

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
May 29, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:11 a.m., on Tuesday, May 29, 2007, in Room 3138 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](#)) and the Attendance Roster ([Exhibit B](#)) 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 Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblywoman Francis Allen (Excused)
Assemblyman Marcus Conklin (Excused)
Assemblyman John Ocegüera (Excused)



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Janie Novi, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Phillip K. O'Neill, Division Chief, Records and Technology Division,
Department of Public Safety

Chairman Anderson:

[Roll was called.] We have one item on the agenda today, Senate Bill 38 (1st Reprint).

Senate Bill 38 (1st Reprint): Makes various changes concerning the Central Repository for Nevada Records of Criminal History. (BDR 43-559)

**Phillip K. O'Neill, Division Chief, Records and Technology Division,
Department of Public Safety:**

I am here to present S.B. 38 (R1), a bill that puts the Records and Technology Division into the Department of Public Safety. Additionally, Section 2 allows dissemination of Nevada criminal justice history information to an employer or their designee. All original duties of the Criminal History Repository will be transferred. This is a housekeeping bill stemming from the last legislative session when the director formed the Division of Records and Technology, but we did not put it into action. All of the duties and responsibilities of the Criminal History Repository will be transferred into the Records and Technology Division. They will service the Department of Public Safety, the outside customers, the criminal justice entities within the State, the federal system and other states. There is a fiscal note attached to the bill, which was also part of the recommended budget. The budget has been approved by the committees and it may be a moot issue since it has been approved.

Chairman Anderson:

We have dealt with the name change issue in another piece of legislation, have we not?

Phillip K. O'Neill:

There was an Assembly bill that discussed the funds to maintain the switching system. The system was going to be given to highway patrol because the section including the Criminal History Repository was under the highway patrol

section. This legislation removes it from highway patrol and brings it into the Department so it can be assigned to the appropriate division to be maintained. We have the second bill to formulate the Records and Technology Division within code.

Chairman Anderson:

Let us say a person is coming to work for me and I am using an employment agency. Do they get to use the Criminal History Repository to background check the potential employee?

Phillip K. O'Neill:

Most likely. That is one reason we have asked for the extension on the second part of the amendment until March of 2008. We are rewriting our civil name check program to allow the assignment of an employer to their designee. We will also have to rewrite the contracts that we have with various employers and they will have to delineate exactly what the agency is. The responsibility cannot be with one person today and then somebody else the next day. There will be security requirements on the second entity to confirm that they have the appropriate amount of security and protection for all of the information. Yes, there are several large entities of employers that have outsourced their human resources and it has caused some problems because we can give the criminal information to the employer, but not the company that the human resources have been outsourced to. Sometimes the person actually handling human resources and hiring are not privy to that criminal information. This is bringing it together to make it a more efficient process and give a better view of the potential candidates.

Chairman Anderson:

If I own a business, I cannot call your division and say that I am thinking about hiring a person and I want to do a criminal check. Does my business have to meet a certain criteria to qualify to get these services, or can I just say I want my employees screened?

Phillip K. O'Neill:

The answer would be a yes and a no. Your business would not qualify under statutory authority to receive the information; however the business could require the employees to provide criminal history information if they feel it is a necessity to improve their service or their interactions with their customers.

Home health care workers or people dealing with hazardous wastes and explosives are statutorily required to receive criminal background checks. A lot of the gaming industry uses a civil name check, which is different than the criminal fingerprint information. A casino would need to get a contract with us

and we would do an inter-local background check. We have certain requirements for the casino's software, their firewalls, where the information is maintained, where their computer is, and who can access that computer. Those people with access to the computer have to have been background checked and actually have received criminal fingerprints at both the state and federal level to view the information. There are also certain requirements for how the system is maintained. For the casino to delegate that task to another agency that specializes in human resources, the agency would also have to have the same strict security requirements to protect the information.

Assemblyman Mortenson:

In the bill, does it have a list or a definition of who can utilize this service and who cannot?

Phillip K. O'Neill:

No, it does not. Any agency can acquire a civil name check. Criminal fingerprints are obtained each time a subject is arrested. We are using information for non-criminal justice purposes. We obtain the information through a fingerprint-based background system. We get fingerprints of all ten fingers and go through both the State of Nevada then the Federal Bureau of Investigation (FBI) databases. This results in a nationwide search to determine criminal history on the individual. We can also check Canadian data bases. That is a civil fingerprint check.

Within the State of Nevada, we are allowed to check for criminal history through Nevada criminal justice information. We do that by utilizing a civil name check. Names are run through a computer to see if any criminal information comes up. If a name comes up more than once with a criminal history attached to it, the employer can ask for more information either by asking for a fingerprint check or other identifying information. The employer can then actually identify which of the names is the correct person. Most agencies that utilize the civil name check are in the gaming industry; however, it is expanding out to private industry. We have been approached by some companies who do rug cleaning, or other service oriented businesses that go into people's homes and want a certain amount of integrity in their employees. This database is expanding and so is the demand for it. That is one reason this amendment is helpful. The designee must be identified and included in our contract as well as meet certain security requirements.

Assemblyman Mortenson:

Let us say I am a rug cleaner. If I come to your department and say I have a guy I am thinking of hiring, can you do a background check? Do I pay for it? How does this work?

Phillip K. O'Neill:

You would pay for it, but you would first set up a contract for the service. The service cannot be provided on a onetime individual basis. We would have to go through your contract to be approved by the board of examiners. You would also have to pass certain security requirements on how you maintain the information, what your computer is, where the information is, and who has access to it. Receiving this information is not an indiscriminate action.

Chairman Anderson:

Once I take this criminal history information into my system and I am running background checks for several different companies, will those companies be able to access your system and download information? Do they have to provide enough specific information so you know that this person is an employee of the company?

Phillip K. O'Neill:

If a human resources company represented several different entities, they could only run a name if that person was applying to one of their companies and it would only apply to that one company. If he left that company and decided to go to a different company that also has a contract with the human resources company, then human resources cannot get the information from the first background check with the first company. We do regular audits on those companies that have civil name checks with us. When performing the audits, we pull a percentage of the names run and the checks that have been done. If we find any discrepancies, we can cut the company off and not allow them access to the information.

Chairman Anderson:

I am surprised we have not thought about having criminal sanctions in statute for instances where such information is misused.

Phillip K. O'Neill:

I cannot quote the *Nevada Revised Statute* (NRS), but there is a misdemeanor for misuse of criminal justice information.

Assemblyman Carpenter:

Unless firms are specifically named in statute, a business cannot get this information. Is that correct?

Phillip K. O'Neill:

Are we talking about civil name checks and the computer based Nevada criminal justice information, or are you talking about the civil fingerprint checks which applies nationwide?

Assemblyman Carpenter:

I am talking about both.

Phillip K. O'Neill:

The civil name check consists of only Nevada information. A company could contract with us if they give justification and meet the security requirements. The civil fingerprint check is limited by statute on who can set up the contract with us and access that information.

Assemblyman Carpenter:

What information would come with the name check?

Phillip K. O'Neill:

The name check would include what a person has done criminally in the State of Nevada. No information from other states would show up. We have a transient population and this makes it difficult to get information on people with the civil name check. The fingerprint check would give you nationwide information.

Chairman Anderson:

Are you going to be responsible for keeping the courts up and running?

Phillip K. O'Neill:

No, that is handled by the Administrative Office of the Courts (AOC). It will be my responsibility to work with them cooperatively to develop a relationship. Also, it will be important to maintain that the courts are transmitting the necessary information to insure the integrity of our criminal history information. The record keeping and sharing of information was a separate issue from the technology that gathered and maintained it. This legislation brings these two issues together so we can address them as a single issue.

Chairman Anderson:

What if I have a firearm and want to sell it, but I want to make sure that the person I am selling it to is not a criminal? Can I call your division and have a name check performed?

Phillip K. O'Neill:

No, that situation would fall under the Brady Bill Unit, which is part of the Records Division. That information is only currently required of Federal Firearms Licensed (FFL) dealers within the state. Those dealers have accounts with us. Individuals cannot have an account with us; there would be some way to get that information. The seller could ask the potential buyer to get a criminal history check performed and come back before he will sell.

Chairman Anderson:

What about the renter of a room or house?

Phillip K. O'Neill:

That is an excellent question. I would say yes, but there may be some questions about obtaining that particular information.

ASSEMBLYMAN HORNE MOVED TO DO PASS
SENATE BILL 38 (1st Reprint).

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ALLEN, CONKLIN, AND
OCEGUERA WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

I will assign this bill to Mr. Segerblom to present on the Floor. We are adjourned [at 9:51 a.m.].

RESPECTFULLY SUBMITTED:

Janie Novi
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 29, 2007

Time of Meeting: 9:11 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster