

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

**Seventy-Fifth Session
May 5, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:17 a.m. on Tuesday, May 5, 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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Kyle McAfee, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Howard Skolnik, Director, Department of Corrections
Shelly Blotter, Division Administrator, Employee and Management Services, Department of Personnel
Sandy Smith, Chief IT Manager, Planning and Program Division, Department of Information Technology
Kevin Ranft, representing the American Federation of State, County, and Municipal Employees, Carson City, Nevada

Chairman Horne:

I will open the hearing on Senate Bill 47 (1st Reprint).

Senate Bill 47 (1st Reprint): Authorizes the Department of Corrections to perform random drug and alcohol testing on certain employees. (BDR 23-306)

Howard Skolnik, Director, Department of Corrections:

Senate Bill 47 (1st Reprint) authorizes the Department of Corrections and other state public safety agencies to randomly drug test its employees. We have not been allowed to do so in the past and have had a number of incidents over the years involving substance abuse in employees. We feel this would contribute greatly to the safety and security of our facilities. We have modified the original bill in conjunction with the employee associations to allow for a one-time opportunity to seek treatment as opposed to termination should there be substance abuse by an employee. Essentially, we have mirrored the policies that the Las Vegas Metropolitan Police Department has established for its law enforcement officers.

Chairman Horne:

Has the Department made an attempt to do this in the past?

Howard Skolnik:

Not that I am aware of. This is our first effort to bring substance abuse testing randomly into our agency. After we proposed this we were contacted by the Director of Public Safety who expressed an interest in joining us in this bill, so the language was modified from the original bill. We have discussed this with employee associations and have their support.

Assemblyman Hambrick:

I had random drug testing throughout the entire length of my career, as has my colleague at the other end of the table. Does the employee have a chance to step forward and say that he or she has a problem before notification of a random testing, or on the day of notification do they still get that go-home-free card?

Howard Skolnik:

Right up until the second that they are tested.

Assemblyman Carpenter:

On page 5 it says that an employee can refuse to submit to a drug test. They can only do that one time. Is that correct?

Howard Skolnik:

That is correct. They can refuse one time. They are then referred to an employee assistance program (EAP) and subsequently to an approved substance abuse program. They are expected to complete that substance abuse program in order to avoid any disciplinary action, but they only have one opportunity.

Assemblyman Carpenter:

What happens if they go through the program and later fall off the wagon?

Howard Skolnik:

They would lose their jobs. Our concern is for the safety and security of the staff and inmates. We do not want people coming into work high.

Assemblyman Segerblom:

If I was an employee and I had one of these random tests and tested positive, would I have a right to go to the employee assistance program?

Howard Skolnik:

That is correct. You would have an opportunity the first time to go to an employee assistance program (EAP) to complete an approved substance abuse program and come back to work.

Assemblyman Segerblom:

That is not our interpretation of the bill. With the way we read the bill, if you do not turn yourself in and just go through a random test and fail it, then you are subject to discipline.

Howard Skolnik:

That was not the intent of the language.

Nick Anthony, Committee Counsel:

I do not believe that language is currently in the bill. We can certainly review that, and if that is the Committee's intent we can come forward with an amendment.

Assemblyman Anderson:

If the employee has tested positive and decided to put himself in the program, are you allowed to test him again before he has completed the program?

Howard Skolnik:

That is not the intent of the bill. I am not aware of whether or not that language is in the bill. The random list would be generated outside of our agency, so it is conceivable that somebody could be tested two days in a row. It would not be our intention to terminate somebody who has voluntarily entered a program until that program is completed and they fail the second time.

Assemblyman Anderson:

I assume you would want them to be admitted to an approved program.

Howard Skolnik:

We would expect the program to be identified through the employee assistance program. They would be referred, they would complete the substance abuse program, and at that time it would be the end of their first chance. If there was a subsequent testing during the period in which they were in that program, we would anticipate that they would come up clean because they should not be using drugs or alcohol while they are in the program, but they are still under treatment so we would give them consideration for that.

Assemblyman Anderson:

What happens if they are in a court-appointed drug and alcohol program?

Howard Skolnik:

The chances are that they would have already lost their job because to get into a court-appointed program, they would probably have committed some type of crime. That is a class 5 termination offense.

Chairman Horne:

I have a question on section 1, subsection 3, "After taking a screening test which indicates the presence of a controlled substance, fails to provide proof, within 72-hours after being requested by his appointing authority, that he had taken the controlled substance as directed pursuant to a current and lawful prescription issued in his name, is subject to disciplinary action." What is the scope of that disciplinary action?

Howard Skolnik:

That would be placed into our prohibitions and penalties and would probably be a class 5 termination offense or, at the very least, a class 4 suspension.

Chairman Horne:

Those are the two options suspension or termination?

Howard Skolnik:

If they are not going to be participating, yes.

Chairman Horne:

Is the plan to advise all of the employees of the employee assistance program, initially?

Howard Skolnik:

Yes. That will become part of the preservice and continue into the employment training program.

Chairman Horne:

If this was in place today, and tomorrow you did a random testing and corrections officer Jones tested positive, but he is not in an EAP, what happens? Do you offer the EAP because he is not in it at the time he is tested positive? Is he subject to disciplinary action at that time?

Howard Skolnik:

He would get a referral to the EAP at the time he tested positive and have an opportunity to go to that program without any disciplinary action taking place.

Chairman Horne:

Let us say that he tests positive again the next month and has already been identified as being in the EAP.

Howard Skolnik:

Has he completed his substance abuse program?

Chairman Horne:

He is still in the program. If his name comes up while he is still in the program, do you still test him or do you wait until after the completion of the program?

Howard Skolnik:

We have not determined that at this point. That could be incorporated into our regulations governing this.

Chairman Horne:

Going further, what if he tests positive after the completion of the program?

Howard Skolnik:

He would be disciplined accordingly.

Chairman Horne:

Suspension or termination?

Howard Skolnik:

More than likely, termination.

Assemblyman Segerblom:

Even if he tests positive for an illegal substance like marijuana, you would offer the EAP?

Howard Skolnik:

One time.

Assemblyman Segerblom:

For the fiscal note, it says that the appropriation was contained in the Executive Budget. It has to be a huge cost to randomly test the whole system.

Howard Skolnik:

We are not going to randomly test the whole system, otherwise it is not random. We have substantial funding in our budget funding for the testing of inmates. A small portion of those funds would be taken for the random testing of staff. You will note that it says, "may be tested" so that we do not have a

major fiscal note. If we do not have money, we do not do random testing. If we run out of money, we stop random testing. We may not tell anybody that we have run out of money.

Assemblyman Carpenter:

On page 5, line 28, it talks about "a reasonable time after an employee submits to a test" when they can get a test of their own if they felt that test was wrong or whatever. What do you think a reasonable time would be?

Howard Skolnik:

I would say the same 72-hour period that is referenced elsewhere in the bill.

Assemblyman Carpenter:

It seems to me that it might be better to have a time-specific limit.

Howard Skolnik:

I have no objection to changing "a reasonable time" to "within 72-hours."

Assemblyman Carpenter:

My definition of reasonable might be a lot different than somebody else. I might want 30 or 40 days.

**Shelly Blotter, Division Administrator, Employee and Management Services,
Department of Personnel:**

I am here in support of what Director Skolnik has asked for in S.B. 47 (R1) in general. The Department of Personnel has reviewed the amendment to this bill and has a couple concerns about it. We are proposing an amendment ([Exhibit C](#)). We are trying to accomplish two things with this amendment. One is to remove the responsibility of the random selection from the Department of Information Technology. Currently, the state contracts with providers who do random selections for people obtaining commercial driver's licenses. We also have a drug testing vendor that we use for our reasonable suspicion program. There is a low cost vehicle for doing those random selections that would not put additional responsibilities on the Department of Information Technology.

Our primary concern relates to the EAP. The way the current language is written, it appears that the EAP provides the treatment. That is not the case; it is a referral from the EAP to a treatment provider. We have reworked the language a little bit, trying to make certain that everybody understands that the EAP is not going to provide the treatment.

Chairman Horne:

In your first proposed amendment, it reads that additionally the state's current vendor that administrates the preemployment and reasonable suspension drug test program can provide this service for a nominal fee. So you would remove the vendor charges?

Shelly Blotter:

If the agency chose to participate in this random program—let us say that the Department of Public Safety participated in it or even the Department of Corrections—and they already do random testing for commercial driver's licenses, they may already contract with a vendor who does the random testing, so they can tack it on to their current services. If they do not, then there are vendors in the community that provide this service. The contract would be through state purchasing.

Chairman Horne:

How much would it cost if you were to do it?

Sandy Smith, Chief IT Manager, Planning and Program Division, Department of Information Technology:

We do not have any available resources. No money was entered into the NEBS system from that department to fund any development that would be necessary to go on in order to support this.

Assemblyman Anderson:

It is unfunded, and there is no place in the budget where it is anticipated that this is included?

Sandy Smith:

That is correct.

Assemblyman Carpenter:

The amendment speaks about a "reputable business." In some small communities that service is provided by a county hospital. Would that fall under the "reputable business" definition?

Shelly Blotter:

I believe we were trying to mirror the language in the other portion of the amendment in regard to "reputable business." There is a business that is contracted through state purchasing that provides this service. They would have to be vetted through that process.

Kevin Ranft, representing the American Federation of State, County, and Municipal Employees Local 4041, Carson City, Nevada:

Our organization has worked with Director Skolnik on this bill, and we have an agreement on this bill. Safety and security is our primary goal. We do not want officers running around the institution with drugs or alcohol in their system.

How do they catch it? Do they have another system for that? That relates to just cause. If a supervisor sees an employee who is acting strangely or is reported acting strangely, that is an opportunity for the supervisor to send him immediately home and to immediately get a drug test as well. That portion is there. This portion of the bill is going to be the random part to catch people who are not out in the open.

We feel that there should be a third party. We agree with the language in the amendment. We have no problem with the amendment as long as it stays within a third party.

Chairman Horne:

I will close the hearing on S.B. 47 (R1) and bring it back to the Committee.

We are adjourned [at 8:44 a.m.].

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: May 5, 2009

Time of Meeting: 8:17 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 47 (R1)	C	Shelly Blotter	Proposed amendment