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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

MAY 8, 2003

ASSEMBLY JUDICIARY

DATE: 5-8-03 ROOM 3138 EXHIBIT DD

SUBMITTED BY: Allison Combs

DD-1 of 13

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

May 8, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

The following measures may be considered during the Committee's work session:

- SENATE BILL 317 FIRST REPRINT** (BDR 34-594 was requested by Senator Valerie Wiener and Senator Mark E. Amodei). The bill was heard in Committee on May 2, 2003, and no action was taken.

Senate Bill 317 makes various changes relating to incarcerated persons, including requiring the Department of Education to adopt regulations that coordinate a statewide program for educational services provided to incarcerated persons within the Department of Corrections.

Proponents/those testifying in support of the bill: Senator Wiener; Dr. Jane Nichols, University and Community College System of Nevada; Treena Leonard; Dorothy Nash Holmes and Marta Hall, Nevada's Department of Corrections; Ernie McKenzie, Carson City School District; Keith Rheault and Carl Shaff, Nevada's Department of Education; Debbie Cahill, Nevada State Education Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony emphasized the importance of education for offenders, especially as a means to avoid recidivism.

Proposed Amendments: The following amendment was proposed by Jim Nadeau, representing the Washoe County Sheriff's Office and the Second Judicial District Court:

- **Amend Chapter 211 of NRS (Local Facilities for Detention) revising the provisions authorizing the sheriff to apply to the court for the release of prisoners in overcrowding situations and requiring the court to issue an order authorizing the release of prisoners in certain circumstances.**

Attached on blue paper is the conceptual amendment proposed by Mr. Nadeau.

In addition, attached on white paper is an amendment prepared for the Committee's consideration by Risa Lang, Committee Counsel, who worked with Mr. Nadeau and the other parties involved, at the request of Chairman Bernie Anderson.

DD 20813

- SENATE BILL 73, FIRST REPRINT** (BDR 1-934 was requested by the Senate Committee on Judiciary). The bill was heard in Committee on April 17, 2003, and no action was taken.

Senate Bill 73 makes various changes to the provisions governing juries.

Proponents/those testifying in support of the bill: Chief Justice Deborah A. Agosti; Justice Mark Gibbons; Justice Robert E. Rose; John P. Desmond, attorney; Wanda Lopshire, Washoe County Jury Commissioner; Elizabeth Gonzalez, attorney; Dan Musgrove, Clark County.

Opponents/those testifying in opposition of the bill: James Jackson, Nevada Attorneys for Criminal Justice.

Discussion: Testimony noted the changes are recommended by the Nevada Supreme Court's Jury Improvement Commission. Proponents discussed the deletion of the exemptions from jury service and the changes under the bill regarding in payment of mileage and fees for jurors. Concerns were raised regarding the deletion of the exemptions and the potential for conflicts between prosecutors and defense attorneys in selecting a jury.

Proposed Amendments: None.

- SENATE BILL 186** (BDR 3-446 was introduced by the Senate Committee on Judiciary on behalf of the Nevada Attorney General). The bill was heard in Committee on May 1, 2003, and no action was taken.

Senate Bill 186 imposes a fee upon the obligor each time an employer withholds income for payment of support for a child.

Proponents/those testifying in support of the bill: Leland Sullivan and Gary Stagliano, Welfare Division, Nevada's Department of Human Resources; Don Winne, Office of the Attorney General; Noel Waters, Carson City District Attorney.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure imposes a new fee of \$2 upon a person who has an obligation for child support each time payment for support is withheld from his income. The monies are to be placed in a separate account to be administered pursuant to the regulations of the State Welfare Administrator, and the account is to be distributed among each enforcing authority pursuant to State regulation.

Proposed Amendments: Assemblywoman Sharron Angle proposed the following amendment:

- Specify that the \$2 fee for an income withholding required by the bill may not be charged to the obligor more than two times each month.

SENATE BILL 315, FIRST REPRINT (BDR 15-435 was requested by the Senate Committee on Judiciary on behalf of Nevada's Attorney General). The bill was heard in Committee on April 29, 2003, and no action was taken.

Senate Bill 315 provides that cigarette vending machines may be placed in public areas only if persons who are under 21 years of age are prohibited from loitering in that area pursuant to certain statutes.

Proponents/those testifying in support of the bill: Cynthia Pyzel, Office of the Attorney General; Anthony Bandiero, Nevada Petroleum Marketers & Convenience Store Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to expressly ban cigarette vending machines except in gaming areas and bars where children under 21 are prohibited from loitering.

Proposed Amendments: None.

SENATE BILL 383, FIRST REPRINT (BDR 38-194 was requested by Senator Raymond C. Shaffer). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 383 requires adults employed by entities that provide organized activities for children to report child abuse.

Proponents/those testifying in support of the bill: Ed Cotton, Division of Child and Family Services, Nevada's Department of Human Resources; May Shelton, Washoe County; Jodi Tyson and Terri Miller, Nevada Coalition Against Sexual Violence.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated this measure would ensure reporting of child abuse by another group of persons with frequent contact with children. Proponents of the measure also expressed support for the original version of the bill, which included volunteers of such organizations and raised the penalty for failure to report child abuse.

Proposed Amendments: None.

- SENATE BILL 394** (BDR 15-1026 was requested by the Senate Committee on Judiciary). The bill was heard in Committee on April 24, 2003, and no action was taken.

Senate Bill 394 revises various provisions relating to certain criminal statutes.

Proponents/those testifying in support of the bill: Kristin Erickson, Nevada District Attorneys' Association; Jodi Tyson, Nevada Coalition Against Sexual Violence.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to address two separate decisions of the Nevada Supreme Court involving the crimes of manufacturing methamphetamines and annoyance of a minor. The measure also adds the luring of mentally ill persons to the existing crime of luring a child, through the use of a computer system or network, with the intent to engage in sexual conduct and replaces the term "obscene material" with the term "material harmful to minors."

Proposed Amendments: The following amendments were proposed:

1. **Expand definition of "sexual offense" for purposes of registration as a sex offender**, proposed by the Nevada District Attorneys' Association. Attached on green paper is a proposal to expand the definition of a "sexual offense" under NRS 179D.410 (Section 18 of the bill) to include the following crimes:
 - a. *Sexual conduct between certain employees of school or volunteers at school and pupil pursuant to NRS 201.540;*
 - b. *Sexual conduct between certain employees of college or university and student pursuant to NRS 201.550; and*
 - c. *A conspiracy to commit an offense listed under the definition of a sexual offense (including the two crimes above).*
2. **Revise list of chemicals under Section 29**, proposed by Assemblyman Jason Geddes. Amend Subsection 4 of Section 29 (pages 29 and 30) to delete the word "*optical*" as a modifier to "*isomers*" in order to broaden the chemicals referenced.
3. **Add prohibitions relating to the manufacture of the drug ecstasy to Section 29**, proposed by Ms. Tyson.

- SENATE BILL 434, FIRST REPRINT** (BDR 2-303 was introduced by the Senate Committee on Judiciary on behalf of the State Treasurer). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 434 exempts from execution by creditors certain money held in a trust forming part of a qualified tuition program under certain circumstances.

Proponents/those testifying in support of the bill: Office of the State Treasurer.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated this measure prevents a creditor from executing a judgment against a trust forming part of a qualified tuition program unless the money in the trust was deposited after entry of judgment, or the money on deposit will not be used by any beneficiary to attend college.

Proposed Amendments: None.

- SENATE BILL 105, SECOND REPRINT** (BDR 15-375 was introduced by the Senate Committee on Judiciary on behalf of the City of Reno). The bill was heard in Committee on April 22, 2003, and no action was taken.

Senate Bill 105 makes various changes to the provisions pertaining to the crime of placing graffiti on or otherwise defacing property.

Proponents/those testifying in support of the bill: Nicole Lamboley, City of Reno; Richard Bjelke, Sergeant, Reno Police Department; Gabrielle Carr, Reno City Attorney's Office; James T. Endres, National Council to Prevent Delinquency; Fred L. Hillerby, Washoe County Regional Transportation Commission; Jim Nadeau, Washoe County Sheriff's Office and Nevada Sheriffs' & Chiefs' Association.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony discussed the financial impact of graffiti on public and private businesses.

Proposed Amendments: The following amendment was proposed:

- **Clarify language allowing aggregation of value of property damaged "if one or more persons commit the offenses pursuant to a scheme or continuing course of conduct,"** proposed by Assemblyman William Horne. Clarify the language (on page 2, lines 6 and 7) concerning aggregation of value of property damage to specify that only the crimes of the individual offender can be aggregated. The purpose is to prevent an offender from being held responsible for another person's graffiti or tagging.

Amendment to Senate Bill 317**Proposed by Washoe County Sheriff's Office and the 2nd Judicial District Court**

May 2, 2003

Amend Chapter 211 of NRS as follows:

NRS 211.130 Prisoners deemed sentenced to labor; exceptions; establishment of program for prisoners to exchange labor for confinement.

1. Except as otherwise provided in subsection 2, all prisoners sentenced by the judge of any district court, ~~or any justice of the peace of any justice's court,~~ *or by any judge of a city's municipal court* and sentenced to a term of imprisonment in any county, city or town jail or detention facility shall be deemed to have been also sentenced to labor during such term.

2. A board of county commissioners or the governing body of a city may authorize the sheriff or chief of police of the municipality to establish a program pursuant to NRS 211.171 to 211.200, inclusive, for the voluntary exchange by a prisoner sentenced to confinement in a jail or detention facility of 10 hours of labor on public works for 1 day of physical confinement, unless the sentencing court has otherwise ordered in a particular case or has restricted the prisoner's eligibility.

Amend NRS 211.240 by deleting the following language and adding a new section as follows:

NRS 211.240 Early release of prisoners to relieve overcrowding.

1. ~~The sheriff with respect to a county jail, or the officer in charge with respect to a city jail,~~ may apply to the presiding judge, or to the judges jointly if there is no presiding judge, for authority to release prisoners pursuant to the provisions of this section. The duration of this authority if granted must not exceed 30 days.

2. At any time within the duration of an authority granted when the number of prisoners exceeds the number of beds available in the jail, the sheriff or other officer in charge may release the lesser of:

- (a) The number of prisoners eligible under this section; or
- (b) The difference between the number of prisoners and the number of beds.

3. A prisoner is eligible for release only if:

- (a) He is serving a sentence of fixed duration and has already served at least 90 percent of the sentence after deduction of any credit; and
- (b) His sentence would expire or he would otherwise be released within 5 days.

4. Among prisoners eligible, priority must be given to those whose expiration of sentence or other release is closest.

(New Section) The sheriff with respect to a county jail, if the general prisoner population of the county jail exceeds the maximum operational capacity for 7 consecutive days, shall certify in writing, by first class mail or personal delivery, to the administrative judge of the justice court, the chief district court judge, and in counties where no city jails exist, the administrative judge of the municipal courts, that a jail overcrowding emergency exists.

Upon receipt of the notification, the chief district court or the judges jointly if there is no chief district court judge, shall issue an order from the court authorizing the sheriff to release prisoners pursuant to the order. The court order may not extend beyond thirty days without review by the court of issuance.

At the time the overcrowding emergency no longer exists, the sheriff shall certify that fact by first class mail or personal delivery to the previously notified judges.

Proposed Amendment to Senate Bill No. 317

Sec. 1. NRS 211.240 is hereby amended to read as follows:

211.240 1. ~~{The}~~ *Except as otherwise provided in subsection 2, the* sheriff with respect to a county jail, or the officer in charge with respect to a city jail, may apply to the ~~{presiding judge, or to the judges jointly if there is no presiding judge,}~~ *chief judge for the judicial district* for authority to release prisoners pursuant to the provisions of this section. *After considering the application, the chief judge may enter an order consistent with the provisions of this section granting authority to release prisoners in the manner set forth in the order.* The duration of this authority if granted must not exceed 30 days.

2. *In a county in which there is not a city jail, the sheriff may apply to the chief judge for the judicial district for authority to release prisoners pursuant to the provisions of this section. Upon receipt of such an application the chief judge shall consult with a justice of the peace designated by the justices of the peace for the county and a judge designated by the municipal courts for the county. After the consultation, the chief judge may enter an order consistent with the provisions of this section granting authority to release prisoners in the manner set forth in the order. The duration of this authority if granted must not exceed 30 days.*

3. At any time within the duration of an authority granted when the number of prisoners exceeds the number of beds available in the jail, the sheriff or other officer in charge may release the lesser of:

- (a) The number of prisoners eligible under this section; or
- (b) The difference between the number of prisoners and the number of beds.

~~{3.}~~ 4. A prisoner is eligible for release only if:

(a) He ~~is serving a sentence of fixed duration and has already served at least 90 percent of the sentence after deduction of any credit; and~~

~~—(b) His sentence would expire or he would otherwise be released within 5 days.]~~ *has served at least 75 percent of his sentence;*

(b) He is not serving a sentence for a crime for which a mandatory sentence is required by statute;

(c) He is not serving a sentence for a crime which involved an act of violence; and

(d) He does not pose a danger to the community.

~~{4.}~~ 5. Among prisoners eligible, priority must be given to those whose expiration of sentence or other release is closest.

6. *A prisoner released pursuant to this section may be required to remain on residential confinement for the remainder of his sentence or may be required to participate in another alternative program of supervision.*

SB 394

APRIL 17, 2003

GREEN

TO: ASSEMBLYMAN BERNIE ANDERSON, CHAIRMAN OF ASSEMBLY
JUDICIARY AND COMMITTEE MEMBERS

FROM: KRISTIN ERICKSON AND BEN GRAHAM, NDAA

RE: REQUIRING CONVICTED SEX OFFENDERS GUILTY OF CRIMES
ESTABLISHED IN NRS 201.540, 205.550 AND CERTAIN
CONSPIRATORS TO REGISTER AS SEX OFFENDERS UNDER NRS
179D.410

FROM TIME TO TIME THE LEGISLATURE HAS MANDATED THAT ONCE A
PARTY IS CONVICTED OF CERTAIN OFFENSES, THEY MUST REGISTER
AS A SEX OFFENDER UNDER 179D.410. THERE ARE CURRENTLY 20
OFFENSES THAT REQUIRE REGISTRATION ONCE CONVICTED.

OVER THE PAST SEVERAL LEGISLATIVE SESSIONS THE LEGISLATURE
HAS EXAMINED AND TAKEN A DIM VIEW OF TEACHERS AND OTHERS
IN AUTHORITY AND IN CONTACT WITH CERTAIN STUDENTS, HAVING
SEX OR CONSPIRING TO HAVE SEX WITH THEIR STUDENTS.

EVEN THOUGH THE LEGISLATURE HAS FOUND SUCH CONDUCT IS A
SEXUAL OFFENSE, VIOLATIONS WERE NEVER PLACED IN THE STATUTE
REQUIRING REGISTRATION AS A SEX OFFENDER.

IT IS URGED THAT THIS COMMITTEE CORRECT WHAT IS MOST LIKELY
AN OVERSIGHT AND AMEND THE ATTACHED LANGUAGE INTO NRS
179D.410 VIA SB 394.

DD 11713

NRS 179D.410 "Sexual offense" defined. "Sexual offense" means any of the following offenses:

1. Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.
2. Sexual assault pursuant to NRS 200.366.
3. Statutory sexual seduction pursuant to NRS 200.368.
4. Battery with intent to commit sexual assault pursuant to NRS 200.400.
5. An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this section.
6. An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section.
7. Abuse of a child pursuant NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
8. An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
9. Incest pursuant to NRS 201.180.
10. Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.
11. Open or gross lewdness pursuant to NRS 201.210.
12. Indecent or obscene exposure pursuant to NRS 201.220.
13. Lewdness with a child pursuant to NRS 201.230.
14. Sexual penetration of a dead human body pursuant to NRS 201.450.
15. Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.
16. Annoyance or molestation of a minor pursuant to NRS 207.260.
17. *Sexual conduct between certain employees of school or volunteers at school and pupil pursuant to NRS 201.540.*
18. *Sexual conduct between certain employees of college or university and student pursuant to NRS 201.550.*
19. An attempt *or a conspiracy* to commit an offense listed in subsections 1 to 16 18, inclusive.
20. An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.
21. An offense committed in another jurisdiction that, if committed in this state, would be an offense listed in this section. This subsection includes, but is not limited to, an offense prosecuted in:
 - (a) A tribal court.
 - (b) A court of the United States or the Armed Forces of the United States.
22. An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a

DD 12/8/13

sex offender because of the offense. This subsection includes, but is not limited to, an offense prosecuted in:

(a) A tribal court.

(b) A court of the United States or the Armed Forces of the United States.

(c) A court having jurisdiction over juveniles.

(Added to NRS by 1997, 1654; A 1999, 1299; 2001, 2796)

DD 13813