shall constitute a complete defense to any action brought under this section.

12/9/80

211.160

Prisoners to have supervision:

The responsible sheriff, chief of police, or town marshall shall establish criteria which determines when a prisoner who is outside the security perimeter of the applicable facility shall be supervised and what degree of supervision is appropriate.

Justification:

Work release prisoners require no direct supervision. Spot checks occasionally are enough. Certain minimum custody prisoners are very appropriate to send to certain points without supervision. Some Public Works work crews could well be supervised by non-sheriff's department staff. Other types of work crews might well require special training for the supervision.