

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 13, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:15 a.m., Wednesday, May 13, 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:

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

COMMITTEE MEMBERS ABSENT:

Senator Sue Wagner

GUEST ASSEMBLYMEN:

Assemblyman Jane Ham, Clark County
Assemblyman Helen Foley, Clark County

STAFF MEMBERS PRESENT:

Sally Boyes, Committee Secretary

ASSEMBLY BILL NO. 250: (Exhibit E)

Forbids probation or suspension of sentence for persons convicted of burglary.

Mrs. Jane Ham, Assemblyman, Clark County, stated this bill was intended for the second time offender. Buglaries are an extremely big problem in D istrict 16, as well as other districts. It was drafted to let the second time or multible offender know that a repeated act of buglary will be punished by a prison term. An amendment was added to the bill stating the mandatory prison sentence does not apply to people convicted the first time of more than one

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burglary. There was no opposition to the bill in the Assembly Judiciary; it passed 38 to 2. Exhibit C contains the figures from the Department of Parole and Probation and is attached hereto and made a part of these minutes.

Larry Ketzenberger, Las Vegas Metropolitan Police Department, stated he supported Mrs. Ham's testimony in regard to A.B. 250. He stated for Clark County for 1980 there were 14,526 burglaries; 11,949 were residential burglaries. Throughout the state of Nevada for 1980, there were 23,016 burglaries. This is an increase over the previous year of 16.9%. Millions of dollars are spent by citizens to protect their homes because they do not feel safe in leaving their homes. He stated an article in the Las Vegas Sun, March 6, 1981, by Andrew Tulley, stated no place was safe anymore. When homes have to be protected with sophisticated burglar alarms, the people are not free. The selling of hand guns and the selling of devices to secure homes is a growing industry. Americans spend almost one billion dollars a year in security hardware to protect themselves. Local governments are spending more than ten times the amount of ten years ago on police protection. This adds millions of dollars to the already high cost of living. He felt there should be tougher restrictions with criminals and let criminals know that should an offense be committed, they will go to prison. First time offenders are usually paroled; second time offenders should realize prison terms will be involved for an offense. Burglary will increase in the state if people are subject to plea bargaining or allowed probation for second time offenders.

Senator Raggio asked how many arrests were made in Clark county for burglaries. Mr. Ketzenberger stated there were about 2,000 arrests made and this figure comes from the Nevada Uniform Crime Report. Senator Raggio stated people complain that not enough attention is given to a burglary case. He said he realized the manpower was a factor in the handling of these cases. Mr. Ketzenberger stated there were 2,393 arrests in 1979 for the crime of burglary in the state of Nevada; that represents about one out of ten. That does not really represent the total picture in relation to the total number of burglaries because these offenders that are arrested, often times are guilty of multiple break ins. The police officers tend to look at the situation as a matter of routine. This represents 35% of the property crime. The crime scene is evaluated to determine if there is any physical evidence present that would warrant the criminalistic bureau coming out and conducting a full scale investigation. Detectives are extremely concerned over the volume of crime and are doing any-

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thing possible to cut it down. The crime prevention bureau is working with the neighborhood watch program in an effort to get people to assist the police in looking out for the safety of their neighborhood by spending a small amount of time each day helping to watch over their own neighborhoods. Senator Raggio asked how much control was over the pawn shops in which stolen property could be sold. Mr. Ketzenberger state there were three people working full time in a pawn shop detail and reports are given to the bureau daily. Items that are pawned from out of state are also checked with law enforcement agencies in the involved state and advise the agency the property was pawned. Senator Hernstadt stated the police auctions seem to have a great many items that are auctioned off that people do not seem to have a claim in for the items. Mr. Ketzenberger stated the problem is people do not know the serial numbers of the property that is stolen from them. Every effort is made to return stolen property to the rightful owner. Senator Hernstadt asked how many burglaries were perpetrated with the use of a hand gun. Mr. Ketzenberger stated he had no way of answering that. Senator Hernstadt stated if the penalty for burglary without the use of a hand gun is increased, he felt it may encourage a burglar to use a hand gun realizing there is no difference in the penalty. Mr. Ketzenberger stated the suggestion was not made to double the penalty for the crime of buglary; we are asking that a second offense have a mandatory prison sentence. Senator Hernstadt stated there was only about one percent of burglars that end up in prison. Mr. Ketzenberger stated 14 to 18 percent of the burglaries are cleared by arrest and that figure is steadily going down over the years.

Brooke Nielsen, Deputy Attorney General's Office, Criminal Department, stated she was here representing the law enforcement legislation group and they fully support A.B. 250.

ASSEMBLY BILL NO. 405: (Exhibit F)

Authorizes magistrates to give oral authorization to peace officers to sign magistrate's name to search warrant.

Mr. Bruce Laxalt, Washoe County District Attorney's Office, stated this bill adopts the California statutory provisions for a telephonic search warrant. This is a tool that is extremely necessary in states like Nevada that has very large counties and they are far removed from the location of the magistrate. This bill is drafted after the California penal code 1524. It allows an affiant, presummably with a deputy district attorney on the other end; although that is not absolutely necessary in

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the bill, to get on the telephone with a magistrate and the magistrate on his end of the telephone either has a court reporter or a tape recorder and allows an oral affidavit to be given. Mr. Laxalt stated this system has been used in California for eight years without problem. Senator Raggio asked how a person would get around the problem of a taped telephone conversation. Mr. Laxalt stated there would be two party consent. All parties would know the conversation is being taped. Senator Raggio asked how an affidavit would be taken as an affidavit must be taken under oath. Mr. Laalt stated there should be one amendment to the bill as drafted: line 10, page one should read "may take an oral statement under oath." Line 16 should be an oral sworn statement. Senator Raggio asked if the statement would have to be signed. Mr. Laxalt stated because it is under oath, there would be no requirement for a person to sign it. He stated there would be a written record with the court. Senator Ford asked if there was a problem with the 7 a.m. to 7 p.m. time stated in the bill. Mr. Laxalt stated under present law, for a magistrate to authorize a search warrant during the night time hours, a good cause must be shown. That could be showing that the evidence would disappear before morning, or that knowledge was gained that an investigation was taking place and the people would be gone before morning.

Chairman Close stated the language on line 10 did not tract with the language on line 16. Mr. Laxalt stated an "oral statement under oath" should be inserted on both lines. Chairman Close stated lines 17 and 18 should be worded as "a search warrant issued under this statute shall be deemed." Mr. Laxalt agreed to the change. Senator Hernstadt suggested in addition to having a recording, the magistrate could, at the same time, sign the search warrant and that would make the other one a duplicate original. Mr. Laxalt stated that would be acceptable.

Brooke Nieslon, Deputy Attorney General's Office, stated the law enforcement legislation group fully supports this bill.

ASSEMBLY BILL NO. 418: (Exhibit 6)

Increases maximum fines for misdemeanors and gross misdemeanors.

Bill Curran, Clark County District Attorney's Office, stated it was his office that asked for the introduction of this bill. He stated there was a tremendous problem presently in Clark County as far as incarcerating anyone, especially misdemeantants, in light

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of the inmate population, which the federal judge is considering imposing on the county jail. The inmate population has ranged between 600 and 700 inmates for several years. There has been arguments before the federal judge attempting to have the inmate cap relaxed that was placed on them; the matter is still under submission. The previous order indicates it will be 148 inmates. Mr. Curran requested the dollar amount on line eight of the bill be increased to \$2,000 and on line 14, the dollar amount be increased to \$3,000. He stated these amounts had not been changed since the 1860ties. After comparing our laws with those of other states, it has been found that Nevada is the lowest in available penalties. Senator Keith Ashworth asked what amount was the highest. Mr. Curran stated he thought it was \$10,000 for a misdemeanor. Chairman Close asked how many misdemeanor convictions had there been that imposed the highest penalty and been collected. Mr. Curran stated he was aware of some but there were not too many. In cases of plea bargaining, maximum fines have been paid. Senator Raggio stated that figure on line 14, page one, gave the judges considerable leeway. He asked what kind of misdemeanor would warrant a \$1,200 penalty. Mr. Curran stated he personally would impose those kind of fines on solicitation for prostitution. Senator Hernstadt asked where do the fines go. Mr. Curran stated should it be a county offense, the fine goes to the county, city offense to the city and state offense goes to the state, under present law. The law enforcement also supports this bill.

ASSEMBLY BILL NO. 453: (Exhibit H)

Permits court to inspect sealed records of juvenile offenders under certain circumstances.

Helen Foley, Assemblyman Clark County, District 9, stated A.B. 453 allows for the review of juvenile records after the conviction of the adult. At the present time the terminals in justice court and municipal courts in Las Vegas receive rap sheets; anything that is on that sheet when the person was a juvenile, a notice is on the bottom that states date of record type not authorized for this terminal. She stated there was a man that turned 18 on March 14 of this year; he was before the judge for vagrancy prowling for which he had been arrested for on April 12, burglary on March 28 and possession of a controled substance on March 28. On the bottom of the sheet the statement of date of record type not authorized for this terminal. One of the judges in Las Vegas, after sentencing the person, asked a juvenile detective to get information to see

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what the juvenile records were. On February 21, 1981, the same person was arrested for possession of a controlled substance and possession of stolen property; one month after that he turned 18 and his record was cleared. The judge had no idea whether the offenses were the first ones or whatever. After the termination of jurisdiction of juvenile court, the records are sealed after three years. Presently, the situation is unfair. After a person turns 18, he is aware of the fact that he can start all over and the punishment will not be as severe. This is a common situation. Assemblyman Foley stated if the juvenile officers have access to those records, judges should also. These records would not be used in consideration for bail; they would be used for sentencing after an adult has been convicted.

Mr. Frank Sullivan, Chief Juvenile Probation Officer, Washoe County, stated in concept he was opposed to giving records out, but, excluding Clark County, there are no other terminals in the state. In Washoe County, record checks would have to be provided to eight more courts. If the bill is passed, there should be a money bill on it also. It will become very expensive to go through files to provide information to justices of the peace and to municipal court judges. Chairman Close asked what he felt the cost would be. Mr. Sullivan stated he had no idea but estimated it to be in the area of \$10,000. Senator Ford asked if this pertained to 18 to 21 year olds only. Mr. Sullivan stated that would be the ages involved. Senator Ford asked what would be involved in getting the records should a judge request them. Mr. Sullivan stated records are not stored in his office; there is a repository and it is two miles away. In order for records to be found, a person would have to go there, search the index for the record, bring them to the judge and then return them again. He stated he has been requested to try to cut the budget of his department by 10%. This bill will increase costs to the department.

ASSEMBLY JOINT RESOLUTION NO. 24: (Exhibit I)

Proposes to amend Nevada constitution to allow raffles for charity.

Mr. Jerry Higgins, Gaming Industry Association, stated the gaming industry association does not oppose raffles for charity on an occasional basis, but it does feel this bill goes far beyond that. They feel it should be limited to occasional raffles for merchandise for charities, there would be no objection to that type of bill. Senator Keith Ashworth asked why the word church could not be used instead of charity. Senator Hernstadt stated hospitals also have raffles. Chairman Close Clark County authorizes various solicitations by permit; if there is no permit, the solicitation of money for a charitable purpose is not allowed. It may be a good idea to tie

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a permit use into this bill. Mr. Sullivan stated that would be acceptable.

Mr. Robbins Cahill, Nevada Resort Associations, stated the assembly ammended the bill and rejected some of it. He felt the way it was originally considered was better than the way it is now. Senator Raggio asked if he was referring to the original bill. Mr. Sullivan stated no, he was referring to the original amendment. There was a provision in that amendment that would not permit a continuing lottery on a continuous basis. Mr. Cahill stated no cash prizes could be offered as a consideration if it exceeded the amount equal to the maximum jurisdictional limit of justice court. He stated the association felt this was in regard to cars and merchandise. There should be some limitation. Senator Raggio stated he felt the reprint of the bill was binding. Mr. Cahill stated the legislature should provide, by law, the regulation of lotteries. He stated the association also felt the limits should be tightened up; it is a historic fact that some real promotions and sins have been committed in the name of sweet charity.

ASSEMBLY BILL NO. 250:

Forbids probation or suspension of sentence for persons convicted of burglary.

Senator Keith Ashworth moved do pass A.B. No. 250.

Senator Hernstadt seconded the motion.

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

ASSEMBLY BILL NO. 405:

Authorizes magistrates to give oral authorization to peace officers to sign magistrate's name to search warrant.

Senator Hernstadt stated the language should be changed. Chairman Close stated the words "under oath" would be added on lines 10 and 16. Line 20 would be amended to read "who shall there upon endorse his name together with the date of".

Senator Raggio moved amend and do pass A.B. No. 405.

Senator Hernstadt seconded the motion.

The motion carried unanimously. (Senators Wagner and Keith Ashworth were absent for the vote.)

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ASSEMBLY BILL NO. 418:

Increases maximum fines for misdemeanors and gross misdemeanors.

The committee agreed to increase the fine to \$2,000.

Senator Hernstadt moved amend and do pass A.B. No. 418.

Senator Don Ashworth seconded the motion.

The motion carried unanimously. (Senators Wagner and Keith Ashworth were absent for the vote.)

ASSEMBLY BILL NO. 453:

Permits court to inspect sealed records of juvenile offenders under certain circumstances.

The committee agreed to reduce the maximum age for sealed records to 21 instead of 24.

Senator Don Ashworth moved amend and do pass A.B. No. 453.

Senator Hernstadt seconded the motion.

The motion carried with Senator Raggio opposing and Senators Wagner and Keith Ashworth absent for the vote.

ASSEMBLY JOINT RESOLUTION NO. 24:

Proposes to amend Nevada constitution to allow raffles for charity.

Senator Hernstadt moved to do pass A.J.R. No. 24.

Senator Raggio seconded the motion.

The motion carried unanimously. (Senators Wagner and Keith Ashworth were absent for the vote.)

SENATE BILL NO. 660:

Makes optional provisions of Bankruptcy Act of 1978 which specify certain exceptions from execution inapplicable in Nevada.

The committee agreed that A.B. 483 could be further amended to include some of the language of S.B. 660 and it would eliminate the processing of S.B. 660.

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ASSEMBLY BILL NO. 483:

Increases limitation on value of property subject to homestead exemption.

Senator Hernstadt moved to further amend A.B.No. 483 to include some of the language contained in S.B.No. 660.

Senator Don Ashworth seconded the motion.

The motion carried unanimously. (Senators Wagner and Keith Ashworth were absent for the vote.)

SENATE BILL NO. 451: (Exhibit J)

Amends provisions relating to county and city jails.

Senator Ford stated page 1, line 17, the word shall should be changed to may. This would also tract with the rest of the bill.

Mr. Frank Daykin, Legislative Counsel Bureau, stated he felt the word should remain shall.

Mr. Larry Ketzenberger, Las Vegas Metropolitan Police Department, stated lines three and four on page four should be deleted. He further stated a new section should be added to the bill allowing for the sheriff, chief of police or lieutenant marshall to establish the criteria determining the type of supervision a prisoner would have when he was released on labor.

The committee agreed to include language in "160" in this bill."

Senator Ford moved to further amend and do pass S.B.No. 451.

Senator Hernstadt seconded the motion.

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

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ASSEMBLY BILL NO. 529:

Chairman Close read the Assembly minutes of May 1, 1981 which is attached hereto, in regard to A.B.No. 529. This was Mr. Frank Daykin, Legislative Counsel Bureau, speaking in regard to some areas of A.B.No. 529. See Exhibit D.

Mr. Frank Daykin reviewed his opinions of the amendments that were proposed in the bill.

ASSEMBLY BILL NO. 530: (Exhibit K)

Corrects terminology of "aggravating circumstances" in relation to first degree murder.

Mr. Frank Daykin stated A.B.No. 530 was changing the words "forceable rape" to "sexual assault" in the aggravating circumstances for first degree murder. When the "aggravating circumstance" legislation was first enacted, the sexual assault legislation was pending; the two terms were not correctly reconciled. This bill provides for that reconciliation.

Senator Hernstadt moved do pass A.B. No. 530.

Senator Raggio seconded the motion.

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

ASSEMBLY BILL NO. 529: (Exhibit L)

Senator Raggio moved do pass A.B. No. 529.

Senator Hernstadt seconded the motion.

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

There being no further business, the meeting adjourned at 10:00 a.m.

Respectfully submitted by,

Sally Boyes
Sally Boyes, Secretary

APPROVED BY:

Mel. D. Close
Senator Melvin D. Close, Chairman
DATE: May 16, 1981

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SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.
Day Wednesday, Date May 13, 1981, Time 8:00 a.m.

AMMENDED AGENDA

- A. B. No. 250--Forbids probation or suspension of sentence for persons convicted of burglary.
- A. B. No. 405--Authorizes magistrates to give oral authorization to peace officers to sign magistrate's name to search warrant.
- A. B. No. 418--Increases maximum fines for misdemeanors and gross misdemeanors.
- A. B. No. 453--Permits court to inspect sealed records of juvenile offenders under certain circumstances.
- A. B. No. 529--Clarifies law relating to appeals from denial of writ of habeas corpus.
- A. B. No. 530--Corrects terminology of "aggravating circumstances" in relation to first degree murder.
- A. J. R. No. 24--Proposes to amend Nevada constitution to allow raffles for charity.

There will be a possibility of a lunch session should the agenda not be completed.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: May 13, 1981

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NAME	ORGANIZATION & ADDRESS	TELEPHONE
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Bob Eyer	Dept of Tricis	882 9202
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Jane Ham	ASSEMBLYMAN - CLARK COUNTY	
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Brooke Nielsen	Deputy AG - Criminal	
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Frank Sullivan	Washoe Co Probation	785 4273
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Henry Curtis	BOULDER CITY	
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Ned Solomon	Clark Co Juvenile Ct.	
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Frank O'Brien	Youth Services Division	
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Patrick Hill	NEVADA STATE FIRE	583-8806
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Jerry Higgins	GAMING Industry Assoc	11
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Larry Ketzenberger	LUMP	381-3086
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Jan Bond		786 2532
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STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



EXHIBIT C
LEGISLATIVE COMMISSION (702) 885-5627

KEITH ASHWORTH, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640

DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

ARTHUR J. PALMER, *Director*
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

May 8, 1981

M E M O R A N D U M

TO: Assemblyman Jane Ham

FROM: Donald A. Rhodes, *Chief Deputy Research Director*

SUBJECT: Impact on Prisons if A.B. 250 of the 61 Session Were to Become Law

This is in response to your request for the "prisoner impact" of A.B. 250, as amended. The bill forbids probation or suspension of sentence for a person convicted of burglary for the second time.

Prisoner Impact

If A.B. 250 would have been in effect during 1980, the impact on the state prison would have been small for that year.

According to the department of parole and probation, only 15 offenders convicted of burglary with prior felony convictions received probation. Only four of those offenders had prior felony burglary convictions. Therefore, the bottom line is that four offenders would have been affected by A.B. 250 in 1980. That figure could, of course, fluctuate on a year-to-year basis. The impact on the prison population would also be compounded as more burglars with prior burglary convictions were sent to prison.

DAR/jld: 5.1 Burglar

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INTER-OFFICE

Memo

FROM THE DEPARTMENT OF PAROLE AND PROBATION

::

STATE OF NEVADA

To: Donald Rhodes, Legislative Counsel Bureau

Date: 5/8/81

From: A. A. Campos, Chief

Copies: B. M. Durbin

Re: Burglary Statistics Requested

Tracy Fisk
Deadline: Sue Hampton

We have researched our files for cases having dispositions during the period 1/1/80 through 12/31/80 relative to Burglary offenses. We have determined the following, for those cases having prior felony offenses.

Of the 487 total Burglary convictions, 117 of those cases involved prior felony convictions. Of the 117 cases, 83 received sentences to Nevada State Prison. This leaves 34 cases which received probation for the Burglary charge, which included a prior felony of some kind.

We have hand reviewed the 34 cases in question, and have determined:

- 1 Case was Compact from another jurisdiction and the file was destroyed, therefore no data available.
- 9 cases were convictions for gross misdemeanors. Therefore, these would not be relevant to your study.
- 8 cases were convictions for Attempted Burglary. We are unclear how attempted burglary is included in this proposed legislation, but will include data on these to follow.
- 16 cases were for Burglary. Two of the 16 were for multiple counts of Burglary. One case was overturned by the Supreme Court.

Therefore, of the 23 cases (15 felony Burglaries, 8 felony Att. Burglaries) pertinent to the proposed legislation, the following is offered. Of the eight Attempted Burglary convictions, four had prior Burglary felony convictions. Of the 15 felony Burglary convictions, four had prior Burglary convictions and two had prior Attempted Burglary convictions (felonies).

One of these cases is presently in the Warrant file, wanted by this agency. One of these cases was previously revoked and returned to Court and sentenced to Nevada State Prison.

Hope this data will assist you. Should you need anything further, please do not hesitate to contact me.

AAC/bmd

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AB 529: Clarifies law relating to appeals from denial of writ of habeas corpus.

Mr. Frank Daykin, of the Legislative Counsel Bureau, explained the changes in this bill. He noted that AB 529 stems from a decision of the Supreme Court last year, in which, while they rejected an appeal from a writ of habeas corpus in a particular matter before them, going on the clear intent of the Legislature in the 1977 Act, said that the sections of the law on the writ of habeas corpus were ambiguous because they still contained references to appeals. Also, there was the point that the evident intent in 1977 was to eliminate appeal from the denial of the writ of habeas corpus only where the writ was sought as an interlocutory matter in a criminal proceeding. Thus AB 529 removes those references which survived 1977.

Mr. Daykin then outlined the areas dealt with by each section of the bill.

Section 1: This deals directly with a pre-trial petition for a writ of habeas corpus based on alleged want of probable cause or jurisdiction to proceed. It contains the limitations on when the application may be made to the District Court. It also takes out the reference here to an appeal of the court's ruling, so as to be consistent with the elimination of the appeal elsewhere.

Section 2: This amends NRS 34.380 in two respects. First, it takes out at the beginning language which is simply duplicative of the constitutional provision in Article VI. This eliminates no authority, it simply removes a duplication of the Nevada Constitution. It dates back to 1866 when they thought they had to reenact in statute everything the Constitution said, and they didn't always copy it right. It also specifies how the appeal may be taken after conviction, if that is the grounds of the defendant's objection.

Mr. Daykin summarized his testimony by noting that the first section removes the ambiguity of which the Supreme Court complained, and the second section assures and explains, in effect, that this removal of denial of the right of appeal was intended only to apply before trial in a criminal matter. Thus, this does not repeal more broadly than the 1977 Legislature intended.

Mr. Stewart added that the Supreme Court, in an attempt to streamline and eliminate a lot of unnecessary matters which were coming in front of them, proposed to the Legislature a bill which would preclude pre-trial writs of habeas corpus, mainly from the Justice of the Peace Courts. This was passed during the last Legislative session. Thus, a writ of habeas corpus could no longer be taken to the Supreme Court after a preliminary hearing. There arose a question, however, of whether it also applied to District Court, and the Supreme Court said they did not intend to eliminate those. This bill simply clarifies all of this.

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(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 250

 ASSEMBLY BILL NO. 250—ASSEMBLYMEN HAM, STEWART,
 BEYER, MALONE AND CAFFERATA

MARCH 2, 1981

Referred to Committee on Judiciary

SUMMARY—Forbids probation or suspension of sentence for persons convicted of burglary. (BDR 16-925)

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

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

AN ACT relating to crimes against property; forbidding probation or suspension of sentence for a person convicted of burglary; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 205.060 is hereby amended to read as follows:
 2 205.060 1. Every person who, either by day or night, enters any
 3 house, room, apartment, tenement, shop, warehouse, store, mill, barn,
 4 stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer,
 5 semitrailer or housetrailer, or railroad car, with intent to commit grand
 6 or petit larceny, or any felony, is guilty of burglary.
 7 2. Any person convicted of burglary shall be punished by imprison-
 8 ment in the state prison for not less than 1 year nor more than 10 years,
 9 and may be further punished by a fine of not more than \$10,000. *No*
 10 *person who is convicted of burglary and who has previously been con-*
 11 *victed of burglary may be released on probation or granted a suspension*
 12 *of his sentence.*
 13 3. Whenever a burglary is committed upon a railroad train, vehicle,
 14 vehicle trailer, semitrailer or housetrailer, in motion or in rest, in this
 15 state, and it cannot with reasonable certainty be ascertained in what
 16 county the crime was committed, the offender may be arrested and tried
 17 in any county through which the railroad train, vehicle, vehicle trailer,
 18 semitrailer or housetrailer may have run on the trip during which [such]
 19 the burglary is committed.

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(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 405

ASSEMBLY BILL NO. 405—COMMITTEE ON JUDICIARY

MARCH 31, 1981

Referred to Committee on Judiciary

SUMMARY—Authorizes magistrates to give oral authorization to peace officers to sign magistrate's name to search warrant. (BDR 14-804)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to search warrants; authorizing magistrates to issue search warrants based on oral statements; authorizing magistrates to give oral authorization to peace officers to sign the magistrate's name to a search warrant; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 179.045 is hereby amended to read as follows:
 2 179.045 1. A search warrant [shall] *may* issue only on affidavit or
 3 affidavits sworn to before the magistrate and establishing the grounds
 4 for issuing the warrant [.] *or as provided in subsection 2.* If the magis-
 5 trate is satisfied that grounds for the application exist or that there is
 6 probable cause to believe that they exist, he [must] *shall* issue a war-
 7 rant identifying the property and naming or describing the person or
 8 place to be searched.
 9 2. *In lieu of the affidavit required by subsection 1, the magistrate*
 10 *may take an oral statement given under oath, which must be recorded in*
 11 *the presence of the magistrate or in his immediate vicinity by a certified*
 12 *shorthand reporter or by electronic means, transcribed, certified by the*
 13 *reporter if he recorded it, and certified by the magistrate. The statement*
 14 *must be filed with the clerk of the court.*
 15 3. *After a magistrate has issued a search warrant, whether it is based*
 16 *on an affidavit or an oral statement given under oath, he may orally*
 17 *authorize a peace officer to sign the magistrate's name on a duplicate*
 18 *original warrant. A duplicate original search warrant shall be deemed to*
 19 *be a search warrant. It must be returned to the magistrate who authorized*
 20 *the signing of his name on it. The magistrate shall endorse his name and*
 21 *enter the date on the warrant when it is returned to him. Any failure of*
 22 *the magistrate to make such an endorsement and entry does not in itself*
 23 *invalidate the warrant.*

1 4. The warrant [shall] *must* be directed to a peace officer in the
2 county where the warrant is to be executed. It [shall] *must* state the
3 grounds or probable cause for its issuance and the names of the persons
4 whose affidavits have been taken in support thereof. It [shall] *must*
5 command the officer to search forthwith the person or place named for
6 the property specified.

7 [3.] 5. The warrant [shall] *must* direct that it be served between
8 the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of
9 good cause therefor, inserts a direction that it be served at any time.

10 [4. It shall] 6. *The warrant must* designate the magistrate to
11 whom it [shall] *is to be* returned.

12 SEC. 2. NRS 179.095 is hereby amended to read as follows:

13 179.095 The magistrate who has issued a search warrant shall attach
14 to the warrant *the duplicate original warrant, if any, and* a copy of the
15 return, inventory and all other papers in connection therewith and shall
16 file them with the clerk of the court having jurisdiction where the prop-
17 erty was seized.



(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 418

ASSEMBLY BILL NO. 418—ASSEMBLYMEN HICKEY, SCHOFIELD, PRICE, BANNER, MALONE, BREMNER, KOVACS, MARVEL, POLISH, VERGIELS, RACKLEY, RHOADS, PRENGAMAN, HORN, WESTALL, MELLO AND DINI

APRIL 1, 1981

Referred to Committee on Judiciary

SUMMARY—Increases maximum fines for misdemeanors and gross misdemeanors. (BDR 16-830)

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

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

AN ACT relating to crimes and punishments; increasing the maximum fines for misdemeanors and gross misdemeanors; enlarging the jurisdiction of justices of the peace and police judges; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 193.120 is hereby amended to read as follows:
- 2 193.120 1. A crime is an act or omission forbidden by law and
- 3 punishable upon conviction by death, imprisonment, fine or other penal
- 4 discipline.
- 5 2. Every crime which may be punished by death or by imprisonment
- 6 in the state prison is a felony.
- 7 3. Every crime punishable by a fine of not more than **[\$500,]**
- 8 **\$1,000,** or by imprisonment in a county jail for not more than 6 months,
- 9 is a misdemeanor.
- 10 4. Every other crime is a gross misdemeanor.
- 11 SEC. 2. NRS 193.140 is hereby amended to read as follows:
- 12 193.140 Every person convicted of a gross misdemeanor shall be
- 13 punished by imprisonment in the county jail for not more than 1 year,
- 14 or by a fine of not more than **[\$1,000,] \$2,000,** or by both fine and
- 15 imprisonment, unless the statute in force at the time of commission of
- 16 such gross misdemeanor prescribed a different penalty.
- 17 SEC. 3. NRS 193.150 is hereby amended to read as follows:
- 18 193.150 1. Every person convicted of a misdemeanor shall be pun-
- 19 ished by imprisonment in the county jail for not more than 6 months,
- 20 or by a fine of not more than **[\$500,] \$1,000,** or by both fine and

1 imprisonment, unless the statute in force at the time of commission
2 of such misdemeanor prescribed a different penalty.

3 2. In lieu of all or a part of the punishment which may be imposed
4 pursuant to subsection 1, if the convicted person agrees, he may be sen-
5 tenced to perform a fixed period of work for the benefit of the community
6 under the conditions prescribed in section 1 of [this act.] *Senate Bill No.*
7 *1.3 of the 61st session of the Nevada legislature.*

8 **SEC. 4.** NRS 193.160 is hereby amended to read as follows:

9 193.160 In all cases where a corporation is convicted of an
10 offense for the commission of which a natural person would be punish-
11 able as for a misdemeanor, and there is no other punishment prescribed
12 by law, [such] the corporation is punishable by a fine not exceeding
13 [\$500.] \$1,000.

14 **SEC. 5.** NRS 5.050 is hereby amended to read as follows:

15 5.050 1. Municipal courts [which are already established, or which
16 may hereafter be established in any incorporated city of this state,
17 shall] have jurisdiction:

18 (a) Of an action or proceeding for the violation of any ordinance
19 of their respective cities.

20 (b) Of an action or proceeding to prevent or abate a nuisance within
21 the limits of their respective cities.

22 (c) Of proceedings respecting vagrants and disorderly persons.

23 2. The municipal courts [already established, or which may here-
24 after be established, shall also] have jurisdiction of the following public
25 offenses committed in their respective cities:

26 (a) Petit larceny.

27 (b) Assault and battery, not charged to have been committed upon a
28 public officer in the execution of his duties, or with intent to kill.

29 (c) Breaches of peace, riots, affrays, committing a willful injury to
30 property, and all misdemeanors punishable by fine not exceeding
31 [\$500,] \$1,000, or imprisonment not exceeding 6 months, or by both
32 [such] fine and imprisonment.

33 **SEC. 6.** Section 3 of this act shall become effective at 12:01 a.m. on
34 July 1, 1981.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 453

ASSEMBLY BILL NO. 453—ASSEMBLYMEN FOLEY, VER-
GIELS, CAFFERATA, CRADDOCK, JEFFREY, HAM, BAN-
NER, MALONE, RHOADS, THOMPSON, PRICE, DuBOIS,
RACKLEY, HICKEY, DINI, GLOVER, BEYER, MELLO,
HAYES, WESTALL, STEWART AND HORN

APRIL 7, 1981

Referred to Committee on Judiciary

SUMMARY—Permits court to inspect sealed records of juvenile offenders
under certain circumstances. (BDR 5-1305)

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

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

AN ACT relating to the sealing of records of juvenile offenders; permitting a court
to inspect those records under certain circumstances; and providing other mat-
ters properly relating thereto.

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

- 1 SECTION 1. NRS 62.275 is hereby amended to read as follows:
2 62.275 1. In any case in which a child is taken into custody by a
3 peace officer, is taken before a probation officer, or appears before a judge
4 or master of a juvenile court, district court, justice's court or municipal
5 court, the child or a probation officer on his behalf may petition for the
6 sealing of all records relating to the child, including records of arrest, but
7 not including records relating to misdemeanor traffic violations, in the
8 custody of the juvenile court, district court, justice's court or municipal
9 court, probation officer, law enforcement agency, or any other agency or
10 public official, if:
11 (a) Three years or more have elapsed after termination of the jurisdic-
12 tion of the juvenile court; or
13 (b) Three years or more have elapsed since the child was last referred
14 to the juvenile court and the child has never been declared a ward of the
15 court.
16 2. The court shall notify the district attorney of the county and the
17 probation officer, if he is not the petitioner. The district attorney, proba-
18 tion officer, any of their deputies or any other persons having relevant
19 evidence may testify at the hearing on the petition.

1 3. If, after the hearing, the court finds that, since such termination of
2 jurisdiction, the child has not been convicted of a felony or of any misde-
3 meanor involving moral turpitude and that rehabilitation has been attained
4 to the satisfaction of the court, it shall order all records, papers and exhib-
5 its in [such person's] *the juvenile's* case in the custody of the juvenile
6 court, district court, justice's court, municipal court, probation officer, law
7 enforcement agency or any other agency or public official sealed. Other
8 records relating to the case, in the custody of such other agencies and offi-
9 cials as are named in the order, [shall] *must* also be ordered sealed. All
10 juvenile records [shall] *must* be automatically sealed when the person
11 reaches 24 years of age.

12 4. The court shall send a copy of the order to each agency and official
13 named therein. Each agency and official shall, within 5 days after receipt
14 of the order:

15 (a) Seal records in its custody, as directed by the order.

16 (b) Advise the court of its compliance.

17 (c) Seal the copy of the court's order that it or he received.

18 As used in this section, "seal" means placing the records in a separate file
19 or other repository not accessible to the general public.

20 5. If the court orders the records sealed, all proceedings recounted in
21 the records are deemed never to have occurred and the minor may prop-
22 erly reply accordingly to any inquiry concerning the proceedings and the
23 events which brought about the proceedings.

24 6. The person who is the subject of records sealed pursuant to this
25 section may petition the court to permit inspection of the records by a
26 person named in the petition and the court may order [such] *the* inspec-
27 tion.

28 7. The court may, upon the application of a district attorney or an
29 attorney representing a defendant in a criminal action, order an inspection
30 of [such] *the* records for the purpose of obtaining information relating to
31 persons who were involved in the incident recorded.

32 8. *The court may, upon its own motion and for the purpose of sen-*
33 *tencing a convicted adult who is under 21 years of age, inspect any rec-*
34 *ords of that person which are sealed pursuant to this section.*

35 9. An agency charged with the medical or psychiatric care of a per-
36 son may petition the court to unseal his juvenile records.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. J. R. 24

ASSEMBLY JOINT RESOLUTION NO. 24—
COMMITTEE ON JUDICIARY

FEBRUARY 24, 1981

Referred to Committee on Judiciary

SUMMARY—Proposes to amend Nevada constitution to allow raffles for charity. (BDR C-822)

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



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

ASSEMBLY JOINT RESOLUTION—Proposing an amendment to section 24 of article 4 of the constitution of the State of Nevada, prohibiting lotteries, by authorizing raffles for charity.

- 1 *Resolved by the Assembly and Senate of the State of Nevada, jointly,*
2 That section 24 of article 4 of the constitution of the State of Nevada be
3 amended to read as follows:
4 **[Sec:]** *Sec. 24. [No lottery shall be authorized by this State, nor*
5 *shall the sale of lottery tickets be allowed.] The legislature may authorize*
6 *only persons engaged in charitable activities or other activities not for*
7 *profit to conduct lotteries on their own behalf if the net proceeds are used*
8 *for charitable purposes or for an activity conducted in this state not for*
9 *profit and may provide by law for the regulation of these lotteries. The*
10 *state and its political subdivision shall not conduct a lottery.*

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

S. B. 451

SENATE BILL NO. 451—COMMITTEE ON JUDICIARY

MARCH 25, 1981

Referred to Committee on Judiciary

SUMMARY—Amends provisions relating to county and city jails. (BDR 16-833)
 FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to county and city jails; amending requirements for detaining United States prisoners in county jails; amending various provisions relating to employment of prisoners; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 211.060 is hereby amended to read as follows:
 2 211.060 1. A person may be committed under the authority of the
 3 United States to any county jail *if a contract has been concluded between*
 4 *the United States and the sheriff of the county*, upon payment of:
 5 (a) All actual and reasonably necessary costs of his confinement,
 6 including the direct cost of his support and an allocated share of the cost
 7 of maintaining the jail and guarding the prisoners, as compensation to the
 8 county for the use of the jail; and
 9 (b) All legal fees of the jailer.
 10 2. The sheriff shall receive such prisoners, and subject them to the
 11 same employment, discipline and treatment, and be liable for any neglect
 12 of duty as in the case of other prisoners, but the county is not liable for
 13 any escape.
 14 SEC. 2. NRS 211.120 is hereby amended to read as follows:
 15 211.120 1. The board of county commissioners or metropolitan
 16 police commission in a county, and the governing body of an incorpo-
 17 rated city, shall make all necessary arrangements, as provided in NRS
 18 211.120 to 211.170, inclusive, to utilize the labor of the prisoners com-
 19 mitted to any jails within any county, city, or town within this state, for a
 20 term of imprisonment by the judges of the several district courts within
 21 this state, or the justices of the peace in any and all townships throughout
 22 this state.
 23 2. A sheriff, chief of police or town marshal may establish a pro-
 24 gram to release prisoners from his jail for work. The program must:

- 1 (a) Provide for thorough screening of prisoners for inclusion in the
2 program;
3 (b) Be limited to prisoners who have been sentenced; and
4 (c) Require that each prisoner who participates in the program reim-
5 burse the county, city or town in whole or in part, according to his ability
6 to pay, for his room and board during the time he participates in the pro-
7 gram.

8 SEC. 3. NRS 211.140 is hereby amended to read as follows:

9 211.140 1. The sheriff of each county has charge and control over
10 all prisoners committed to his care in the respective county jails, and the
11 chiefs of police and town marshals in the several cities and towns
12 throughout this state have charge and control over all prisoners com-
13 mitted to their respective city and town jails.

14 2. The sheriffs, chiefs of police and town marshals shall see that the
15 prisoners under their care are [at all times] kept at labor [on the public
16 works in their respective counties, cities and towns, at least 6 hours a day
17 during 6 days of the week, when the weather permits when required by
18 the board of county commissioners or metropolitan police commission, by
19 the mayor and board of aldermen of their respective cities or by the board
20 of trustees of their respective towns.] for reasonable amounts of time
21 within the jail, on public works in the county, city or town, or as part of
22 a program of release for work established pursuant to NRS 211.120.

23 3. "Public works" as used in NRS 211.120 to 211.170, inclusive,
24 means the construction, repair, or cleaning of any streets, road, sidewalks,
25 public square, park, building, cutting away hills, grading, putting in sew-
26 ers, or other work whatever, which is or may be authorized to be done by
27 and for the use of any of the counties, cities or towns, and the expense of
28 which is not to be borne exclusively by persons or property particularly
29 benefited thereby .

30 4. The sheriff, chief of police or town marshal shall arrange for the
31 administration of [such] medical care [as may be] required by prison-
32 ers committed to his custody. The county, city or town, or the metropoli-
33 tan police department where one exists, shall pay the cost of appropriate
34 medical:

35 (a) Treatment for injuries incurred by a prisoner [during his arrest for
36 commission of a public offense or] while he is in custody;

37 (b) Treatment for any infectious, contagious or communicable disease
38 which the prisoner contracts while he is in custody; and

39 (c) Examinations required by law or by court order unless the order
40 otherwise provides.

41 5. A prisoner shall pay the cost of medical treatment for:

42 (a) Injuries incurred by the prisoner during his commission of a public
43 offense [;] or during his arrest for commission of a public offense;

44 (b) Injuries or illnesses which existed before the prisoner was taken
45 into custody;

46 (c) Self-inflicted injuries; and

47 (d) Except treatment provided pursuant to subsection 4, any other
48 injury or illness incurred by the prisoner.

49 6. A health and care facility furnishing treatment pursuant to subsec-
50 tion 5 shall attempt to collect the cost of the treatment from the prisoner

1 or his insurance carrier. If the facility is unable to collect the cost and
2 certifies to the appropriate board of county commissioners that it is unable
3 to collect the cost of the medical treatment, the board of county commis-
4 sioners shall pay the cost of the medical treatment.

5 SEC. 4. NRS 211.150 is hereby amended to read as follows:

6 211.150 [In case any prisoner or prisoners are] 1. If a prisoner
7 is disobedient or disorderly, or [do] does not faithfully perform [their
8 task,] his tasks, the officers having charge of [them may inflict punish-
9 ment upon them by confining them in dark and solitary cells, and the
10 officers so punishing shall keep a record of the punishment so inflicted,
11 showing its cause, mode, degree and duration, making a correct report
12 of the same on the last day of each month to their respective boards in
13 each county, city and town, together with the amount and character of
14 work done by the prisoners during the month.] him may take action to
15 discipline and punish him. The action may include confinement to an indi-
16 vidual cell separate from other prisoners for the protection of the staff of
17 the jail and other prisoners. An officer who confines a prisoner to an indi-
18 vidual cell for any reason shall report his action as soon as possible to the
19 person in charge of the jail.

20 2. A report of the number of prisoners who are performing work and
21 the amount and type of work performed must be submitted to the person
22 in charge of the jail on the last day of each month.

23 SEC. 5. NRS 211.160 is hereby amended to read as follows:

24 211.160 [No] 1. Except in accordance with criteria established
25 pursuant to subsection 2, no prisoner or prisoners [shall] may be
26 allowed to go from the walls of the prison without a proper and suffici-
27 ent guard.

28 2. The responsible sheriff, chief of police or town marshal shall
29 establish criteria for determining whether, and to what extent, super-
30 vision of a prisoner participating in a program of release for work is
31 required when the prisoner is outside the perimeter of the secured area.

32 SEC. 6. NRS 211.170 is hereby amended to read as follows:

33 211.170 1. For each month in which a prisoner:

34 (a) Appears by the [record provided for in] reports required by NRS
35 211.150, to have been obedient, orderly and faithful, the sheriff of the
36 county or the chief of police of the municipality in which the prisoner is
37 incarcerated may deduct not more than 5 days from the term of impris-
38 onment of the prisoner.

39 (b) Diligently performs his assigned work, the sheriff or chief of police
40 may deduct: [not more than 5 additional days from the term of imprison-
41 ment of the prisoner.]

42 (1) Not more than 10 additional days if his sentence is 270 days or
43 more;

44 (2) Not more than 7 additional days if his sentence is 180 days or
45 more but less than 270 days;

46 (3) Not more than 5 additional days if his sentence is 30 days or
47 more but less than 180 days;

48 (4) Not more than 3 additional days if his sentence is 15 days or
49 more but less than 30 days; and

50 (5) No additional days if his sentence is less than 15 days.

- 1 2. Deduction earned *under paragraph (a) of subsection 1* for an
- 2 period of time less than a month must be credited on a pro rata basis.
- 3 3. If, while incarcerated, a prisoner:
- 4 (a) Commits a criminal offense;
- 5 (b) Commits an act which endangers human life; or
- 6 (c) Intentionally disobeys a rule of the jail,
- 7 all or part of any deductions the prisoner has earned under this section
- 8 may be forfeited as the sheriff or chief of police determines.
- 9 4. Before any forfeiture under subsection 3 may occur, the prisoner
- 10 must be given reasonable notice of the alleged misconduct for which the
- 11 forfeiture is sought and an opportunity for a hearing on that misconduct.

A. B. 530

ASSEMBLY BILL NO. 530—COMMITTEE ON JUDICIARY

APRIL 21, 1981

Referred to Committee on Judiciary

SUMMARY—Corrects terminology of “aggravating circumstances” in relation to first degree murder. (BDR 16-1285)

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

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

AN ACT relating to first degree murder; correcting the terminology of “aggravating circumstances”; and providing other matters properly relating thereto.

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

- 1 **SECTION 1. NRS 200.033 is hereby amended to read as follows:**
2 **200.033 The only circumstances by which murder of the first degree**
3 **may be aggravated are:**
4 **1. The murder was committed by a person under sentence of impris-**
5 **onment.**
6 **2. The murder was committed by a person who was previously con-**
7 **victed of another murder or of a felony involving the use or threat of vio-**
8 **lence to the person of another.**
9 **3. The murder was committed by a person who knowingly created a**
10 **great risk of death to more than one person by means of a weapon, device**
11 **or course of action which would normally be hazardous to the lives of**
12 **more than one person.**
13 **4. The murder was committed while the person was engaged, or was**
14 **an accomplice, in the commission of or an attempt to commit or flight**
15 **after committing or attempting to commit, any robbery, [forcible rape,]**
16 **sexual assault, arson in the first degree, burglary or kidnaping in the first**
17 **degree.**
18 **5. The murder was committed for the purpose of avoiding or pre-**
19 **venting a lawful arrest or effecting an escape from custody.**
20 **6. The murder was committed by a person, for himself or another,**
21 **for the purpose of receiving money or any other thing of monetary value.**
22 **7. The murder was committed upon a peace officer or fireman who**
23 **was killed while engaged in the performance of his official duty or**
24 **because of an act performed in his official capacity, and the defendant**

1 knew or reasonably should have known that the victim was a peace offi-
2 cer or fireman. For purposes of this subsection "peace officer" means
3 sheriffs of counties and their deputies, marshals and policemen of cities
4 and towns, the chief and agents of the investigation and narcotics division
5 of the department of law enforcement assistance, personnel of the Nevada
6 highway patrol, and the director, deputy director, correctional officers
7 and other employees of the department of prisons when carrying out the
8 duties prescribed by the director of the department.

9 8. The murder involved torture, depravity of mind or the mutilation
10 of the victim.

11 9. The murder was committed upon one or more persons at random
12 and without apparent motive.

13 SEC. 2. This act shall become effective upon passage and approval.

A. B. 529

ASSEMBLY BILL NO. 529—COMMITTEE ON JUDICIARY

APRIL 21, 1981

Referred to Committee on Judiciary

SUMMARY—Clarifies law relating to appeals from denial of writ of habeas corpus. (BDR 3-1174)

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

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

AN ACT relating to habeas corpus; clarifying the provisions for appeals from the denial of a writ; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 34.375 is hereby amended to read as follows:
- 2 34.375 1. Except as provided in subsection 2, a pretrial petition for
- 3 a writ of habeas corpus based on alleged want of probable cause or
- 4 otherwise challenging the court's right or jurisdiction to proceed to the
- 5 trial of a criminal charge [shall] *may* not be considered unless:
- 6 (a) The petition and all supporting documents are filed within 21 days
- 7 after the first appearance of the accused in the district court; and
- 8 (b) The petition contains a statement that the accused:
- 9 (1) Waives the [60 day] *60-day* limitation for bringing an accused
- 10 to trial; or
- 11 (2) If the petition is not decided within 15 days before the date set
- 12 for trial, consents that the court may, without notice or hearing, continue
- 13 the trial indefinitely or to a date designated by the court. [;
- 14 (3) If any party appeals the court's ruling and the appeal is not
- 15 determined before the date set for trial, consents that the trial date is
- 16 automatically vacated and the trial postponed unless the court otherwise
- 17 orders.]
- 18 2. The court may extend, for good cause, the time to file a petition.
- 19 Good cause shall be deemed to exist if the transcript of the preliminary
- 20 hearing or of the proceedings before the grand jury is not available within
- 21 14 days after the accused's initial appearance and the court shall grant an
- 22 ex parte application to extend the time for filing a petition. All other
- 23 applications [shall] *may* be made only after appropriate notice has been
- 24 given to the district attorney.
- 25 SEC. 2. NRS 34.380 is hereby amended to read as follows:

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1 34.380 1. [Except as otherwise provided in this section, a writ of
2 habeas corpus may be granted by each justice of the supreme court or
3 judges of district courts at any time.

4 2. Each of the justices of the supreme court may issue writs of habeas
5 corpus to any part of the state, on petition by, or on behalf of any person
6 held in actual custody, and may make such writ returnable before himself
7 or before the supreme court, or before any district court in the state or
8 before any judge of the district court, as provided in section 4 of article
9 6 of the constitution of the State of Nevada.

10 3. A district judge may only issue writs of habeas corpus on petition
11 by, or in behalf of, any person held in actual custody within the judicial
12 district of the district judge to whom application for the writ is made, as
13 provided in section 6 of article 6 of the constitution of the State of
14 Nevada.

15 4.] A district court shall not consider any pretrial petition for habeas
16 corpus:

17 (a) Based on alleged want of probable cause or otherwise challenging
18 the court's right or jurisdiction to proceed to the trial of a criminal charge
19 unless a petition is filed in accordance with NRS 34.375.

20 (b) Based on a ground which the petitioner could have included as a
21 ground for relief in any prior petition for habeas corpus or other petition
22 for extraordinary relief.

23 [5.] 2. When an application is made to a justice of the supreme
24 court for a writ of habeas corpus and the application is entertained by the
25 justice, or the supreme court, and thereafter denied, the person making
26 [such] the application has no right to submit thereafter an application to
27 the district judge of the district wherein [such] the applicant is held in
28 custody, nor to any other district judge in any other judicial district of the
29 state, premised upon the illegality of the same charge upon which [such]
30 the applicant is held in custody.

31 [6.] 3. *An applicant who, after conviction or while no criminal
32 action is pending against him, has petitioned the district court for a writ of
33 habeas corpus and whose application for the writ is denied, may appeal
34 to the supreme court from the order and judgment of the district court,
35 but the appeal must be made within 15 days after the day of entry of
36 the order or judgment.*

37 4. The State of Nevada is an interested party in habeas corpus pro-
38 ceedings, and, [in the event] if the district judge or district court to
39 whom or to which an application for a writ of habeas corpus has been
40 made [shall grant such] grants the writ, then the district attorney of the
41 county in which the application for the writ was made, or the city attor-
42 ney of a city which is situated in the county in which the application for
43 the writ was made, or the attorney general in behalf of the state, may
44 appeal to the supreme court from the order of the district judge granting
45 the writ and discharging the applicant; but [such appeal shall] the
46 appeal must be taken within 15 days from the day of entry of the order.

47 [7.] 5. Whenever an appeal is taken from an order of the district
48 court granting a pretrial petition for habeas corpus based on alleged
49 want of probable cause, or otherwise challenging the court's right or

1 jurisdiction to proceed to trial of a criminal charge, the clerk of the dis-
2 trict court shall forthwith certify and transmit to the supreme court of
3 Nevada, as the record on appeal, the original papers on which [such]
4 the petition was heard in the district court and, if either the appellant or
5 respondent demands it, a transcript of any evidentiary proceedings had
6 in the district court. The district court shall require its court reporter to
7 expedite the preparation of [such] the transcript in preference to any
8 request for a transcript in any civil matter. When [such] the appeal is
9 docketed in the supreme court of Nevada, it stands submitted without
10 further briefs or oral argument, unless the supreme court otherwise
11 orders.

12 [8.] 6. Any procedure provided by law for a change of judge in a
13 civil proceeding before any court of this state, except the supreme court,
14 applies to the proceedings set forth in this section.

15 SEC. 3. This act shall become effective upon passage and approval.

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