

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

**Seventy-Fifth Session
February 10, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chair William C. Horne at 8:10 a.m. on Tuesday, February 10, 2009, 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](#)), 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/75th2009/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 William C. Horne, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Bernie Anderson
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Nicole Bailey, Committee Assistant

OTHERS PRESENT:

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Keith G. Munro, Assistant Attorney General, Administration, Office of the Attorney General
Howard Skolnik, Director, Department of Corrections
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada
Kevin Ranft, Region 1 Vice-President, American Federation of State, County, and Municipal Employees, Carson City, Nevada
Lori Bagwell, Deputy Director, Department of Corrections
Tosh Dawson, Private Citizen, Virginia City, Nevada
Dennis Mallory, Chief of Staff, American Federation of State, County, and Municipal Employees, Carson City, Nevada

Chairman Horne:

[Call to order, roll call.] Just some housekeeping, please bring 30 copies of the exhibits for the committee members, the legal counsel, policy analyst, the secretary and a few for the public.

Last week the Committee went on a tour of two prisons, and we may go on another. When we do these tours, it is a request of the Chairman that all members attend. We are going for education, so please participate. If you cannot make any tour or a special meeting, please contact your Chairman.

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety:

This is an overview of the Department of Public Safety, Division of Parole and Probation's function and operations throughout the state [PowerPoint ([Exhibit C](#)) and handout ([Exhibit D](#))]. There are two commands in Parole and Probation, one in the north and the other in Clark County. [Read from PowerPoint ([Exhibit C](#)).]

Chairman Horne:

We have a number of new members on the Committee, so if you would please give brief definitions on some of the terms.

Bernard W. Curtis:

If I do not answer any of your questions in the course of the presentation, we will answer questions at the end, and we will stay after this Committee meeting as well to answer questions.

[Continued to read from ([Exhibit C](#)), page 4.]

We are at the tail end of the criminal justice system. I would like to direct your attention to the chart on page 5 ([Exhibit C](#)). There is an arrest, charging, arraignment, trial or guilty plea. If a person is found guilty at trial, we submit a pre-sentence investigation report (PSI). It gives sentencing recommendations. [Chart continues to page 6, [Exhibit C](#)]. In sentencing there is the possibility of only probation recommended, whether it is a felony or gross misdemeanor offense and the chart shows how that works [page 7, [Exhibit C](#)]. The recommendation can also be prison, and when the inmate is paroled via the State Board of Parole Commissioners (Parole Board), he is then supervised in the same way as a probationer.

Our Northern Command includes Washoe, Storey, Lyon, Churchill, and Douglas Counties and Carson City [page 8, [Exhibit C](#)]. Clark County is the Southern Command, and the Rural Command is the rest of the state. The numbers are as of December 31, 2008.

Interstate compact offenders are ones that are transferred to the State of Nevada from other states. We have a compact throughout the country, so inmates are also transferred from Nevada to other states. We trade offenders based on where their jobs and families are.

Chairman Horne:

Could you explain more how that works?

Bernard W. Curtis:

The Interstate Commission for Adult Offender Supervision (Interstate Compact Commission) issues transfers, and we accept transfers of offenders from other states depending on the criteria set up for them and vice versa. We transfer offenders to other states because they live there and they are then afforded parole or probation in the other states. They remain our responsibility, since they were convicted here, to manage their cases overall; however, they report to officers in the states where they have been transferred.

Nevada has had a history in which many people who committed crimes here were often not from here. Now, paroled people come to Nevada for work from other states, so we then take over their supervision. In summary, it is an interstate transfer of offenders that are released from incarceration, but remain under supervision.

The majority of the work is in the Southern Command [page 9 of [Exhibit C](#)].

Assemblyman Anderson:

How many sworn Parole and Probation officers do you have in the north to supervise the 3,432 parolees and probationers?

Bernard W. Curtis:

As of the last fiscal year (FY) we had a total of 103 sworn positions and 57 non-sworn support staff in the Northern Command. The Southern Command has 201 sworn positions and 45 non-sworn. Headquarters has 11 sworn and 56 non-sworn; this is where most of the financial and operational support is done. The total for the Division effective last fiscal year was 532 positions, 315 sworn and 217 non-sworn.

Assemblyman Anderson:

How many unfilled positions do you have of your potential allocations?

Bernard W. Curtis:

At this time we have 102.

Assemblyman Anderson:

So you are 102 sworn officers short...?

Bernard W. Curtis:

That number is the total number of vacancies currently existing in Parole and Probation. As of 3 February, 62 of those are sworn and 40 are non-sworn.

Assemblyman Carpenter:

Do you have money in your budget to hire all of those people or not?

Bernard W. Curtis:

We will be able to start hiring at the end of this fiscal year for the next fiscal year, which will begin in July.

Assemblyman Carpenter:

So would you be able to hire the total?

Bernard W. Curtis:

No sir. The Division will be at a different level at the end of this fiscal year. Our contingent will be 451 plus an additional 14 depending on budget.

Assemblyman Anderson:

What is the relationship of people that have come to reside in the State of Nevada and are on probation, versus those convicted here and are doing parole or probation elsewhere? Is the tradeoff about the same?

Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:

The number that we have currently, those who have been convicted in Nevada but now reside in other states, is about 1,100. The number of people who have been convicted in other states and now reside in Nevada is about 900, so we are sending out more than we are getting.

Assemblyman Kihuen:

What is the process to award parole and probation for some prisoners? Is it a scoring system?

Mark Woods:

There are two areas: parole and probation. When a person is convicted, the judge gives a sentence. In about 80 percent of cases the judge will place the person on probation and hold incarceration time in abeyance. We do a pre-sentence investigation that makes a recommendation on whether the defendant should get probation or not, but it is the judge's decision. The judge follows our recommendation about 70 percent of the time.

The Parole Board uses a matrix, but I do not feel comfortable talking about it because it is their system. The inmate has interviews with them, sets up a program with them, and then has to obtain a certain score to be eligible for parole. We investigate the program to verify if it is sound and exists. If it is, then the inmate is paroled.

Assemblyman Ohrenschall:

How frequently do you conduct the PSI and recommend probation, but statute does not allow for it?

Mark Woods:

It does not happen very often. The way the matrix is set up, those who are mandated prison time by statute will have scores dictating prison time. This is because of the type of crime, the victims involved, and the violence of the

crime. So, it is rare for someone convicted of a crime that has mandated prison time to score for probation only.

Bernard W. Curtis:

[Continued to read from ([Exhibit C](#)) pages 9 and 10.] The Rural Command excludes Washoe, Storey, Carson City, Lyon, Douglas, and Clark Counties. [Continued to read from ([Exhibit C](#)) pages 11, 12, and 13.]

Assemblyman Mortensen:

Why does Nevada have such a high incarceration rate compared to other states?

Bernard W. Curtis:

Nevada is different than other states in a lot of ways, but Parole and Probation deals with people after incarceration.

Mark Woods:

Nevada is very serious about protecting its citizens and it does not take crime lightly. I am proud of the law enforcement agencies across the state and we are one of them.

Bernard W. Curtis:

My background is with working for local Sheriff's offices for the last 30 years before Parole and Probation. The goal of law enforcement officers throughout the state is to put people in jail for doing bad things.

Chairman Horne:

Do you have statistics on revocations for probationers and parolees?

Mark Woods:

We have success rates. Nevada is above average nationally for success. Parole success is being discharged without revocation. It is approximately 80 percent in Nevada; the national average is just over 60 percent, and the success rate for probation is 62 percent in Nevada.

Chairman Horne:

For clarification, are most of your probationers gross misdemeanants and Class E felons?

Mark Woods:

Probation versus parole is 80 percent to 20 percent. Of the 80 percent that are on probation, approximately 30 percent are gross misdemeanants, with the rest felons.

Assemblyman Segerblom:

What is the definition of lifetime supervision for sex offenders, and are other sex offenders not under your purview?

Mark Woods:

The Division is presently supervising 1,100 sex offenders throughout the state. That does not include all of the registered sex offenders in the state, whose number is close to 8,000. Lifetime supervision offenders are those who, because of the nature of their crime, after completing their sentences are deemed dangerous enough to need lifetime supervision. They are the worst of the worst. There are 410 in that group.

Assemblyman Segerblom:

Is that a burden?

Mark Woods:

Our job is to watch people in the community. It is our job to watch those people. Our normal caseload is 70-to-1, lifetime supervision sex offenders are monitored at a ratio of 45-to-1.

Chairman Horne:

Could you explain the different levels of supervision, and for the lifetime supervision offenders, are they also categorized?

Mark Woods:

There are five different categories of supervision. The first is Intensive Supervision Unit (ISU). Through their history, crime, or the officer's knowledge of the individual, it is determined that he or she needs to be watched more closely. They are on a caseload of 30-to-1. The majority of these get revoked quickly because they are not willing to reenter society and be law-abiding citizens. We try to be proactive, but most of them will not accept the limited resources available to better themselves. For a lack of a better term, they are the "habitual criminal."

The second group is those who we place on electronic monitoring, or house arrest. They wear electronic devices so we know when they are in their homes, and they have a schedule of when they are allowed to be away from home. They are also monitored at a 30-to-1 ratio.

The next level is the sex offender group. They are on this caseload because of the crime of which they have been convicted. They are monitored at a ratio of 45-to-1. We can put them on ISU or house arrest if we feel they need closer supervision.

The next group is general supervision. This is the normal parolee or probationer. They have a good chance of reintegrating into society. They are monitored at a 70-to-1 ratio.

The last group is the administrative caseload. This only exists in southern Nevada. This is because the vacancies for sworn staff are in the Las Vegas area. The remainder of the state is able to keep the 30-to-1, 45-to-1 and 70-to-1 ratios with sworn officers. In Las Vegas, they are overworked. There are more than 2,100 offenders in Las Vegas for whom we do not have officers to watch. No one in this category is on the ISU, house arrest, or sex offender level. Those ratios are kept as they are supposed to be. These 2,100 are supervised by four individuals, so they have no major supervision.

The people in Las Vegas have done a yeoman's job. They have attempted to make the system work as well as possible with a lack of staff. They do have an intake staff, which aggressively deals with the individual within their first three months. That is showing success, but as a result, more individuals end up in the administrative caseload bank.

More than 90 percent of those on the administrative caseload are gross misdemeanants without violence or sexual issues, and the remainder are the lower Class E felons. Most were convicted of possession of a controlled substance.

Chairman Horne:

You mentioned electronic monitoring. This is not a GPS type with officers in a room identifying blips on a screen so you know who is where at any given time. Could you elaborate?

Mark Woods:

The house arrest system is tied into the phone lines in the house. A person will give us their schedule, which we approve. We are notified when they are away from the phone so we know when they have left the area. The average person has an eight hour job and an hour to and from work, so for ten hours, the person should be at work. We cannot guarantee that is where they are, the electronic monitoring just tells us when they are not home when they should be.

Assemblywoman Parnell:

Are the 102 open positions in southern Nevada frozen from budget cuts, or have you not had applicants?

Bernard W. Curtis:

A little of both. The 102 is statewide. There are 45 sworn vacancies and 17 non-sworn vacancies. We are at this level of staffing based on the need for salary savings to make our budget. This is not the number of full-time equivalents (FTE)s or position control number (PCN)s we are entitled to have. The numbers are as of the 3rd of February 2009.

Assemblywoman Parnell:

Do you have the numbers of how much money has been given back to victims of crime? What percentage is this of the total owed?

Mark Woods:

Since July 1 we have collected over \$1.5 million in restitution, but it is not really something we can answer. It is difficult to explain. Once we have someone for restitution, we have them on our books, even after they are gone.

There is the perception that restitution is something like \$500 for some crime, so Parole and Probation will get the money at \$50 a month. This is a rare occurrence. A more common occurrence is that the restitution is unbelievably high and will not be paid. An example is the Belli Ranch Fire. The restitution ordered was over \$10 million, and we are barely collecting any of it. We are getting \$10 a month because of the status of the individual. That looks bad percentage-wise but for the people who have the ability to pay, we are successful in getting that money.

Assemblyman Manendo:

Could we have a copy of the staffing ratios and the frozen and not frozen positions? [Director Curtis indicated yes.]

Could you walk me through the process for a prisoner to get parole?

Mark Woods:

The second question is one for the Parole Board. We get involved once parole has been granted and gives us a program for us to investigate. What that means is: an inmate will go to the Parole Board and say, "I want to do this, this, and this, and I am going to live at 1 A Street." We investigate and find out whether 1 A Street exists or not. Up to that point, we are not involved.

Assemblyman Anderson:

What is the percentage of people that are released directly to house arrest?

Mark Woods:

It is a smaller number than one would expect. We try to use that as an intermediate sanction. We try to assign to the lowest level possible depending on how we think the person will respond.

Assemblyman Anderson:

We hear stories of electronic monitoring that is an alternative sentence. I think of it as your responsibility to monitor. Is this correct?

Mark Woods:

For example, Washoe County has a house arrest program for the jail. We have nothing to do with that. That is how the Washoe County Sheriff handles his jail. A small number of parolees and probationers are placed on house arrest. We do work with the prison for 305s [Assembly Bill No. 305 of the 66th Session] and 317s [Assembly Bill No. 317 of the 68th Session] who are mandated to be on house arrest. This is a successful program because there is zero tolerance.

Assemblyman Anderson:

As sex offenders appear to be more problematic, do you have the ability to move them up the tiers? What is the recidivism rate among the third tier sex offenders compared to those who are under lifetime supervision?

Mark Woods:

Sex offenders may commit a crime, such that they would not be taken up to the house arrest or ISU level, but rather back to the Court or Parole Board for revocation. It depends on the action he or she committed for us to get involved again.

Assemblyman Anderson:

One of the criticisms we often hear about Parole and Probation is that people are revoked for small infractions. What is your response, so I know how to respond?

Mark Woods:

Our response is that it is not true. Those are just stories and we have facts to back it up. Dr. James Austin did a study with us almost two years ago. He took a random sample of 100 parolees who had been revoked. It was his determination that not a single one went back without due cause.

What happens a lot is, we begin the revocation process, bring the violator back before the court or Parole Board, and explain in our violation report what the person did right and wrong. A common scenario then is someone on parole for

a possession case picks up a new felony and has missed \$30 in fees. So in the violation report, it will state that he was picked up by this law enforcement agency for doing this and he is \$30 behind in his fees. He then goes to sentencing, and the new charge will be dismissed and the individual will be revoked on the original probation or parole violation. The system shows that he went to prison for being \$30 behind on his fees because the original charge disappeared.

I can assure you then that no one is going back to prison because they are behind on fees or were late for an appointment. Those things may be the last straw. We have heard those stories, so we ask for the names. Every name we have investigated, we found that it just is not true. These are called technical violations, but one technical violation is absconding.

Chairman Horne:

A lot of the times when someone gets revoked on the existing sentence, it is a negotiated settlement. I am a practicing criminal defense attorney, so I can attest that it is not the judge who unilaterally decides to dismiss the new charge and revoke on the underlying sentence.

Assemblywoman Dondero Loop:

Did you say the success rate for parolees was above average at 80 percent?

Mark Woods:

Yes.

Assemblywoman Dondero Loop:

Thank you to your officers then for doing a fine job. How many of the parole or probation cases abscond?

Mark Woods:

Currently we have about 2,800 in absconder status. It sounds like a lot, but once someone is in absconder status and a warrant is issued, their time stops. The numbers stay on the books until we catch them. Some of the absconders have been on the list for 20 to 30 years. While the number is significant, it is less than most other states.

Assemblywoman Dondero Loop:

So that figure is cumulative?

Mark Woods:

Yes.

Assemblyman Mortensen:

Where does the restitution money go, does it stay with the Division or does it go to victims?

Bernard W. Curtis:

It goes to victims. We collect it and then transfer it back to them.

Chairman Horne:

We will hear audit testimony on that issue next week.

Assemblyman Anderson:

The pre-sentencing report is one of the parts of the justice system. The sworn officers not only have the responsibility of supervising this group of people, but then also preparing the reports before they go to prison. Could you review that quickly?

Bernard W. Curtis:

Pre-sentence investigations are generally done by non-sworn staff. They are called specialists. Investigations are completed, on average, one per day per specialist. Specialists in the north appear in court to back up what they have written. The PSIs are disseminated to the defense, district attorney, and court. They make recommendations based on matrices for sentencing.

Six hundred to 700 investigations are written a month in the south and about 300 in the north. There are backlogs at times, and sometimes we are ahead. They are written for gross misdemeanors and all categories of felonies for district court sentences.

Assemblyman Anderson:

That is not part of your sworn staff?

Bernard W. Curtis:

Generally not.

Assemblyman Anderson:

Generally, what is the timeline from when the judge would ask for a pre-sentencing report and when he would expect to receive it?

Mark Woods:

The time between arraignment and sentencing is generally 45 days. The PSI is delivered to the court three to five days before that. Once the investigator gets the case, he reviews the district attorney's file to understand the case and interviews the defendant to get his point of view of the crime and his social

history. At that point, if there are victims involved, they will be interviewed. The investigator will then use the matrix of our recommendation scale. That is how we arrive at the recommendation of underlying sentence and probation or not probation.

To assist the local jurisdictions, if it is an "in custody" case, whereby the defendant stays in custody until sentencing, the investigators try to complete the investigations within 30 days.

Assemblyman Anderson:

Is the timeline about the same in the rural areas?

Mark Woods:

All three areas are handled a little bit differently. Because the rural areas are so small, the timeline is sometimes accelerated, but the difficulty there is the distance to and from courts.

The Reno and Carson City offices are more "the norm" in terms of workload. The investigators know the judges and meet with the courts on a regular basis and have a working relationship. They can stick to the 30 and 45 day timelines. When a PSI writer goes to court in the north, the average caseload is three to four cases a day.

The Las Vegas area is a whole different animal. As a comparison: if you cannot get into the courtroom in Reno, it is because the bailiff has not yet opened the door. In Las Vegas one cannot get into the courtroom because there is no room. The number of people going through that system is incredible. It is very difficult for the writers to keep up, so much so that the writers stopped going to court. They were spending so much time sitting and waiting in court, yet they are still overwhelmed.

In the rural areas, if you cannot get into a courtroom, it is because the door is not unlocked. The writers out there work with the judge and the bailiff and often help the bailiffs.

Chairman Horne:

In Clark County, I have had sentencings continued because the PSI had not been completed.

The members of the Committee should be aware that Parole and Probation officers are a unique breed. They are law enforcement officers and Peace Officer Standards and Training (POST) certified, but they also have an element of social worker. Not only do they make sure that probationers and parolees are

toeing the line, but also help them to succeed getting their life back on track. They help their charges find jobs, childcare, healthcare, et cetera. It is not just keeping their thumbs on them. It is not an easy job and because of that there is high turnover.

We are going to have a short presentation about the Adam Walsh Act because there were some questions about it in the Judiciary Committee yesterday. It deals with the supervision of sex offenders. Keith Munro from the Attorney General's Office is going to go over what the injunction means to us.

Keith G. Munro, Assistant Attorney General, Administration, Office of the Attorney General:

I will give a quick overview of how Adam Walsh came into effect as well. Assembly Bill No. 579 of the 74th Session was submitted last session. I passed out an exhibit ([Exhibit E](#)) and the first part is a letter explaining the Adam Walsh Act. It was a federal requirement. The bill was presented to this Committee last session. The second part is the history of the bill. There were six hearings, two before this Committee, two before Assembly Ways and Means, and two before Senate Judiciary. There were a couple of amendments to the bill, and it passed 63 to zero.

The effective date of A. B. No. 579 of the 74th Session was July 1, 2008. On June 24, 2008 several parolees, who would have been subject to the Adam Walsh Act, filed a 104-page brief in support of a temporary restraining order and a preliminary injunction. The court held a hearing on the preliminary injunction motion on June 30, 2008 and granted the injunction. The court noted the need for an expedited schedule. The court required the plaintiffs to file their amended complaint by July 7, 2008.

The State of Nevada filed an opposition and the plaintiffs filed a reply. On September 10, 2008, the court held a hearing on the plaintiffs' motion for a permanent injunction to enjoin the enforcement of the Adam Walsh Act. The court found in favor of the parolees, on October 10, 2008, and permanently enjoined the State from enforcing A. B. No. 579 of the 74th Session and Senate Bill No. 471 of the 74th Session which dealt with distance requirements for parolees.

The third part of the handout is a copy of the order entered by Federal Judge James C. Mahan, enjoining both of those provisions. The bottom of page four of the order gets to the heart of Judge Mahan's ruling: the retroactive application of both of these pieces of legislation. He also found a due process violation for the prospective application as well.

As a result of that injunction, the Attorney General's Office filed a notice of appeal of the District Court's decision. The docketing statement has been filed with the Ninth Circuit Court of Appeals. On Friday, February 13, 2009 we will file our opening brief in the Ninth Circuit and subsequent to that, pursuant to the briefing schedule ordered by the Ninth Circuit, the American Civil Liberties Union (ACLU) who is representing the named plaintiffs in this matter, will file their response by March 30, 2009. Our reply will be due two weeks after that.

Assemblyman Carpenter:

If the Ninth Circuit decides to uphold the district court's decision, would the case be appealed to the Supreme Court?

Keith Munro:

I would agree.

Assemblyman Carpenter:

So it might be years before there is a final judgment from the courts?

Keith Munro:

It would be fair to say it is a couple of years away.

Chairman Horne:

This topic kept coming up, so I wanted the Committee to have some background on it. There are some policies we may want to put in place and are eager to do so. We may be precluded or prohibited while the injunction is in place. We have to be mindful of the injunction, we are not shutting anyone down for no reason.

Assemblyman Anderson:

Are you of the opinion that we are precluded from perfecting the statute so we can distinguish between those on lifetime supervision and those who are not, and between juveniles and adults? Would that put us back to where we were on the tiered system?

Chairman Horne:

I think that we would go back to what we were doing before. I do not think it precludes us from making changes to the *Nevada Revised Statutes* (NRS) that would comply with the rulings of Judge Mahan. It would do no good to pass a bill in violation of the injunction because it would not be enforced. Mr. Anthony, what is your opinion?

Nick Anthony, Committee Counsel:

I think you are right on that point.

Keith Munro:

This is an extremely complicated issue. During the interim there has been a working group, of which Assemblyman Carpenter is a member, trying to perfect it for the State of Nevada. If any member has any questions or concerns about the application of this bill and how it applies to sex offenders in our state, I will make myself available to explain it.

Chairman Horne:

Assemblyman Anderson, the Majority Leader, others, and I have a meeting on Thursday and we look forward to meeting with you.

[Recess 9:24, reconvene 9:34]

Chairman Horne:

There will be no public comment on the presentations. There will be public comment after the hearing on Assembly Bill 34.

Howard Skolnik, Director, Department of Corrections:

Before we get into the specifics of the presentation, I thought I would talk about Nevada State Prison (NSP) and Prison No. 8. There have been a number of questions raised about why the Department of Corrections would close a facility and also build a new one.

We are required, by law, to provide budget recommendations consistent with a dollar amount that is given to us by the Budget Division in the Executive Branch. In the course of fiscal year (FY) 2008, we were asked to reduce our budget and did so by closing the Southern Nevada Correctional Center and the Silver Springs Conservation Camp. Those proposals were brought before the Interim Finance Committee for approval and were approved. We were able to close both of those facilities with the loss of only three staff. They were registered nurses who chose to be laid off and go to work in the private sector in Las Vegas.

Our recommendations were made because of the dollar amounts that we were given. After those reductions we were then asked to reduce our budget by 14.5 percent. We were given other scenarios, but they were far too drastic to our Department. I indicated to the Budget Office and the Governor's staff that the prison system could not be safely operated with any reductions beyond the 14.5 percent.

The recommendation that went to the Governor was for the closure of NSP, the Tonopah Conservation Camp, and the Pioche Conservation Camp. Subsequent conversations with the Department of Conservation and Natural Resources

indicated that the Pioche Camp was truly vital for the state for fire protection. It would cost more to close Pioche than to keep it open, therefore the Pioche Camp was put back into the budget. Nevada State Prison was selected, not because of its physical condition; you all saw how well the staff maintains that physical plant in spite of its age. It is not being operated as a prison scheduled to be closed. The staff deserves a lot of recognition for being able to do that in light of all of the pressures that have been placed on them. We had a dollar amount that we had to reach. We had a number of beds that we could make available throughout the system, and we reviewed our existing facilities. Clearly, the Ely State Prison was not eligible because it is our only closed and maximum security facility in the state. The Florence McClure Women's Correctional Center was not eligible because it is the only female prison in the state. When we looked at the Warm Springs Correctional Center, the numbers did not match the amount we had to reduce. The only facility that was both the right size and dollar amount was NSP. We could have nothing better happen to our department than to find the money to keep that facility open.

Prison No. 8's planning started three to four years ago, it takes four to five years from beginning to end to build a prison. The initiation for Prison No. 8 was based on projections we got from JFA Associates about four years ago. It put the need for Prison No. 8 on the table, and the planning was funded in the previous session. This session, the request for the construction money was presented. It will not be staffed in the coming biennium, so the monies we propose to cut for NSP and the money we have asked for the construction of Prison No. 8 are not the same dollars, or from the same fund. We do not know if we will need Prison No. 8 now. Assembly Bill No. 510 of the 74th Session has caused our population to decline slightly over the past year. We are currently operating at 700 inmates below our budgeted projections. This has been consistent for months now. We will probably be able to hold that number, but we will not know for sure until JFA Associates gives us their predictions in March.

We do not make our own population projections. Statutory requirements are that the Department of Administration contract with an independent source to make the projections for the Department of Corrections population. It is on those projections that construction and operations budgets are built for the Department. If the numbers come in below what is necessary to operate our department, then it may make sense to delay the construction of Prison No. 8. That is a decision the Legislature will have to make. The cost of construction will go up if it is not built in the current biennium, and it will provide infrastructure jobs in Clark County.

We need two components, one definitely and one probably, irrespective of Prison No. 8's construction. There is a regional medical facility that is part of the design. It is a stand-alone part of the design for Prison No. 8. We do not have a regional medical facility in southern Nevada where approximately 70 percent of our population resides.

For example, we have three inmates in the hospital being supervised by six officers, which is not part of our funding because we are not funded for transportation for medical needs. We could be accommodating them in a regional medical facility which would provide long-term savings for the state. The other aspect of Prison No. 8, which is also a stand-alone, but a little more difficult to predict for its need, is the execution chamber. There is a bill up for a moratorium on executions; however, at this time we are not prepared to continue with executions. The chamber is not American with Disabilities Act (ADA) compliant. So no matter, we will need to build a new execution chamber in the near future.

We think we have provided enough information ([Exhibit F](#)) for you all to make an informed decision regarding both NSP and Prison No. 8. The staff will do everything that is possible to make whatever decisions coming out of this Legislature the right ones for the State of Nevada.

Chairman Horne:

I wanted to thank you for hosting the tour last week, it was insightful, and especially to those who have never been in a prison facility before. I appreciate the overview on the closure of Nevada State Prison, and that it is a policy decision for the Legislature. While none of us sit on Ways and Means, I will be preparing a report with Ms. Combs, Committee Policy Analyst, to Ways and Means. They will make the fiscal determination, and we will make the policy ones.

Assemblyman Carpenter:

What is the statewide inmate population right now?

Howard Skolnik:

The population as of two days ago was 12,731; 11,761 male, 970 female, a total of 683 below the budgeted amount. In the binders there is also information about the number of beds available. We actually went out recently and made a physical count of every bed we have in the system. This apparently had never been done before.

We broke those beds down into categories. There are general population beds, mental health and infirmary beds, closed, medium, and minimum custody beds.

There is also information on beds that we have that we really do not want to use: secondary beds in what should be single cells. Using those beds for double celling creates a risk that is not in the best interest of the staff, inmates, or Department. They are there if we have to use them on an emergency basis. That is under the population tab.

You will see that a few days ago, we were 706 under budget and 686 yesterday. You will see the definitions used for our population, and in the charts, the populations have stayed close to the projections from JFA Associates, with the exception of the impact of A.B. No. 510 of the 74th Session which changed time credits for inmates. This has reduced our population somewhere between 500 and 1,000.

Assemblywoman Parnell:

I get emails about people sitting in city and county jails waiting to be transferred into the prison system. Do we have any idea how many people there are in that status?

Howard Skolnik:

I get a regular report from Washoe County and there are not that many. I am told that there are fewer than 100 in Clark County. I do not have current numbers. Most of the individuals we do not have yet are waiting for a judgment of conviction. As soon as there is a judgment of conviction the transfer to our intake occurs. It is a fairly steady number.

Assemblywoman Parnell:

I would appreciate if we could get those numbers, especially Clark County. We have to be aware that there is a population waiting, soon to be part of the inmate population.

Chairman Horne:

That is true; sometimes that judgment of conviction is slow in coming.

Howard Skolnik:

The Committee members have received two things from us today. One is a large book with a lot of information and data ([Exhibit F](#)). It includes the fiscal information in the first tab, the budget reductions to date under the second tab, Capital Improvement Projects (CIP) and deferred maintenance under the third tab. I would point out that about \$77 million of our reductions in FY 2008 came from reductions in capital improvements. We have cut just about everything that we can cut out at this time. Capital Improvement is all from the General Fund, and we were then able to move some of the more critical General Fund activity to Bond Funds.

Chairman Horne:

I remember asking last week about the cost of repairing a plumbing leak at NSP and the response was that an estimate had not even been requested. That seems like that would be deferred maintenance.

Howard Skolnik:

We have asked the State Public Works Board to come in and reevaluate since it has been about four or five years since they have looked at that physical plant. They would make an estimate of what needs to be done and in what priority. They would decide if it is an immediate need or can be delayed. They committed to having that done by the end of the month.

Chairman Horne:

We would like to have that report.

Howard Skolnik:

After the Capital Improvement, there is a tab that gets into the issues of our population: population projections and growth. One thing you will find interesting is that we have about 3,000 vacant beds. We can put a minimum security inmate in a medium or a close custody bed, but not vice versa. Please be aware of that because some of the population information can be a bit misleading.

You all have the Male and Female Long Range Plan. It is the most current, completed in January. It is based on the last set of numbers from JFA Associates. Again, we are anticipating new numbers in March, and when we get those numbers, a lot of these figures will be revised.

The next section is the bill draft requests (BDR)s or the bills the Department has requested, and some Legislative history in the back. At the very back is some additional information on how we came to the decisions regarding NSP and Prison No. 8.

The other thing you received this morning ([Exhibit G](#)) is a Corrections Strategic Plan draft. It has spelling errors and does not reference our boot camp. That needs to be put back. Yesterday we had an extensive meeting with the Department of Employment, Training, and Rehabilitation (DETR) to develop a statewide program for reentry. There is funding available from the United States Department of Labor that can be used for reentry. The Director of DETR and I are going after those dollars to create a more cogent reentry program than we currently have.

One of our lieutenants pointed out that we have a number of staff in our department that have graduated from the Department of Personnel's Certified Public Manager and Certified Supervising Manager programs. They are at all levels throughout the system. I have asked them to put together working groups of their people to review things like this document and provide us with input in other areas that the Department is going to be addressing in the future. I have asked them to respond to this draft by the thirteenth.

The introduction will give you a little bit of information about the Department and a recap of the beds available. Sections seven, eight, and nine are the goals, objectives, and our plans by institution and timeline.

Chairman Horne:

How many facilities are there total in the state? I heard there is only one maximum security facility.

Howard Skolnik:

Ely is the only maximum security facility, Florence McClure is the only female facility; Nevada State Prison, Northern Nevada Correctional Facility, Lovelock Correctional Center, Southern Desert Correctional Center, High Desert Correctional Center, Warm Springs Correctional Center and, if it were open, the Southern Nevada Correctional Center are the medium security facilities. We have ten camps, one of which is closed: the Silver Springs Conservation Camp. We have one boot camp and two reentry centers.

Chairman Horne:

So, all levels and classifications of women are in one facility?

Howard Skolnik:

We have the Jean Conservation Camp, which is a female camp with minimum security inmates. We also have a pod at the Casa Grande transitional housing program for females. We have never filled more than 20-some of the 50 beds available. But, yes the majority of medium, closed, and maximum security women's beds are at Florence McClure.

We are waiting to hear from the Legislature for the plans for the Department. We are prepared to close, keep open, construct or not as directed. We do not know what the population is going to be. I am in regular contact with Washoe and Clark Counties, and their populations have also remained flat. So hopefully we will not have a bubble in the near future, which would disrupt planning. I will point out again, the numbers are projections. We do not know what is going to happen.

What is happening right now is counterintuitive. One would expect to see an increase in crime and incarceration during these economic times, but right now we are not seeing that. I do not know if people are going out less so there is less crime or if people are leaving the state. Legislation may also have an influence on the inmate population.

Chairman Horne:

I wanted to ask about health care access for inmates and women's issues on health care access and programs. Last session I had some concerns about incarcerated women not having the same number or types of programs that the men have. I also want to find out if there have been any cuts in the programs over the past biennium.

Howard Skolnik:

We have not cut medical care at all. There was a Legislative Audit of our medical access, and it was found to be above the national average.

Chairman Horne:

We will hear the audit in the Committee next week.

Howard Skolnik:

The medical care that we give is good. An inmate probably has better access to medical care than you or I, in terms of frequency and speed of care. One of the things in the big binder ([Exhibit F](#)) is that our population has grown about 45 percent since 2002, but our staffing has not. So we have gone from about 30 inmates per medical staff to about 50 per staff today. I do not feel this has compromised the quality of care.

The difficulty we have right now is in Clark County where we do not have enough onsite beds to meet the needs of the inmates, so we have the issue of transporting prisoners into the community for treatment at local hospitals. This is not something we budget for and they then also require guarding.

As far as the availability of programming for the female population; there was a lawsuit that was filed against the department about ten years ago by the women, and it was determined that women actually had access to more programming than the male population. I would suspect if we took a hard look we would find that to still be true. We have a lot of community support for our women's facility; it is located in town and is accessible. I am not saying we do not need more.

We have a pre-release individual based in the women's facility that helps inmates transition into the community. As a state, we have not addressed the

issue of programming as well in the past. I joined the Department in 1987 and at that time about 70 percent of our prison population had been in Nevada less than six weeks when they committed their crimes. They were not staying when their time was complete. Therefore, the state made no investment in them because there was no need. Today, more than 80 percent of the inmate populations are residents of the state for a year or more. They will remain in the community when they get out. We did not have a program division until 2004, I believe. We have put more energy into programs in the last five years than the previous 50.

We have been underfunded and understaffed for many, many years. In spite of that, and to the credit of our truly remarkable staff, we have one of the best records in corrections in terms of institutional violence and successful release. I do not know why we have been so successful. The programming that has taken place in the past few years has focused more and more on preparing inmates to go back into the community. We will gather a list for you of programs in the women's facility compared to the men's facilities.

Assemblyman Manendo:

Is there a heating issue at High Desert?

Howard Skolnik:

There have been some problems because the water is very hard. We have had problems with the system closing down because of broken pipes. The main heating loop broke at Southern Desert, but I am not aware of an ongoing heating problem at High Desert. I am aware of some isolated problems that occurred over the course of the winter.

Assemblyman Manendo:

I am hearing that there are still problems out there.

Howard Skolnik:

If so, it has not been brought to my attention. I will look into it.

Assemblyman Manendo:

I would like to hear back about that.

What is the "hole?"

Howard Skolnik:

The "hole" is a unit that is maintained in lockdown status. In keeping with what must be provided, as ordered by the courts, is a minimum of five hours a week out of cell and a shower every 72 hours. We do not refer to it as the

"hole." We refer to is as segregation. There are different kinds of segregation, administrative and disciplinary. Administrative is for investigation and protective custody, and disciplinary segregation is the consequence of behavior adjudicated by the Department.

Assemblyman Manendo:

If someone has Hepatitis B or C, what would be their care?

Howard Skolnik:

The same as if they were in the community. They would be provided with the appropriate medication for their disease.

Assemblyman Manendo:

If they are not?

Howard Skolnik:

There is a grievance process, and there is an emergency grievance process for medical cases. If they use that process they will be seen almost immediately.

Assemblyman Manendo:

What I call the "hole" and you call segregation—are those facilities heated?

Howard Skolnik:

Yes.

Assemblyman Mortensen:

I thought I heard you say that you did not find it necessary to provide programs for people who had been in the state for only a short time before they committed their crime and were convicted. I think I misunderstood you.

Howard Skolnik:

I was referring to 1987, when the Legislature did not fund programming for the Department of Corrections because of the transient nature of the population. That is no longer the case. We provide programming in all of our institutions, and we do not identify inmates as to whether or not they will stay in the community after their release.

We have had contract inmates from Washington who were afforded the same access to programming as our own inmates.

Assemblywoman Parnell:

I am looking at the Public Works Project Cost Estimate for Prison No. 8 [[Exhibit F](#)] page 5 of 135 under CIP and Deferred Maintenance]. When this

was submitted the project justification said, "Inmate population projections indicate additional housing units will be needed. Current projections require three new housing units." Based on the numbers you have given us this morning, which show you have about 2,500 open beds, is that justification still correct?

Howard Skolnik:

I do not know at this time. We have projections today that say yes. JFA Associates will provide us with revised projections in March and those numbers will tell us whether we truly do need these beds or not.

Assemblywoman Parnell:

You have all the other recommendations for maintenance and upgrades at the existing prisons, and just about every facility has some recommendation except NSP. Is there a reason that there is no recommendation for maintenance there?

Howard Skolnik:

The only reason is because we had submitted the recommendation for its closure. We do have a list of CIPs that will be necessary if the institution is going to remain open. We can provide those to you.

Chairman Horne:

Yes, if you can get that to us.

Howard Skolnik:

I can get what we have as of today, and the requested update from the State Public Works Board will not be available until March 2.

Assemblyman Segerblom:

Do you have a cost per inmate per year, and are the costs different for the different levels of security?

Howard Skolnik:

We provided the costs per inmate in the binder ([Exhibit F](#)) by facility and by type of operation. It is the third page under the Fiscal tab.

Chairman Horne:

I recommend that the members of the Committee take the time to go through this binder.

Assemblyman Segerblom:

Am I reading correctly then that the cost is \$22,000 per inmate for FY 2009?

Howard Skolnik:

That is the cost for FY 2009. Our budget submission actually reduced the cost to under \$18,000 per inmate per year.

Assemblyman Kihuen:

Is it correct that there are about 12,000 inmates statewide?

Howard Skolnik:

That is correct.

Assemblyman Kihuen:

Do you have an approximate amount of the total that are undocumented? Do they receive the same treatment as other inmates?

Howard Skolnik:

It is about 1,700 or 1,800. We were the first state to work with Immigration and Customs Enforcement (ICE). We actually froze all movement for a few days so that ICE could come in with about 30 to 40 agents and review the entire population at that time. Immigration and Customs Enforcement not only goes to the county jails but also into our intake centers on a regular basis to review new inmates.

Undocumented individuals are programmed identically to our documented population with the exception of some of the paid jobs inside, which they would not be eligible for on the outside either.

Chairman Horne:

Where are we in terms of the facility in southern Nevada that ICE is thinking about acquiring?

Howard Skolnik:

As of yesterday, we received a letter from ICE indicating that they would not be willing to provide the money to do the modifications to the physical plant that they require upfront. As a consequence we will be putting the facility up for general bidding for a lease. We have two or three private companies that have expressed significant interest, and we feel we can get it leased, again depending on the will of the Legislature, within 60 days.

Chairman Horne:

Private company meaning a private corrections company like Corrections Corporation of America (CCA)?

Howard Skolnik:

Yes, CCA and GEO Group, Inc. (GEO) have expressed interest.

Assemblyman Kihuen:

How do you determine if a person is undocumented? Once they are in prison, what is the process to release them? For instance, Clark County just established a Section 287(g) of the Immigration and Nationality Act program. How do you work in conjunction with the Las Vegas Metropolitan Police Department (Metro)?

Howard Skolnik:

We do not actually work with Metro at the end of sentencing. Every foreign born inmate is reviewed by ICE to determine whether or not he is documented. We do not make that determination, ICE does. Immigration and Customs Enforcement may or may not place a warrant on that individual for when he is released, either on parole or discharge. Once he is about to be released, if there is an ICE hold, we contact them and they will come to pick up that individual. They will then transport the individual to one of their detention facilities.

Assemblyman Carpenter:

In the handout ([Exhibit D](#)) we received from Parole and Probation there is information about the Compassionate Release Program. It says that under this program only two people have been released since 2003. It seems that there would be more people eligible for this program, especially if relatives would be caring for these individuals.

Howard Skolnik:

The Director of the Department of Corrections is the one who makes the final decision of whether or not to release someone on Compassionate Release.

We were sued because we had a family tell us that they were more than willing to take one of our individuals under Compassionate Release. We released the individual, but the family was not capable of providing the medical care required. The offender then sued and won the lawsuit against the Department for releasing him to his family. That is one of the two.

Two years ago we received an inmate who was well into his nineties. He was a brand new inmate given to us for the molestation of children. So there is a narrow line. The inmate has to be certified by our medical division as being terminal with a life expectancy of six months or less in order to qualify. Once inmates get into this status, they tend to be expensive to maintain, and the families frequently cannot do it.

Chairman Horne:

Do you have a board or committee that reviews those requests? Approximately how many do you get in a year?

Howard Skolnik:

Maybe two or three. There are not that many that come to us. It may change as our population ages. The recommendations are initiated by the Medical Division and then reviewed by the Offender Management Division. They both then make the recommendation to me and it is my decision.

Chairman Horne:

I will close the presentation part of the meeting and will open the hearing on Assembly Bill 34.

Assembly Bill 34: Authorizes prisoners in certain state correctional institutions or facilities to use certain electronic communication devices under certain circumstances. (BDR 16-307)

Howard Skolnik, Director, Department of Corrections:

We have requested Assembly Bill 34 because of the changes that have taken place in technology over the past few years. It was about 1995 when a bill was passed limiting inmate access to telecommunication devices, electronic communication devices, et cetera.

This has closed the door on some revenue streams for our Department and created an inability to participate in some facets of technology that would reduce our staff workload. Specifically, today there are kiosks that are very secure which would allow incoming emails from family to inmates. This would reduce the burden on our mailrooms. Additionally, there are kiosks for downloading MP3 files which we would be able to sell, creating another revenue stream. Under the existing statute we are unable to participate in any of those programs.

Finally, we have a real limitation on inmates who are working in the community. They are still inmates, coming either from our restitution center or transitional housing, so they cannot use a telephone, nor can they sit at a computer with Internet access. These are the kind of jobs that have some future, instead of work at carwashes, but we cannot allow them to take these positions because it is prohibited by current statute.

This bill does not give Internet access to inmates. It does not say that it will give phone access to inmates. It allows us to explore the new technologies and

open the door for things coming down the road that would benefit the Department.

Chairman Horne:

In section 1, subsection 4, paragraph (a), subparagraph (3), "Has no access or restricted access to the Internet." "Restricted access" implies that there is some kind of limited access that is going to be monitored, but there is some Internet access.

Howard Skolnik:

The Internet access is the email that we are talking about, incoming only, the technology is there to control that today. We cannot have email access without the Internet.

Chairman Horne:

You were talking about jobs; more and more employers are seeking employees to apply online. Do you have that in mind as well? Do you have the technology where there would be limited access to the Internet, so that an inmate could fill out and send in an application and no more?

Howard Skolnik:

We do not currently have that ability. We would not allow that. Once the technology was there to assure us that the access could be controlled and limited completely, at that time we might consider it. We would then implement it through our transitional housing facilities to work out the bugs before we would ever consider putting it inside an institution.

Chairman Horne:

You said downloads too. I take it that they can buy MP3 players from your canteen?

Howard Skolnik:

Obviously, we are not selling them yet because they are of no value without music. They will probably pay more than what you do for music.

Assemblyman Anderson:

I am always interested and concerned about the people in correctional institutions having educational opportunities in order for them to change their lifestyle. This is not just about incarceration, but correction and new opportunities. As a teacher, I had to pay attention to the fact that what used to take kids months to research now takes them a few hours.

If an inmate wanted to write a research paper on subliminal advertising, which often includes material that is sexual in nature, would he or she be able to conduct that research on the Internet?

Howard Skolnik:

At this time, no. Our law libraries are kept current through the provision of compact discs (CDs) that have current law on them, so the inmates do have access to current information in the law library on a computer, but the computer does not have Internet access. Educationally, it is pretty much the same. Anything that is brought in would be hard copy, CD, or digital video disc (DVD).

I would point out that we do not run the schools. The Department of Corrections hosts the local county school district to actually run the schools in the system, within the framework we give them, which is, at this time, no Internet access.

Assemblyman Anderson:

So if I were taking a course to complete my high school diploma, I would not be able to research say, the Battle of Bunker Hill, on the Internet?

Howard Skolnik:

Hopefully there would be a book in the library or that the school district could provide one to the inmate for research purposes, but no, you could not access the Internet.

We have a successful rate of completion on the proficiency test, which I am not sure I could pass today. The education departments in our institutions are doing a pretty good job.

Assemblyman Anderson:

The law library is a good example. Other states' statutes are constructed differently, and an inmate's defense might be predicated on that information. If he or she were going to be released from Nevada and go to another state that might have a hold on him, it would be good for him to know what to expect when he arrives. The research would not be possible because only Nevada's laws are available in the library because of the cost.

Howard Skolnik:

Candidly, you are beyond my expertise at this point. I assume that if an inmate wanted access to case law from a different state, he would be able to get that.

Assemblyman Anderson:

It is done now through Westlaw.

Howard Skolnik:

They have access to that on CD.

Assemblywoman Parnell:

I have a question on section 1, subsection 3(h). Can you give me an example of what "Purchasing certain items" means?

Howard Skolnik:

Our current vendor and the other vendors who are out there are capable of providing a commissary via kiosk. This would allow the inmates to order their goods through a kiosk located in the cell house. We could then verify that they had money in their accounts and would open the door to additional goods that they cannot get now. It would also allow us to better identify what is selling and what is not, so that we could modify what we carry in the stores.

Assemblywoman Parnell:

And there is a way to ensure that the kiosks are being used only for that and nothing else?

Howard Skolnik:

That is correct. It is a direct line to the commissary. It is not a line that accesses the total Internet.

Assemblyman Hambrick:

In section 2, subsection 2, how would you monitor the inbound emails? Do they go into a queue to be inspected?

Howard Skolnik:

Yes, they would go into a queue for inspection prior to delivery. There is also software out there that would allow us to identify key words in the emails if we chose to purchase it.

Assemblyman Mortensen:

What is the reason that you do not allow prisoners to have access to the Internet?

Howard Skolnik:

There are a number of reasons. Let me give you an anecdotal story. When the Internet was first available, there was an inmate in the captain's office in the Philadelphia County jail. He knew how to work the computer and the captain did not. The inmate hacked into a bank account, transferred \$40,000 into his personal account, made bail, withdrew the rest of the money, and disappeared.

That was way before there was the kind of access and technology there is today.

Our fear is that if inmates had uncontrolled access to the Internet, they would be creating new victims, harassing old victims, and a lot of things we do not want them to do. To say that we are smarter than all of our inmates would not be the truth. Rather than let them outsmart us, we just do not give them access.

Assemblyman Ohrenschall:

I would like to follow up about the queue of inbound emails: how would you know which emails are privileged, for instance, emails from an attorney?

Howard Skolnik:

We have a separate process for legal mail, and we would maintain that process. We would not use email for that because we could not guarantee the confidentiality of inbound email.

Assemblyman Gustavson:

Does anyone in the Department have the ability to trace emails? Section 2, subsection 1 states, "may be intercepted if: (a) The interception is made by an authorized employee of the Department." I do not know how that would work.

Howard Skolnik:

Yes, we do. The Inspector General's Office would be the oversight of the investigation, which would be conducted by our Management Information Systems (MIS) staff. We have had a number of our own staff terminated for misusing the Internet on institutional computers, and we are able to track all of that. That capability would also exist in this system.

Assemblyman Gustavson:

I was curious because it says "employee of the Department."

Howard Skolnik:

The Inspector General is internal to our Department.

Chairman Horne:

Section 2, subsection 5, the "Reliance in good faith" paragraph, includes the phrase "or other person" intercepting.

Howard Skolnik:

That would be the vendor, the provider of the service. There are vendors who already provide this service to other correctional agencies, and we would be

utilizing one of those organizations who have demonstrated their ability to manage an email system without its being compromised. They would also have access, and we would utilize their assistance if we needed to do so.

Chairman Horne:

Could we add something to have you report back in the biennium on the success or failure of this system?

Howard Skolnik:

We would be happy to provide you with reports regarding the success or failure of the system.

Chairman Horne:

Is there anyone in favor of A. B. 34?

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada:

We are here in support of A. B. 34 with a caveat. We see the use of expanded technology as a boon for the Department of Corrections and welcome the ideas put forth in this bill. We would like further clarification that these proposals not be used as a substitute for full due process rights at parole hearings, one-on-one medical care, or visitation rights.

We have handed in an amendment for your consideration ([Exhibit H](#)). I have not had the opportunity to speak with anyone from the Department but we would be more than happy to work with them to tailor the language according to their insight.

Specifically, we suggest an explicit additional use of electronic communication devices for inmates with disabilities and include an amendment that allows for confidential communications for telemedicine. Currently, the law does not include medical conversations as confidential, most likely because inmates do not actually seek medical treatment by telephone. Were telemedicine to be implemented, we would like confidentiality to be clear.

Chairman Horne:

You propose adding the facilitation of communication of inmates with disabilities. You heard Mr. Skolnik's and the Committee's concerns about inmates' access to the Internet, and it seems like the communications would be incoming not outgoing. Do you believe the proposed amendment will stay within the scope of that endeavor?

Rebecca Gasca:

Yes, for the most part. For the telemedicine portion, from what I understand—I am not an expert by any means—telemedicine is a one way communication in general.

About the bolded paragraph following section 1, paragraph 3 ([Exhibit H](#)), this is just a further clarification that these allowances are supplementing current forms of communication. We do not want anything to be a substitution for the rights that inmates currently have.

Assemblyman Anderson:

How would an inmate qualify as disabled? How would you make that determination?

Rebecca Gasca:

I do not have it in front of me, but we would use the definitions in existing statutes. I would be happy to look into it further.

Assemblyman Anderson:

Do you feel that there is a protocol already in place to verify that the person on the other end of the phone is who he says he is? I do not want to allow access to someone who puts himself out to be a physician or under the guise of protection of being a physician, when he is not licensed in Nevada.

Rebecca Gasca:

I do not presume that there are any regulations that cover this because telemedicine is not currently implemented within our institutional facilities. That would have to be considered. I am open to working with a representative from the Nevada Department of Corrections (NDOC) about how this language might affect the proposal.

Chairman Horne:

[To Director Skolnik] Have you had the opportunity to see the amendment? [To Rebecca Gasca] Did you give a copy to Director Skolnik?

Rebecca Gasca:

We have not had the opportunity.

Chairman Horne:

Please get that to the Director. We will hear this bill again. In your amendment, you have a subsection (h), in section 2, which states that "a communication made by an offender is confidential if it is made to:" and you added an (h) "a

doctor or other medical professional who is consulting with an inmate about an inmate's medical care." I am wondering why that does not exist already.

Howard Skolnik:

All of our medical information is kept confidential as required by Health Insurance Portability and Accountability Act (HIPAA) laws. Any medical information, including this, if we choose to incorporate it, would automatically be maintained under those controls.

We already provide devices to our handicapped, so we have no objections to that part of the amendment. I do not know that I would want our inmates self-diagnosing and contacting telemedical services without going through our medical division. I would prefer that the inmates not be the ones making the phone calls, that it would be our medical staff utilizing telemedicine if they so choose. I am not a doctor and cannot begin to address when that would be appropriate.

Chairman Horne:

If you would work with Ms. Gasca, I would appreciate it.

Is there anyone else in favor A. B. 34?

Kevin Ranft, Region 1 Vice-President, American Federation of State, County, and Municipal Employees, Carson City, Nevada:

Our organization is clearly in favor of this bill, as long as a few questions are answered and security is maintained. We will work with the Department of Corrections to make sure that happens.

We always look for advancement to improve the inmates' ability to reintegrate when they get out of prison. We do not want them to be ages behind.

We are curious about the fiscal note, especially during this economic downturn, and the Department has already cut the staff tremendously. So we are concerned about the cost to implement the bill and how many full-time employees compared to custody staff will be needed to maintain the safety and security of the prisons systems.

I am a correctional officer at the Northern Nevada Correctional Center, so I would like to see staffing for security first, but I am in favor of the bill.

Chairman Horne:

The bill shows a \$20,000 fiscal note, for savings.

Lori Bagwell, Deputy Director, Department of Corrections:

That is actually a revenue generator; it is not an expenditure line. There is no additional staff anticipated for this project.

Chairman Horne:

Is there anyone else in favor of A. B. 34? [There were none.] Opposed?

Tosh Dawson, Private Citizen, Virginia City, Nevada:

I did not plan on speaking on this bill until Director's Skolnik's explanation. For the first time, I am going to agree with him. I have experience with the situation of denying inmates Internet access.

I ran a transitional housing unit for violent felons. These people were closely supervised by me and other staff, yet they managed to get access to the Internet, to print documentation and payroll checks on the proper stock paper and put all of those elements together to get themselves early releases. The payroll checks were used to pay off their restitution, and with their restitution paid off and letters of employment, they were released early.

All of that happened under the watch of a lot of different people. This is a situation that is an excellent opportunity for victimization in the prisons of the lower functioning and less sophisticated individuals. I know this from first hand experience.

Chairman Horne:

Are there any questions for Ms. Dawson? I see none. Are there any more opposed to A.B. 34? [There were none.] Are there any neutral? [There were none.]

I will close the hearing on A. B. 34. I will bring it back before the Committee; it will probably appear in our first work session.

I will open the meeting for public comment, especially on the presentations that we heard. Please note the time; I may need to cut you off if we are called to the floor session.

Dennis Mallory, Chief of Staff, American Federation of State, County, and Municipal Employees, Carson City, Nevada:

I would like to testify about the potential closure of Nevada State Prison (NSP).

As an organization, we do not believe closing NSP during this budget crisis is the responsible thing to do. It defies logic to build a new prison in Las Vegas, while at the same time shutting a prison in Carson City, which is operating fine. The inmates and the officers like it.

In one conversation I had with the Director about three months ago, he stated that it would cost approximately \$50 million to completely refurbish NSP. Rather than spend the \$200 plus million to build a new prison in Las Vegas, it makes sense to us to spend \$50 million to refurbish the prison here in Carson City.

There are other arguments that we would like considered in this discussion. First, the savings attributed to closing NSP are not exactly what the Department is stating. The numbers that you are seeing are the total operating costs of NSP over the biennium. I believe it is \$36 million, \$18 million each year. Eighty percent of that cost is attributed to staff. One important note is that NSP currently employs the most senior correctional staff in the state, so if NSP were to close, we would see them bumping lower senior staff within Carson City's geographical location. This would result in lesser senior staff being laid off and so the salary savings you see is not exactly accurate, and would be much less.

Secondly, we are housing inmates, specifically at Lovelock, as of two or three weeks ago, in activity rooms. There is double bunking in Ely, where there should be single bunking because it is the maximum security prison. There is also talk about housing inmates in gymnasiums and in warehouses, specifically in a Prison Industries (PI) warehouse in Lovelock, which has one bathroom and no shower.

I know that Chief Justice Hardesty has testified to various committees and commissions that the prison population is at 140 percent of capacity. Shutting down a prison when we are looking at unique ways to house inmates does not make sense.

Chairman Horne:

So you dispute what Director Skolnik states, which is that we are below capacity now? It seems like a great gulf between your numbers and the Director's.

Dennis Mallory:

I am going by the report generated by Chief Justice Hardesty's Interim Commission. He has stated on the record, I think two Prison Board Commission meetings ago, that we are at 140 percent capacity.

Thirdly, the turnover rate in Las Vegas for correctional officers is double the rate in northern Nevada. The reason is the majority of the law enforcement competitors are in the Las Vegas area, like Metro, City of Henderson, and the City of North Las Vegas. This would make it extremely difficult to staff a new

prison. The American Federation of State, County, and Municipal Employees (AFSCME) has unfortunately become a training ground for the law enforcement agencies in the Las Vegas Valley.

There has been a recommendation to staff the old Jean prison, which is being taken over by ICE.

Finally, the closure of NSP would result in over 100 staff members being laid off. This would further dramatize the already horrific budget crisis that Carson City is already experiencing. Correctional officers in Carson City are some of the few citizens who are still able to frequent businesses. If we laid these people off, it would further aggravate the housing crisis in the state, here in Carson City, and Dayton.

In closing, we do not believe that closing a prison at this time makes sense financially nor logistically.

Assemblyman Mortenson:

I am looking at the amendment that the American Civil Liberties Union (ACLU) submitted for A.B. 34. It looks good and I was wondering whether the Chairman would take a motion to adopt it.

Chairman Horne:

Not at this time. I want to bring this back to Committee because there are still some questions, and the ACLU needs to work with Director Skolnik because he had not yet seen the amendment.

If there are no others to come before Committee, I will adjourn the meeting.
[There were none.]

[Meeting adjourned 11:00 a.m.]

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: February 10, 2009

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Bernard W. Curtis, Division of Parole and Probation, Department of Public Safety	PowerPoint Presentation
	D	Bernard W. Curtis, Division of Parole and Probation, Department of Public Safety	2006-2008 Biennial Report
	E	Keith Munro, Attorney General's Office	Information regarding the Adam Walsh Act
	F	Howard Skolnik, Director, Department of Corrections	Binder, Information about the Corrections System
	G	Howard Skolnik, Director, Department of Corrections	Department of Corrections Strategic Plan Draft, January 2009
<u>A.B.</u> <u>34</u>	H	American Civil Liberties Union of Nevada	Proposed Amendment