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SB 299 – OFFERED TESTIMONY OF GERALD GARDNER

Mr. Chairman, Members of the Committee on Judiciary:

My name is Gerald Gardner, Chief of the Attorney General's Criminal Justice Division. I greatly appreciate being given this opportunity to testify on behalf of Attorney General Brian Sandoval in support of SB 299.

SB 299 is a simple, yet extremely important bill designed to afford greater protection to our prison correctional officers, civilian staff, and the public.

In July of last year, I attempted to prosecute a case involving a prison inmate who was found with three handcuff keys sewn into the hem of his prison clothes. They appeared to have been manufactured out of strips of tin from a tin can. All three keys were meticulously crafted and actually opened prison issue handcuffs.

To my surprise, there was no crime on the books making it a crime for prison inmates to possess handcuff keys, or any other escape device. The only charge I was able to prosecute was under the Attempt Escape statute. I took the case to preliminary hearing before the Justice of the Peace in Ely, and presented the evidence I had. Not surprisingly, the Justice of the Peace had to dismiss the case, since there was insufficient evidence of any overt attempt to escape.

After that, I spoke with a number of people in the prison community and DA's offices around the State, and learned that the law enforcement community had experienced similar problems in the past. For example, Lt. Dan Falge, of the Ely State Prison, told me the following story:

On March 8, 1993, then Senior Correctional Officer Falge was assigned to the prison infirmary. Two death row inmates had scheduled visits to see their mental health counselors in the infirmary. Inmate Leonard went into the counselor's office for 2 minutes or so, then came out.

What Officer Falge did not know was that this inmate had gone into the counselor's office, had removed his belly chains and handcuffs with a contraband handcuff key, and then had walked out, holding his chains in front of him so it appeared he was still in restraints.

Inmate Redmon then went into the counselor's room for 2 to 3 minutes. When he came out, his hands were out of restraints. At the same time, Leonard started a fight in a holding cell, thereby distracting other correctional officers. Redmon then tried to make a break for it, and was intercepted by a correctional officer trainee. Redmon struck this officer in the upper lung region with what they later discovered to be a 13" plexiglass shank. The officer was rendered unconscious as a result of the blow.

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Officer Falge came running in to assist his fallen colleague. Redmon turned around to face Officer Falge and began swinging. Inmate Leonard, meanwhile, had jammed the sally port, so that other officers were unable to get in. Redmon then took the 13" plexiglass weapon and stabbed Officer Falge seven times: in the head, back of neck, and through his ribs. The wounds had an average depth of 1 ½ inches. The neck wound missed Officer Falge's carotid artery and spine by ½ inch. Eventually a response team was able to enter through another entrance and subdue Redmon and Leonard. Officer Falge required 77 internal stitches and more than 70 external stitches. The other officer/trainee required 14 stitches. This officer never returned to the prison. Lt. Falge was conferred a heroism award by the Governor and is now one of the highest ranking officers at Ely State Prison.

The two inmates had escaped from custody by way of a smuggled handcuff key that had been hidden in the infirmary by someone - we don't know who. The key was found in the counselor's office after the attacks. Redmon was prosecuted and convicted of two counts of attempt murder with use of a deadly weapon and received an additional 40 years on top of his death sentence.

More recently, the Washoe County DA's office extradited a violent murder and rape defendant from California. The case is still pending, so I won't state the defendant's name. As the defendant was being boarded upon the plane, escorting officers placed his hands in a protective box. The inmate then told the officers that he "guessed he wouldn't be needing" the picklock he had smuggled on board. The officers in fact recovered a smuggled picklock that could have been used to get out of ordinary handcuffs. I don't want to imagine what a murder and rape defendant, facing capital charges might have done if he had escaped from custody while aboard an airplane in mid-flight.

In both cases, short of proving that the inmates actually were attempting to escape, there would be nothing we could do to prosecute these individuals for any crime. With the death row inmates in Ely State prison, if officers had discovered the key the day before on either of these two inmates, or perhaps another inmate who had smuggled it in to the infirmary, there would be nothing they could do to deter this other than file an administrative violation. Inmates thus have nothing to lose by manufacturing and possessing these devices and taking dangerously close steps toward an actual escape attempt.

The fact is, by the time a prisoner executes an attempt escape the level of danger is beyond grave. It is condition red. There is no doubt that once a violent maximum security prisoner has decided to escape, and has taken steps towards that escape, the lives of the correctional officers, the civilian employees, other prisoners, and the public are at extreme risk. These prisoners will do what it takes to carry out

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whatever intent they have, whether to escape, or to attack or kill an enemy. We should not have to wait for that to happen before we take steps to deter this behavior.

We are not only trying to punish violent escapees, we also want to deter others who are willing to manufacture or sell, or trade such escape devices. If we deter only a handful of these abettors from facilitating the escapes of others, then this law will have been worth enacting.

We have also taken care, in the amended version of the bill, to ensure that there will be no punishment for inmates who are authorized to possess tools in the course of their prison work-programs. For example, a prisoner who is assigned to do landscaping work in the prison will not be prosecuted for possession of a shovel – that is, unless he or she tries to use the shovel to dig a hole under the fence.

Mr. Chairman, Members of the Committee on Judiciary, thank you for allowing me to speak on this matter.

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