

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

**Seventy-Fourth Session
April 10, 2007**

The Select Committee on Corrections, Parole, and Probation was called to order by Chair David R. Parks at 4:07 p.m., on Tuesday, April 10, 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. Hoffercker, Committee Policy Analyst
Mark Stevens, Fiscal Analyst, Legislative Counsel Bureau
Matt Nichols, Committee Counsel
Deanna Duncan, Committee Manager
Brooke Bishop, Committee Secretary
Olivia Lloyd, Committee Assistant



OTHERS PRESENT:

John Michela, Deputy Attorney General, Office of the Attorney General
Philip K. (P.K.) O'Neill, Captain, Records and Technology Division,
Department of Public Safety
Frank Adams, Executive Director, Sheriffs' and Chiefs' Association
Kristen Erickson, Chief Deputy District Attorney, Criminal Division,
Washoe County District Attorney's Office
Tonja Brown, Private Citizen, Carson City, Nevada
Jason Frierson, Attorney at Law, Clark County Office of the
Public Defender
Howard Skolnik, Director, Department of Corrections
Pam Del Porto, Supervisory Criminal Investigator, Office of the Inspector
General, Department of Corrections

Chair Parks:

[Roll called.] Today we will be introducing Assembly Bill 579. After we close the hearing on A.B. 579, we will have a work session on three Assembly bills previously introduced. Assembly Bill 574, introduced by the Sheriffs' and Chiefs' Association, has been withdrawn.

We will open the hearing on Assembly Bill 579.

Assembly Bill 579: Makes certain changes to provisions relating to sex offenders and certain offenders convicted of a crime against a child. (BDR 14-499)

John Michela, Deputy Attorney General, Office of the Attorney General:

[Read from prepared testimony ([Exhibit C](#)) and proposed amendments ([Exhibit D](#)).]

Assemblyman Carpenter:

Does a charge of misdemeanor or gross misdemeanor determine the tier level of a sex offender?

John Michela:

The tier levels are based on the type of crime committed. Most misdemeanors and gross misdemeanors are a Tier 1, but there are some felonies included in that as well. The differences are set out in Sections 22 through 24 of A.B. 579.

Assemblyman Carpenter:

On page 17, lines 28 and 30 of the bill, where it mentions "parent of a child," could we add the word "guardian"?

John Michela:

I believe that would be a policy decision for this Committee, but I do not see the Attorney General's Office (AGO) having a problem with that.

Assemblyman Horne:

Do you know the approximate dollar amount of the grant you mentioned?

John Michela:

The amount is not set out in the Adam Walsh Act. There is mention of the grant in Section 126 of the Act, but no specific appropriation or amount is mentioned in that.

Assemblyman Horne:

We have a fiscal note so if the grant money is not there or is too low, our fiscal impact will be higher than the available funds.

Chair Parks:

I share that concern with you. It is a grant that has consistently declined in the amount of money available, similar to the Byrne Grant, which I know keeps declining every year.

John Michela:

I do have the figures for the Byrne Grant. In Fiscal Year (FY) 2006, Nevada received \$2,874,608, so 10 percent of that is a little less than \$300,000 per year if Nevada does not enact the Adam Walsh Act. I thought Mr. Horne was asking about the additional Sex Offender Management Assistance (SOMA) grant Nevada would be eligible for if it were in compliance with the Adam Walsh Act by 2008. This would be a new grant, under Section 126, subsection C of the Adam Walsh Act, which states a jurisdiction, as determined by the Attorney General, that has substantially implemented this title not later than two years after the enactment of this act, is eligible for this bonus payment.

Chair Parks:

Thank you for that explanation. Thank you also for providing us with your prepared testimony and amendments in advance. I would like further explanation of one amendment, under letter C, regarding loop-hole closure in Section 23.

John Michela:

The current language in the bill seems to flow in one direction. If a sex offender commits a crime and is classified as a Tier 1, and then commits a second crime which is a felony, they are automatically bumped up to a Tier 2. But if that same offender committed the felony crime first, and was classified as a Tier 1, then committed a misdemeanor crime second, he would remain a Tier 1. We do not feel that is correct, that is why we have submitted the amendment regarding the closure of this loop-hole. The offender who commits the felony first and then the misdemeanor second still should be bumped up to Tier 2.

Assemblyman Anderson:

Thank you, I understand now.

Assemblyman Horne:

Looking at Section 6 of the bill, paragraphs 3 and 5, dealing with lifetime supervision and those released from lifetime supervision posing no threat to society, what conviction can you get for mental abuse?

John Michela:

This section was taken from another section of the bill and there was no thought of policy from the Attorney General's (AGs) perspective, when including this section. If you wish to modify or remove it, we would have no objection. As far as the crimes encompassed in that section, I can do some research and get back to you.

Assemblyman Horne:

No, that is not necessary. But would our changing the language or content jeopardize Nevada's ability to qualify for the grant you mentioned earlier?

John Michela:

The Adam Walsh Act deals with sex offender registration and community notification. I am not aware of anything that Nevada could or could not do with regard to maintaining offenders under lifetime supervision that would have a negative effect when qualifying for the additional grant.

**Philip K. (P.K.) O'Neill, Captain, Records and Technology Division,
Department of Public Safety:**

I am here to notify you that the Legislative Counsel Bureau (LCB) has asked us to attach a fiscal note to A.B. 579. I wanted to make you aware of that, and let you know that the fiscal note attached to this bill, is mirrored in our Governor's Recommendation (Gov Rec) budget as well.

Assemblyman Anderson:

Can we anticipate that the Ways and Means Committee will reconcile this fiscal note with the Governor's Budget, or will it stand alone?

Chair Parks:

Sometimes we do hold bills, but I believe we will need to ask our fiscal analyst on that.

Mark Stevens, Fiscal Analyst, Legislative Counsel Bureau:

Sometimes bills are held and sometimes they are not. I am pulling up the fiscal note and will review it.

Assemblyman Anderson:

Can the policy portion still move forward if we do not move forward with the budgetary portion?

Chair Parks:

Yes, it looks like the Records and Technology Division is requesting \$165,000 the first year and \$161,000 the second year. We will consider this bill and then leave it for reconciliation with the Ways and Means Committee and the fiscal staff.

Frank Adams, Executive Director, Sheriffs' and Chiefs' Association:

We are in support of A.B. 579, and as you mentioned we have withdrawn our bill A.B. 574. Our one amendment has been included in A.B. 579, in Section 10.5, pertaining to the harassment of those on the registry, from people who have obtained their personal information from the website.

Kristen Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney's Office:

I simply wanted to put on the record that my office is in support of A.B. 579.

Tonja Brown, Private Citizen, Carson City, Nevada:

I have a couple of concerns with this bill. First of which is what classifies a Tier 1 offender? An example that comes to mind is urinating in public. If you are seen by a child while urinating in public and subsequently arrested, are you made to register every year for 15 years? I think something about that needs to be addressed. Another concern I have, is there was a case where a young girl, a 12-year-old, was molested and made to take three polygraph tests, which she passed. The District Attorney's (DA) office sat on this case for two years, and in the meantime the offender molested another young girl, this time she was under the age of eight. The new DA is finally charging this man in the first molestation, and I feel that if charges would have been brought against him

sooner there would not have been another little girl molested. The prior DA purposely sat on this case because of a vendetta with the little girl's mother. Can the sheriffs' office or police department step in and arrest this offender in order to keep the public safe? I do not see anything in this bill that specifically would allow another agency or department to do the job of the DA, if the DA does not or is not willing to do their job.

Chair Parks:

I will need to defer that question. Since it is not in this bill, I definitely think you have brought up some interesting points and we will look into them. I do have one question with regard to the act of urinating in public; can that be a sex offense?

John Michela:

I do not believe it is in the list of sex offenses. Ms. Brown is referring to the situation if a child saw a person urinating then they could possibly be charged with lewdness with a minor or a similar charge. Of course if the person truly had no sexual intent, the DA could plea it down.

Assemblyman Anderson:

It really is at the discretion of the DA as to what is or is not considered indecent exposure.

Jason Frierson, Attorney at Law, Clark County Office of the Public Defender:

We are taking a neutral stance on A.B. 579. We did have some questions about the definition of open and gross lewdness, because there are circumstances when the intent is not at all sexual in nature. The other concern would be including juveniles. If they are adjudicated delinquent, if charged as a juvenile, then they would still have a chance to be a kid, unless they commit another crime and are charged as an adult.

Chair Parks:

Those are some good points, thank you. We will go ahead and close the hearing on A.B. 579. We will start our work session with Assembly Bill 37.

Assembly Bill 37: Revises provisions relating to the administration of the Department of Corrections (BDR No. 16-615).

Craig V. Hoffecker, Committee Policy Analyst:

[Read directly from work session document ([Exhibit E](#)).]

ASSEMBLYMAN ANDERSON MOVED TO DO PASS
ASSEMBLY BILL 37 AS PRESENTED WITHOUT AMENDMENT.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Assembly Bill 38: Revises certain provisions governing the forfeiture of credits earned to reduce the maximum term of imprisonment when a parolee violates a condition of his parole (BDR No. 16-617).

Craig V. Hoffecker:

[Read directly from work session document ([Exhibit F](#)).]

ASSEMBLYMAN HORNE MOVED TO DO PASS ASSEMBLY BILL 38
AS PRESENTED WITHOUT AMENDMENT.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Assembly Bill 106: Prohibits prisoners in the custody of the Department of Corrections from obtaining or possessing portable telecommunications devices (BDR No. 16-616).

Craig V. Hoffecker:

[Read directly from work session document ([Exhibit G](#)).]

Howard Skolnik, Director, Department of Corrections:

The Nevada Department of Corrections (NDOC) has concerns regarding the amendments proposed to A.B. 106, specifically, the addition of the intent language. Adding intent really does weaken our control of the flow in and out of our facility. Telecommunications devices today pose a significant security threat to our department; we are even prohibited by federal law from blocking such signals. The NDOC recently had an escape that was primarily planned and implemented by the use of a cell phone. This escape had a significant financial impact not only on the Department but on the community as well. A change in the felony category from D to E would not be adequate punishment for such persons intending to do harm. It limits our ability to deal with staff, who unfortunately are the first to bring such devices in the facility, and makes it hard for us to feel secure and have control.

Assemblyman Horne:

The intent language was put in the bill to capture those who are purposefully breaking the rules, not those who accidentally do it. It is important to keep this language in there. I personally have been to almost every facility in Nevada, and I have never had the experience where I could have accidentally brought in my cell phone.

Howard Skolnik:

That is exactly why we want the language removed. It would seem that if someone could get through the metal detectors, instead of having to prove that, we think from our point of view it would be a given that there was intent.

Assemblyman Horne:

The proof is there was no other way for the device to enter the facility unless someone intentionally brought it in.

Pam Del Porto, Supervisory Criminal Investigator, Office of the Inspector General, Department of Corrections:

I have had to testify on many different issues in cases, but proving intent of a staff member sneaking a cell phone in to a facility and then taking that device out and bringing in another is hard to prove. We had to connect the staff member to the inmate on a personal level and had to absolutely prove she was part of the plot. It sounds easy, but good defense attorneys make doing that even harder.

Assemblyman Horne:

This is the area I have practiced in for many years, and I do not see the difficulty in proving intent when the intent of the employee, in your example, seems very clear.

Howard Skolnik:

Perhaps if the language surrounding intent in the bill could refer to actions demonstrated by those still passing through the security and detectors with a device. That might be sufficient for our use later, if needed.

Assemblyman Anderson:

If something such as this happens and we set such a high standard, if there really is no intent, then the State will make the assumption that everyone has intent of doing something bad. The intent language would give you the discretion in that assumption.

Howard Skolnik:

We have expressed our concerns and oppose this legislation due to our increasing problems with such devices as cell phones, and the rules we have to abide by on the federal level. We will take whatever you, the Legislature gives us and make it work. But we wanted our feelings to go on record.

Chair Parks:

Do all visitors go through metal detectors, and are cell phones detected by these devices?

Howard Skolnik:

Yes, all visitors are made to go through the metal detectors, and they are supposed to detect such devices as cell phones.

Chair Parks:

My concern is the unintentional taking of a cell phone into a facility by a visitor.

Howard Skolnik:

We post signs outside the doors of our facilities which state what is and is not allowed. No matter how the device gets in, intentional or not, there is a threat to the security of the institution. There are and will continue to be exceptions such as medical staff who need such devices to properly do their jobs.

Assemblywoman Weber:

In looking at Section 2, subsection 2, could language be added that would require guards to inform visitors of the rules as they entered the facility?

Howard Skolnik:

We currently do that. When people enter the facility, the guards remind them that no telecommunication devices are allowed and to please return them to their vehicle. That is an administrative function that does not need to be part of a statute.

Assemblywoman McClain:

Does all staff go through the metal detectors?

Howard Skolnik:

Yes, they are required to go through as well.

Pam Del Porto:

I was recently at an institution where the metal detector was not working and the guard did use a wand on me.

Assemblyman Anderson:

Are those who are working at these different facilities, such as forest service or power company employees, subject to these rules as well?

Howard Skolnik:

They would be afforded the exception that is in this bill. If they are outside the facility, they would not be subject to the rules at all.

Assemblywoman McClain:

We could leave out the intent language, and if abused by the Department, add it in at a later time.

Chair Parks:

That language can also be added by the Senate if we leave it out.

Assemblyman Horne:

If we were to pass this bill without the intent language, then it needs to include the proposed amendment regarding change in felony category from D to E. I agree with Ms. McClain that if abuse is demonstrated by the Department, then we would need to add that language back in. But most importantly, the NDOC must promise to support the bill as we have amended it when it goes to the Senate.

Assemblyman Carpenter:

I am not in favor of adding the intent language either, but I agree that the proposed amendment regarding the change in the felony category from D to E must be included.

Howard Skolnik:

We would have no problem with that and will support it on the Senate side.

ASSEMBLYWOMAN MCCLAIN MOVED TO AMEND AND DO PASS
AS AMENDED ASSEMBLY BILL 106.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (ASSEMBLYMAN ANDERSON VOTED NO.)

Chair Parks:

Are there any further questions or comments from the Committee? We have completed the items listed on our agenda, and having no further business this meeting is adjourned [at 5:27 p.m.].

RESPECTFULLY SUBMITTED:

Brooke Bishop
Committee Secretary

APPROVED BY:

Assemblyman David R. Parks, Chair

DATE: _____

EXHIBITS

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

Date: April 10, 2007

Time of Meeting: 4:07 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 579	C	John Michela, Deputy Attorney General, Office of the Attorney General	Written testimony
AB 579	D	John Michela	Proposed Amendments
AB 37	E	Craig V. Hoffecker, Committee Policy Analyst	Committee Introduction of Bill and Work Session
AB 38	F	Craig V. Hoffecker	Committee Introduction of Bill and Work Session
AB 106	G	Craig V. Hoffecker	Committee Introduction of Bill and Work Session