

Richter, Vonette J.

From: Delaney, Jean
Sent: Tuesday, May 04, 2010 11:41 AM
To: Richter, Vonette J.; Erickson, Ladd R.
Subject: FW: Bill draft for May 10 Judiciary Committee Meeting

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-----Original Message-----

From: Russ Myhre [mailto:mloffice3@qwestoffice.net]
Sent: Monday, May 03, 2010 12:06 PM
To: Delaney, Jean
Subject: RE: Bill draft for May 10 Judiciary Committee Meeting

Jean:

Overall, the proposed amendments appear to be reasonable and, in some instances, appear to clarify some issues.

The monetary increases are a reasonable reflection of inflation. However, I do have an issue with some of the increases in the gradation of offenses in some instances, including the increase in Section 12.1-21-04 from a Class B Felony to a Class AA Felony.

I remain unconvinced that all of this gradation increase is necessary. I am not certain if North Dakota has been inundated with any massive releases of destructive forces lately, and thus do not feel that the amendment to this provision is warranted by any recent historical outbreak of civil unrest and/or protest in North Dakota. Nevertheless, given some recent attempted terroristic events, I will grant there may be some legitimate concern about such issues. However, this seems to be directed more toward comic book villains who regularly threaten plots to destroy the world. And if we could actually "prove" the weatherman had something to do with the weather, that might be reason enough not to want to grow up to be a meteorologist because we would be able to throw the scoundrel into prison for the rest of his life.

My concern, though, is that it seems as if we as a culture are being driven through mass hysteria over recent news stories, and our reaction has been to create all sorts of laws with draconian and exceedingly harsh penalties, without any demonstration for the necessity of these harsh penalties.

Moreover, the United States has the highest documented incarceration rate in the world. The U.S. incarceration rate on December 31, 2008 was 754 inmates per 100,000 U.S. residents. The USA also has the highest total documented prison and jail population in the world. According to the U.S. Bureau of Justice Statistics, in 2008, over 7.3 million people were on probation, in jail or prison, or on parole at year-end - 3.2% of all U.S. adult residents or 1 in every 31 adults." A total of 2,304,115 people were incarcerated in U.S. prisons and jails in 2008. In addition, according to a December 2009 BJS report, there were 92,854 held in juvenile facilities as of the 2006 Census of Juveniles in Residential Placement (CJRP), conducted by the Office of Juvenile Justice and Delinquency Prevention.

Put another way, the United States accounts for only about 4-5% of the world's total population, yet we incarcerate approximately 25% of the all of the people incarcerated in the entire world.

As Senator James Webb observed, either something is wrong with American society, or something is wrong with the American criminal justice system.

My concern is that it appears we are creating all sorts of offenses for which life without parole is the penalty, and it is simply a short leap from "death by incarceration" to the death penalty. Presently, North Dakota is only 1 of 13 jurisdictions which does not have the death penalty, and by making more and more offenses into AA Felonies, we get closer to that possibility.

I trust these comments provide some insight into what I believe is a possible future for criminal law in North Dakota. I feel we in the criminal defense bar should be resisting these moves toward death by incarceration.

Russell J. Myhre
Attorney at Law

Richter, Vonette J.

From: Delaney, Jean
Sent: Wednesday, May 05, 2010 9:15 AM
To: Richter, Vonette J.
Cc: Thornton, Nicholas; Erickson, Ladd R.
Subject: FW: Bill draft for May 10 Judiciary Committee Meeting
Attachments: Nick Thornton.vcf

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One more comment:

-----Original Message-----

From: Thornton, Nicholas
Sent: Monday, May 03, 2010 11:38 AM
To: Delaney, Jean
Cc: Thornton, Nicholas
Subject: RE: Bill draft for May 10 Judiciary Committee Meeting

I meant "intentionally" not "recklessly" swerve... It still must be intentional conduct.
Sorry!

Nick D. Thornton

* * *

In terms of comments, I like the values going up, but I don't like the A felony theft statute. I also don't like the wording in the catastrophe section. So by recklessly swerving in front of a van, which happens to have five passengers, did I just cause a catastrophe and subject to the possibility of life without parole?

Nick D. Thornton

Richter, Vonette J.

Subject: FW: Bill draft for May 10 Judiciary Committee Meeting

-----Original Message-----

From: Martin, Robert W.
Sent: Monday, May 03, 2010 2:01 PM
To: Delaney, Jean
Subject: RE: Bill draft for May 10 Judiciary Committee Meeting

Nope--feel free--I think it is a real weakness in the statute--Bob

-----Original Message-----

From: Delaney, Jean
Sent: Monday, May 03, 2010 10:10 AM
To: Martin, Robert W.
Subject: RE: Bill draft for May 10 Judiciary Committee Meeting

Do you mind if I forward your response to Ladd?

-----Original Message-----

From: Martin, Robert W.
Sent: Monday, May 03, 2010 10:07 AM
To: Delaney, Jean
Subject: RE: Bill draft for May 10 Judiciary Committee Meeting

I think that they would be well-served to drop the "within three years" temporal trigger on the statute. Roza had just charged out a retired farmer with a physical disability for a class C Felony as it was his third NSF check within three years--the first being for \$19.00, the second for \$25.00, and this one a whopping \$50.00.

As it was a felony, he had to sit in jail overnight until he could get an appearance before the Court and get a bond set. They dropped it to a B misdemeanor when I pointed out just how stupid this was--but they claimed it was a software thing. If all the prosecutors are using a data base on NSF offenders that is triggered by number of offenses within a specified time period--this kind of garbage is going to get more prevalent.

Bob