MINUTES OF THE MEETING
OF THE
ASSEMBLY SELECT COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION

Seventy-Fourth Session
March 1, 2007

The Select Committee on Corrections, Parole, and Probation was called to order by Chair David R. Parks at 3:53 p.m., on Thursday, March 1, 2007, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman David R. Parks, Chair
Assemblyman Bernie Anderson, Vice Chair
Assemblyman John C. Carpenter
Assemblyman William Horne
Assemblywoman Kathy McClain
Assemblywoman Valerie E. Weber

STAFF MEMBERS PRESENT:

Craig V. Hoffecker, Committee Policy Analyst
Risa Lang, Committee Counsel
Patricia Blackburn, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

George Chock, Trooper, Southern Nevada Sex Offender Task Force

Sergeant Ken Leon, Sex Offender Unit, Department of Public Safety, Parole and Probation
Sergeant Chris Dreyer, Sex Offender Unit, Department of Public Safety, Parole and Probation
Tom Carroll, Chief Deputy District Attorney, Clark County District Attorney's Office
Dorothy Nash Holmes, Deputy Director, Correctional Programs, Department of Corrections, Carson City, Nevada
Angelé Morgan, Masters of Social Work, Treatment Provider, Red Rock Psychological Service
Juli Star-Alexander, Redress, Inc., Las Vegas, Nevada
Jason Frierson, Clark County Public Defender's Office
Pam Del Porto, Nevada Department of Corrections, Inspector General's Office
Frederick Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections

[The roll was called and a quorum was present.]

Chair Parks:
This afternoon we have two bills on the agenda. We will open the hearing on Assembly Bill 96.

Assembly Bill 96: Makes various changes concerning criminal procedure. (BDR 14-994)

Assemblywoman Valerie Weber, Assembly District No. 5:
Assembly Bill 96 is presented as a result of recent recommendations of the Southern Nevada Sex Offender Task Force, which is a multi-agency, multi-disciplinary committee that was formed in 2005 from a Department of Justice grant. This group was asked to conduct a comprehensive assessment protocol of sex offender management practices in Nevada. You will hear the results from the leaders of this task force today. This diverse 24-member group consisted of five law enforcement jurisdictions including travel police, the District Attorney's Office, U.S. Probation, Juvenile Social Services, University of Nevada at Las Vegas, Parole and Probation, Nevada Highway Patrol, the Department of Corrections, a child advocate, a community non-profit organization, the Sex Offender Registry, and treatment providers. They will share with you the results of their work and improvements to sex offender management practices by recommendations in this bill.

Upon request, the Division of Parole and Probation discloses the content of a pre-sentence investigation to help care providers, approved by the Division, to

provide treatment to the defendant. Secondly, it extends probation from five to ten years as defined in *Nevada Revised Statutes* (NRS) 176.091 for certain sexual offenses and revises prosecution of violations. There are witnesses in southern Nevada ready to testify.

Chair Parks:
Before we go to Las Vegas, are there any questions from the Committee? Do you have a particular sequence in which you would like them to speak?

Assemblywoman Weber:
I believe that Trooper George Chock will be leading off the testimony.

George Chock, Trooper, Southern Nevada Sex Offender Task Force:
I am presently assigned with the Nevada Highway Patrol. Prior to that assignment I was with the Division of Parole and Probation for eight and one-half years. Seven of those years were with the Sex Offender Unit. To my left is Sgt. Chris Dreyer and to my right is Sgt. Ken Leon, both members of the Sex Offender Unit for the Division of Probation. Also in the audience we have Lt. Adam Page, he is our global positioning system (GPS) expert on sex offenders. We have Angelé Morgan who is a treatment provider and the vice chairman for the Southern Nevada Sex Offender Task Force. Also present is Chief Deputy District Attorney Tom Carroll who is also a member of the Southern Nevada Sex Offender Task Force.

Before I speak of why we want a ten-year probation period, it is important that you understand that A.B. 96 deals only with the serious sex offenses and these offenses also include a special sentence of lifetime supervision. In your hand-out (Exhibit C) it shows the crimes under NRS 176.0931. It lists the types of offenses we are talking about. Most defendants who are convicted of one of these offenses normally receive a mandatory prison sentence. The option for probation comes when a defendant is convicted of an attempt of one of these offenses. For example, anyone convicted of sexual assault has a mandatory prison sentence. If the same person is convicted for an attempted sexual assault, the judge has the option to consider probation. Assembly Bill 96 only deals with the serious sex offenders.

It is also important for you to know that we are not asking you to extend the length of supervision, just the type of supervision they are under. You will understand what I mean when I explain the law concerning lifetime supervision. To make it clear, we are talking about Section 2 of this bill.

Studies show that over 90 percent of these offenders who go to prison eventually return to the community. Based on this fact, we understand that

incarceration is not the answer, rehabilitation is. To keep the community safe, we stress rehabilitation. Officers in the Sex Offender Unit receive special training from qualified instructors, approved by the Center for Sex Offender Management. We have learned that a sex offender counseling program is the number one priority in rehabilitating offenders. Our treatment providers must meet the highest standards of the Association for Treatment of Sexual Abusers and the Center for Sex Offender Management. Treatment providers and officers work closely together. Officers receive weekly and monthly reports from the counselor outlining the topics discussed, the offender's participation, or lack of, and the progress of the offender. Officers also sit in on these sessions and sometimes participate in the discussions or answer questions.

Another example of how we stress rehabilitation first is the way we handle violations. For instance, if an offender tests positive for cocaine, we do not arrest them. We could, but we do not. What we do is add sanctions such as a curfew. We have them report weekly and take weekly drug tests. Also, we put them in an outpatient substance abuse program. If that offender tests dirty a second time, we still do not arrest him, we refer this person to an inpatient substance abuse program such as Westcare or the Salvation Army. These programs are typically 90 to 100 days long. If that same offender tests dirty a third time, we do make an arrest. We arrest this person for probation violation. The judge decides the punishment. Approximately 40 percent of the people we send back for probation violation just receive sanctions and do not go to prison. We work with the judges to rehabilitate these offenders.

This is the normal procedure for dealing with violations. We do not arrest for one violation unless it is a new felony charge or the offender refuses to attend counseling.

I need to explain to you what lifetime supervision is. You will be surprised to learn that the majority of those who are on lifetime supervision will get off. The law states that if a defendant is convicted of a sexual offense, the court shall include in sentencing the special sentence of lifetime supervision. This sentence commences after any period of probation or any term of imprisonment or any period of release on parole. Once the person is discharged from probation or parole, he is placed on lifetime supervision. A person sentenced to lifetime supervision may petition the sentence in court or the parole board for release from lifetime supervision. The court or the board shall grant a petition for release if they comply with the following:

- The person has complied with the requirements of the provisions of NRS 179B.350 to .550, which deal with registration.

- The person has not been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least ten consecutive years after his last conviction or release from incarceration.

- The person is not likely to pose a threat to the safety of others as determined by someone who is professionally qualified to conduct psycho-sexual evaluations.

So, that is lifetime supervision.

Probation can be explained with the following example. The judge will order the defendant to serve a minimum of 36 or up to a maximum of 96 months in the Department of Corrections. He will suspend the sentence and give probation of five years followed by special sentencing of lifetime supervision. Every person convicted under these offenses receives a prison term. In this case it is three to eight years. But, the judge might suspend the prison term and place him on probation. If the offender successfully completes his probation, he will receive a discharge and be placed on lifetime supervision. If his probation is revoked at any time, he will face a prison sentence of up to eight years. A violation of probation is taken very seriously. A prison sentence is always hanging over their heads. Once the offender receives a discharge from their probation we lose that prison sentence.

If violation of lifetime supervision is not taken seriously by offenders, there is no prison sentence hanging over their heads. Violations such as dirty drug tests, absconding, not reporting or even refusing sex offender counseling, are only a misdemeanor. If they are on probation, they could be revoked for violating these conditions. We have submitted numerous felony cases involving violation of lifetime supervision; not misdemeanors, but felony cases. The results are alarming.

Chair Parks:
We have a question for Trooper Chock. Mr. Horne?

Assemblyman Horne:
Did I hear testimony that a violation of supervision when they are no longer on probation is only a misdemeanor?

George Chock:
Technical violations are misdemeanors when they are on lifetime supervision.

Assemblyman Horne:
So that would be a separate crime? For instance, they are no longer on probation or have satisfied their parole requirements and now they just have their lifetime supervision requirements; they move and they do not tell you. So at that time would they only be charged with a misdemeanor?

George Chock:
It depends. If they move and do not tell us, but they registered with the Sex Offender Registry, it would be a misdemeanor. If they do not change their address with the Sex Offender Registry, then it is a felony. Sex offender laws are very serious.

Assemblyman Horne:
I understand. I am trying to find out what type of crime would produce what type of penalty. You said it was not an extension of their probation, but that is what it is. You want to impose another five years so that a technical violation can send them back to prison. You have said they have several chances before you arrest them. We had prior testimony that there are times a parole or probation officer might want to put the offender in treatment but there is no space, and they have no other recourse but to put them back into prison.

George Chock:
But, you have to understand that would be his third violation. We would give him the option of finding a place to get into an inpatient program. The other option is to get arrested. Normally, we do find them beds. That is how it works in southern Nevada; I am not sure how it works anywhere else.

Assemblyman Horne:
Thank you. I think that is contradictory to other testimony we have had.

George Chock:
As I said before, we are not extending their supervision. We are extending the probation, the type of supervision they are under. With lifetime supervision they must serve ten years minimum.

Assemblyman Horne:
So, are you extending their exposure to revocation?

George Chock:
Correct.

Chair Parks:
Are there further questions from the Committee? I see none.

George Chock:
We would like to give you some examples of the reasons why we are asking for this change to the extension of probation.

Ken Leon, Sergeant, Sex Offender Unit, Department of Public Safety, Parole and Probation:
In 1999, the Southern Command Sex Offender Unit was comprised, in its entirety, of one sergeant and five officers. Today, that same unit consists of 2 sergeants and 15 officers. From September 2006 to February 2007, there was a monthly average of 410 probation cases, 142 parole cases, and 130 lifetime supervision cases in the Southern Command. Regarding the 130 lifetime supervision cases, 68, or 52 percent, started out as probation cases. Of the 410 current probation cases, 132, or 31 percent, will become lifetime supervision cases. Again, for the six-month period, officers in the Southern Command submitted 19 felony cases for violation of lifetime supervision. The Division received three convictions, and all three cases received probation. During the same six-month period, the Division submitted 82 violation reports to the courts and/or parole board. Forty-seven cases resulted in modification and/or revocation.

Chris Dreyer, Sergeant, Sex Offender Unit, Department of Public Safety, Parole and Probation:
I have some examples of a few individuals where we have had issues with lifetime supervision versus if that individual would have been on a period of probation for ten years. The first example is an individual who is a tier-two sex offender for lewdness with a minor. His underlying sentence was 24 to 60 months in the Nevada Department of Corrections. He was released on lifetime supervision on February 8, 2006. Since July 2006, he had been arrested four times for violating lifetime supervision. Two of those arrests were when he was intoxicated well above the legal limit, and in two of those incidents, the subject was arrested for sex offender failure to change address. The subject was subsequently released and has since absconded from supervision and his current whereabouts are unknown. After absconding, the subject had new charges filed for violation of lifetime supervision and sex offender failure to register. He currently has multiple outstanding warrants for his arrest.

The second example we have is an individual who is also on lifetime supervision for attempted lewdness with a minor. He is also a tier-two sex offender. His underlying sentence was initially 24 to 60 months in the Nevada Department of

Corrections. He was released on lifetime supervision on June 7, 2005. He has been arrested three times for violating lifetime supervision. All three of those arrests included drug use. Two of those arrests also included sex offender failure to change address. The subject received probation only for his last arrest for sex offender failure to change address and not on the violation of lifetime supervision. The subject has subsequently continued his drug use and is currently awaiting revocation for violating the conditions of his probation. He also has another sex offender failure to change address as well as another pending charge of violation of lifetime supervision.

The third example we have is an individual on lifetime supervision for possession of child pornography. He is a tier-one sex offender. His underlying sentence was initially 36 to 96 months in the Nevada Department of Corrections. The subject was arrested for violating his lifetime supervision on November 8, 2006. He admitted, during a polygraph examination, to using methamphetamines on numerous occasions, associating with other convicted felons, and watching pornography while taking methamphetamines. He stated that he took methamphetamines while watching pornography to enhance his sexual gratification. The case was submitted and denied by the District Attorney's Office.

Those are just a few examples of some individuals where we have had issues with their lifetime supervision.

George Chock:
In closing, what you have heard are a few reasons why we are asking for a change. We are seeing that the offenders are aware of what is happening, because we are experiencing a rise in violations after they are discharged from probation and placed on lifetime supervision. If A.B. 96 becomes law, the suspended prison sentence will remain in place the full ten years of probation. A high percentage of offenders are compliant and eventually will get a release from lifetime supervision. This bill will not affect them. We are aiming this legislation at the offender who needs that extra incentive to succeed. Facing the possibility of going to prison for eight years is the incentive that we need. Lifetime supervision is a good law. The offender who deserves to be on lifetime supervision will be on for life because he is not capable of staying out of trouble for ten consecutive years. Are there any questions?

Chair Parks:
Mr. Horne?

Assemblyman Horne:
I think that lifetime supervision is very good law. If a technical violation is oftentimes a misdemeanor and the violation is not in line with the underlying crime that put them into prison to begin with, would not the proper remedy be increasing the sentence on the supervision? If you have someone on lifetime supervision, but their five-year probation has expired, then they violate lifetime supervision because they failed to give an address, the sentence for that misdemeanor would be up to six months in jail. Would it not be more appropriate to increase the time for violating the supervision, making it, a gross misdemeanor instead of continually holding that threat over their heads?

After the five years, do you have a high degree of sexual predator violations? I did not hear that in your testimony. This Committee has been trying to find ways in which to streamline our prison and use our prison dollars and beds more efficiently. I do not know if this particular legislation does that.

In other words, would it not be easier to increase the sentence for the violations?

George Chock:
Are you saying to still place that person on probation? Once he is convicted of that violation to just increase the probation period?

Assemblyman Horne:
No, I mean keeping their five years on probation that we have in statute for the felony, but, afterwards, while they are on lifetime supervision, to increase that violation to perhaps a year in jail.

George Chock:
I think Parole and Probation is trying to make these violations into felonies. They used to be felony charges. It was during the last session that they were made misdemeanors. The problem we are having is, even if they are convicted, they are placed on probation, which is not a punishment at all because of the way they are supervised; it is the same as lifetime supervision. If they do not report or do not attend counseling, and we charge them with a violation, the courts give them a two-year probation. They just come back to the same officer and there is no punishment except that now they are on probation instead of lifetime supervision. I do not see that as a punishment.

Ken Leon:
I believe extending the probation to ten years would give the probation department and the courts better use of sanctions against the individual who is on probation instead of filing new charges for violating lifetime supervision. We

could address issues where we might place an individual on house arrest, get him into an inpatient drug program, or other sanctions that are available.

Assemblyman Horne:
I have one more question about the bill that has not been addressed in this presentation. What is the purpose of disclosing the pre-sentence investigation report to health care providers?

Chair Parks:
I do not know.

George Chock:
I have someone here who could address the increase of sentences to a gross misdemeanor.

Tom Carroll, Chief Deputy District Attorney, Clark County District Attorney's Office:
With regard to the question of whether or not it would achieve the same purpose by increasing the punishment for technical violations if lifetime supervision up to a gross misdemeanor, that certainly is an option that the panel has. If you wish to change that, there is a potential that such a change could motivate some of the offenders who are on lifetime supervision to perform better. However, it does not appear that it would be a sufficient stimulator to get them to comply with the requirements. If they are charged with a new gross misdemeanor, they know full well that the overburdened court system must go through the whole due process system and the whole criminal justice system with the hopes of achieving a conviction for that gross misdemeanor offense. When a person is on probation, the violations of probation can be addressed in the courts that have already convicted that person and are responsible for those convictions. It seems that there would be a more immediate and more efficient way to punish a person for violations by keeping them in the realm of the sentencing court that has given them the probation.

Lastly, I would like to point out that in regard to Section 2 of the bill, increasing the probation period from five years to up to ten years is not mandatory as it is phrased in this bill. It merely gives the sentencing court the option of setting a probation period not to exceed ten years. It would not be mandatory for the district court judges who sentence these offenders to impose a period of probation of ten years. The court could still set the period of probation at five years or less. This would be a tool to give the district court judges discretion in appropriate cases to set a period of probation of up to ten years. Theoretically, with a person who is on probation and not doing well, the court could extend the period of probation up to ten years if they felt it was

necessary. In effect, some people who might be sent to prison could avoid that by the court keeping them on probation and under supervision for up to ten years. How this will actually play out is yet to be seen, but this would be a tool for the court system to have to prevent people from having to go to prison.

Assemblyman Horne:
You spoke of the procedural problems of having to convict on a new offense of violation, and whether we should make it a gross misdemeanor, but it seems to me that it would be very easy to convict on the new charges. If you are on lifetime supervision and you violate your requirements, it would not be a huge burden or take a long, drawn-out trial to convict.

Tom Carroll:
With regard to your comment, I agree that, generally speaking, prosecuting and proving a violation of lifetime supervision should not be that difficult. But, you may have a person who is being supervised by an officer and that officer is trying to get him into compliance so that he follows the requirements of lifetime supervision. If that person is currently not compliant, the officer has to bring him back before the sentencing judge to let that judge know of the violations and to give him the due process that is afforded as part of a probation revocation. That certainly happens much more swiftly than it would be to file a new criminal case and go through the whole criminal justice system from investigation to a preliminary hearing, possibly a jury trial on a gross misdemeanor, and then the sentencing process.

If the purpose of this bill is to keep people compliant with lifetime supervision, then when they become noncompliant it is much more efficient and expedient while still affording them the due process that is built into the probation violation process. You can get the case back to the sentencing judge much more easily than actually going through the whole criminal justice system.

Assemblyman Horne:
Thank you. That is contrary to what Trooper Chock said about probation not being a punishment.

Tom Carroll:
I guess the point I am making is that once the judge initially sentences a person, if they elect not to send them to prison, they can impose any period of probation, currently up to five years. They could impose a period of probation lasting one, two, three, or four years. If this new proposal were enacted, the sentencing judge could still do that. One of the options for a sentencing judge, when one of their probationers comes back before them for a violation, would be to modify the terms of the probation to extend the probation for yet a further

period of time. I could easily see a probationer coming back for a violation of their probation and the judge not wanting to send them to prison, but would instead elect to extend their period of probation, so that they would continue with the counseling and the other services that are being provided as part of that probation.

Assemblyman Horne:
In Section 3 of this bill it talks about the location in which the violation takes place. I am curious as to what they are finding where they cannot prosecute them. Why is this change necessary?

Chair Parks:
Mr. Carroll, do you have any comment relative to Section 3 of this bill, which concerns the court in which the initial sentencing took place?

Tom Carroll:
I have not given much review to that section. The cases that I have seen support the notion of making this change. As the law currently reads, if a person is convicted in Clark County and given lifetime supervision, and they subsequently relocate and commit a violation of their lifetime supervision in that other county, we have to bring them back to Clark County to actually prosecute them for the new misdemeanor violation of lifetime supervision. If I am reading Section 3 of this bill correctly, it is saying that a person who is on lifetime supervision but commits a violation can now be prosecuted for that violation in the county where they are committing the violation. That makes good sense. If the person is being supervised in Clark County, even though they suffered the conviction and were placed on lifetime supervision in Washoe or any other county of the State, since he is presently in Clark County and the supervising officer is in Clark County and could be a witness to that violation, why should we not prosecute him for the violation of lifetime supervision here in the county where that took place? I do not see a problem with Section 3.

Assemblyman Anderson:
I remember when we dealt with this issue several sessions ago. I was under the impression that both the District Attorney's Association and the judges were adamant about making sure the original court of jurisdiction would maintain the jurisdiction so that they could find consistency in someone's behavior. Has this position changed?

Tom Carroll:
I cannot speak to the legislative history. I personally do not see a problem with this. As someone with the Clark County District Attorney's Office, who handles these types of cases, I personally do not see an issue with this.

Chair Parks:
Are there other questions from the Committee?

Assemblyman Horne:
I still need an answer concerning the pre-sentencing report going to health care providers.

Chair Parks:
Is there somebody who can comment on Section 1?

Dorothy Nash Holmes, Deputy Director, Correctional Programs, Department of Corrections, Carson City, Nevada:
Two sessions ago, Lake's Crossing and our Department had a bill passed, it was Senate Bill No. 90 of the 72nd Legislative Session, to allow us to provide medical records that we had on an inmate, or in the case of Lake's Crossing, a defendant, to treatment providers in the community for purposes of diagnosis, continuity of care, et cetera. When a person is coming from Lake's Crossing to our Department, we can find out what treatment they have had at Lake's; and if they are coming from prison to the community, psychologists or psychiatrists can find out what treatment they have had in prison and what they need. The Parole and Probation Department was not part of that statute. There are 30 psychologists that work in our Division and provide mental health treatment to sex offenders and other defendants. Sometimes the only way you have a breakthrough, especially with sex offenders, is to confront them with their own statements and with some of the history about that. Because then they start telling the truth. Sometimes that history is summarized best in a pre-sentencing investigation report (PSI). There are a lot of confidential records that we cannot give out from the prison to other entities. This part of the bill is primarily aimed at treatment within the community.

[A letter from Marcia Lee, in support of A.B. 96 was introduced as (Exhibit D)].

Chair Parks:
Are there questions? Are there other witnesses from Las Vegas wishing to testify?

Angelé Morgan, Treatment Provider, Red Rock Psychological Service:
I am an outpatient treatment provider for sex offenders. I would like to comment on the last statement regarding PSIs and why it is important for us to receive them when the clients come in for counseling. Our main focus is to help the offenders come out of denial. Until we know exactly what has happened, we are not able to truly treat the offender and help them be successful in the

community. The PSIs are a way for us to compare what the offenders are telling us in terms of their crime, and we can confront them with that and find out what the truth is. We can then offer the supervision we need as counselors to keep the community safe and make sure the offenders are doing what they need to do. Without the PSIs it ties our hands not knowing what really happened.

Chair Parks:
Are there questions from the Committee? I see none. Is there anyone else in Las Vegas wishing to testify in favor of A.B. 96? I see none. Ms. Weber?

Assemblywoman Weber:
I just want to find out if Mr. Horne's concerns are with the terminology of "health care provider"? It seems it is more "treatment provider" rather than "health care provider."

Assemblyman Horne:
Initially, yes. Health care provider is a very broad term. After hearing the reasons I understand the need. I am just mulling it over.

Chair Parks:
I see Ms. Morgan has returned to the witness table. Would you like to add to your previous testimony?

Angelé Morgan:
In terms of the rest of the criminal information in the PSI report, we are also looking for patterns to help them recognize what is going to help them succeed. To know those prior offenses or prior criminal charges allows us to better help them recognize why they have chosen the path they have chosen. It shows us clearly some of the choices they are making. As a therapist, I need to know that to stop that cycle.

Chair Parks:
I do not see any further questions from the Committee. Ms. Star-Alexander?

Juli Star-Alexander, Redress, Inc., Las Vegas, Nevada:
On page 2, under Section 1, line 8, we were glad to see that it said the Division "shall afford an opportunity to each party to object to factual errors in any such report and to comment on any recommendations." As this Committee knows, we have testified on the matter of PSI reports and the nonfactual information submitted and we will be submitting a supplemental package to that. I am wondering if there is any chance to include any language here, in lines

8 through 10, to allow for the objection to factual errors prior to the release of the report?

Chair Parks:
At this point, I cannot give you a response to that question. We will certainly look into the possibility of placing that information in the bill.

Are there any questions from the Committee? I see none. Is there anyone else who would like to speak in favor of A.B. 96? Anyone wishing to speak in opposition to this bill? Are there any neutral comments?

Jason Frierson, Clark County Public Defender's Office:
I signed in as being neutral with respect to A.B. 96, but I did want to express some concerns. Regarding the ten-year probationary period, I think the logical connection to a violation would possibly be extending the punishment for that technical violation to a gross misdemeanor. The majority of my clients who are sitting in jail awaiting transport to prison are in a hurry to get to prison because they cannot stand being in jail. So, I think an extended period of time in jail would probably get the attention of a lot of individuals. An additional five years is a significant amount of time to extend probation.

Another concern is the change that the county in which a violation occurs is where that individual would be dealt with. If a person was sentenced to lifetime supervision out of state and had that supervision transferred to Nevada, would we be precluded from sending that individual back to the original state to handle that violation? It appears we would be increasing the number of people that we would be dealing with in the State of Nevada as opposed to sending them to their own state. I do not think that is the intent. I believe it would only deal with county-to-county violations.

Chair Parks:
Are there any questions from the Committee? Seeing none, I will close the hearing on A.B. 96.

We will open the hearing on Assembly Bill 106.

Assembly Bill 106: Prohibits prisoners in the custody of the Department of Corrections from obtaining or possessing portable telecommunications devices. (BDR 16-616)

Is there anyone from the Department of Corrections here to testify?

Pam Del Porto, Nevada Department of Corrections, Inspector General's Office:
I am a supervisor of investigations and also in charge of the prison gangs. On behalf of the Department of Corrections (DOC), I do want to say that we are in full support of this legislation making it illegal to have or introduce a cell phone. The cell phones are a huge threat, not only to the Department, but to the public. In the exhibit (Exhibit E) that you have before you, we have listed just two examples of the severe threat, with Jody Thompson being one of the worst ones. Now there are 22 more victims connected to his name after his conviction and when he was supposed to be in prison. One compromised staff member provided Jody Thompson with one cell phone this cost the State thousands of dollars trying to recapture Jody Thompson. He was, subsequent to his capture, convicted of three felonies for armed robberies and one felony for kidnapping of a person over the age of six. That is not the kind of person we want on the street. They are sent to us for a reason. Not only the inmates, but staff have to be held accountable for their actions. Cell phones are very dangerous items and there is no reason to have them on any guard or any person.

Chair Parks:
Are there questions from the Committee?

Assemblyman Horne:
In the Jody Thompson case, I think a staff member got him a cell phone. Are there no charges available to prosecute the staff member?

Pam Del Porto:
She was subsequently convicted of aiding and abetting a prisoner to escape. There are instances when we could not prosecute, such as when a staff member took a cell phone onto the prison property, and found out that the administrators were going to conduct a search. He gave his cell phone to another employee who stuck it in his/her underwear, so that he could keep his cell phone on the property. That is a very covert and overt attempt at keeping that cell phone hidden. All we could do was walk them off the property and fire them.

Assemblyman Horne:
Is it your position that that conduct should equate to a category C felony?

Pam Del Porto:
Actually, subsection 2 makes it unlawful for the person without lawful authorization to carry a cell phone. It would be a misdemeanor. In this type of a situation for the employee, it would be a misdemeanor offense.

Dorothy Nash Holmes, Deputy Director, Correctional Programs, Department of Corrections:
The way the bill is written, it would be a category C felony for the inmate who has it and uses it. It would be a category D felony for someone who smuggles it in. If someone has been stopped at the gate and told to put the cell phone away and not bring it in, and they stick it in their pocket and bring it in anyway, it would be a misdemeanor. We did not want to overly penalize somebody who just made a mistake bringing it in. The subsection that makes it a misdemeanor would be for someone who after being told not to, tries to bring a cell phone in. But, if they actually furnish it to the inmate, that is when it becomes the D felony, by the employee, the wife, or whomever.

Assemblyman Horne:
Would it not be possible to accidentally bring it in? Most prisons have a metal detector. How would anyone get a phone in?

Dorothy Nash Holmes:
The misdemeanor charge is really for someone who has been told not to bring it in. There would have to be criminal intent. The category D felony part would be like the nurse who smuggled the cell phone in and gave it to the inmate. We are not looking to criminalize an inadvertent error. We stop people all the time and have them turn around and take the cell phones back to their cars. Only the directors and the deputy directors are even permitted to bring cell phones in. We have a very tight list on who is allowed to do that. We are not looking to penalize someone if we make a mistake and miss it. If they have been told to turn around and take it back to their car, but instead they stick it into their pocket and just cruise in with it, at the very least it would be a misdemeanor. Obviously, if it is given to an inmate, then it becomes the D felony.

Assemblyman Horne:
What is a category C felony sentence?

Dorothy Nash Holmes:
A category C felony is one to five years and a category D felony is one to four years. Basically, a D is an attempted C.

Chair Parks:
So, you currently have a policy, although it is not in statute, which prohibits cell phones in the prison?

Pam Del Porto:
Yes. There is a memorandum from former Director Whorton and it was very clear who could carry cell phones onto prison property. It also went on to

administratively prohibit other electronic devices, such as Personal Digital Assistants (PDA) or Blackberries.

Chair Parks:
Does this bill cover PDAs and Blackberries? Is this modeled after general legislation in other states?

Dorothy Nash Holmes:
Yes. This was modeled after a law in the state of Colorado.

Chair Parks:
Are there further questions from the Committee?

I do have a question. Do you do random sweeps? In some states they do that. Could you comment on that?

Pam Del Porto:
The Federal Communications Commission (FCC) has regulations that forbid the detection of cell phone signals or the interruption of those signals. All we can do is hope that an inmate wants to get another inmate in trouble or a staff member reports it, or that we find it by chance.

Frederick Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:
If you work for the Department, sooner or later you will address this issue, because we have all had the experience of being called by an inmate's mother and being asked to ask the inmate to please return her calls on their cell phone. That is usually how we know they have cell phones.

Chair Parks:
To go back to the previous statement, the FCC has regulations forbidding detection or interruption of a cell phone signal? Are you saying you could not use one of these detection devices? So, if you have suspicions, you would have to go in and do a physical search of that inmate's possessions and you could not use some kind of device that would hone in on the signal?

Pam Del Porto:
From what I have been told by the Deputy Director, honing in on the signal or trying to interrupt that signal is against FCC regulations. Allegedly, the Federal Bureau of Prisons recently conducted a search, a sweep, and located 300 cell phones within different institutions on the East Coast. I do not know how they did it. I would love to find out so we could find 300 cell phones. I am sure we have that many.

Chair Parks:
Are there any questions from the Committee? Mr. Anderson?

Assemblyman Anderson:
I do not really expect you to know the answer to this question, but I was under the impression that movie theaters had a device that would block out signals. Have you heard of that?

Pam Del Porto:
I have not heard that. Again, if they can do it and are getting away with it, good for them. According to Director Skolnik, this regulation dates back to the 1930s and it has not been changed to address the issue of this serious technological problem that we have in prisons and jails. There is always the chance that a prisoner will manipulate and compromise a staff member. Unfortunately, there are ways to get by gatehouse officers. With regard to the Jody Thompson case, the nurse did it. There were three staff members who brought in drugs and cell phones in the month of December.

Chair Parks:
I think in Japan they have the ability to drown out cell phones and the like in various establishments. Would anyone else like to speak on this bill?

Jason Frierson, Clark County Public Defender's Office:
My primary concern with this bill was in Section 2 and the intent element. After speaking with Ms. Nash Holmes, I am somewhat calmed by their procedures and the fact that they do have metal detectors. Sometimes, these metal detectors do not work. I would suggest we add some type of intent language.

Chair Parks:
Are there further questions from the Committee? Would anyone else like to speak on this bill?

Juli Star-Alexander, Redress, Inc., Las Vegas, Nevada:
I am glad to see the Department of Corrections display their awareness of this problem. One of the things we would like to know is would there be any possibility to add any provision to mandate prison guard searches be on videotape? Some people at DOC are entitled to carry their cell phones, but the cell phones that get in as contraband have been through compromised prison guards. Some of the reports we have received is that the friends of gatekeepers are not searched, although the supervisors are. We must assume that most of these cell phones come in through the prison guards, so we are

looking for some codification to provide for prison guard searches being done on videotape.

Frederick Schlottman:
I share the concerns of Ms. Star-Alexander in regard to staff bringing in cell phones. Cell phones can also come in from vendors, from shipments, and a number of different ways. They could literally be thrown over the fence at times. There are other ways in which cell phones can come into the prison community.

Staff needs to be treated differently from the inmates; there are certain personnel policies relating to our ability to search staff. We have to keep in line with those policies. There are, of course, constitutional guarantees about unlawful search and seizure.

Chair Parks:
There are no further questions or comments.
I will close the hearing on A.B. 106.

There being no further business before this Committee, I will adjourn the meeting at 5:04 p.m.

RESPECTFULLY SUBMITTED:

_____
Patricia Blackburn
Committee Secretary

APPROVED BY:

_____
Assemblyman David R. Parks, Chair

DATE: _____

EXHIBITS

Committee Name: Select Committee on Corrections, Parole, and Probation

Date: March 1, 2007 **Time of Meeting: 3:53 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 96	C	Trooper George Chock	Presentation In Support
AB 96	D	Marcia Lee, MS MFT	Letter in Support
AB 106	E	Pamela Del Porto	Prepared Testimony