

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

**Seventy-Fifth Session
May 14, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:31 a.m. on Thursday, May 14, 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 Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)
Assemblyman Harry Mortenson (excused)

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
Ben R. Graham, Private Citizen, Las Vegas, Nevada
Kristin Erickson, representing the Nevada District Attorneys Association,
Reno, Nevada
Orrin Johnson, representing the Washoe County Public Defender's Office,
Reno, Nevada
Connie S. Bisbee, Chairman, State Board of Parole Commissioners,
Department of Public Safety

Chairman Horne:

[Roll was called. The standing rules were stated to those present.]

We are going to start with 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)

Allison Combs, Committee Policy Analyst:

The work session document ([Exhibit C](#)) in front of you contains the three bills for today. This is the bill that authorizes the Department of Corrections and state law enforcement agencies to perform random drug and alcohol testing on employees. There were three conceptual amendments discussed during the hearing.

The first one was to clarify in the bill that an employee who tests positive for the first time under the random drug testing program would be allowed to participate in an employee assistance program.

The second one was a proposal to define "a reasonable time" after submitting to the random drug test for an employee to obtain an independent test from a laboratory of his choice. That "reasonable time" language is from the existing law under testing based upon probable cause or reasonable belief.

The third amendment was submitted by the Department of Personnel, paragraph (a) asks to provide responsibility for the development and supervision of the method of random selection—instead of the Department of Information Technology which indicated they would have to put a fiscal note on the bill—and substitute the Department of Personnel for an "experienced business." The second one clarifies the language regarding an employee assistance program. Those requirements include the employee's successful completion of a treatment program and proof of completion of the treatment program to his employer.

Mr. Anthony has created a mock-up for the first and third amendments, which start on page 5.

Assemblyman Segerblom:

I want to clarify the standard for law enforcement positions or peace officers. I want to make sure that goes all the way up the chain of command to the Lieutenants, Deputy Warden, and Warden.

Chairman Horne:

I understand that this is supposed to be drug testing for persons who are responsible for public safety. I want to make sure that we are not capturing strictly administrative personnel.

Howard Skolnik, Director, Department of Corrections:

It was our intent to have all staff, up to and including the Director, included in the list that would be generated for random testing.

Chairman Horne:

Including yourself?

Howard Skolnik:

Including myself.

Chairman Horne:

I want to go over the amendment concerning "reasonable time" that was proposed by Mr. Carpenter. I am going to ask that number two not be considered.

Nicolas Anthony, Committee Counsel:

"Reasonable time" is the standard currently used in the *Nevada Revised Statutes* (NRS) where there is drug testing based upon probable cause or reasonable belief. That is mirrored in this language. When the Committee discussed it, maybe they were under the impression that this was a reasonable time after the results were received. The law currently provides that the individual subject to testing would have a reasonable time, after he tests, to get another test done at his own expense. It is our belief that "a reasonable time" would be up to the parties to determine.

Chairman Horne:

I am sure that "reasonable time" framework would certainly vary depending on the type of drugs involved. I believe the term "reasonable time" is appropriate.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
SENATE BILL 47 (1st REPRINT) WITH AMENDMENTS ONE AND
THREE.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

Assemblyman Hambrick:

It is going to go back to the person being notified that there will be a reasonable time for a person to have his own test done. We have to make sure that "reasonable time" is within what the experts would recommend. You want to have a time frame that is sufficient to detect the drug after the second test.

Chairman Horne:

That "reasonable time" language is for the litigants. We cannot put into the statute a reasonable time, for instance if an employee tested positive for tetrahydrocannabinol (THC). The reasonable amount of time in which a person can get their own test would be different than the reasonable amount of time for a person who tests positive for alcohol versus other drugs. We cannot include a finite time frame for each potential prohibitive substance that they may be tested for. If it gets to the point where they are fighting that issue in court then that is something that the attorneys will dispute.

Assemblyman Hambrick:

I agree with you. We have just established legislative intent.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND
MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Horne:

Assemblyman Hambrick will handle this on the floor.

Let us move to Senate Bill 84 (1st Reprint).

Senate Bill 84 (1st Reprint): Authorizes cities to create departments of alternative sentencing. (BDR 16-257)

Allison Combs, Committee Policy Analyst:

Senate Bill 84 (1st Reprint) is a measure that authorizes cities to create departments of alternative sentencing under the statute and mirrors the existing laws allowing counties to do the same thing. There is one proposed amendment on pages 13 and 14 of the work session document. It was proposed by the City of Henderson. It essentially takes out of the bill the authorization for a city to operate a department of alternative sentencing on behalf of a county that does not have one and vice versa. If a city has one it operates its own; it would not operate in counties that do not have a department. That is what the amendment language on pages 13 and 14 provides for.

Chairman Horne:

My concern is for defendants who have obligations in multiple courts. If a defendant has obligations with one court and is then brought before another court in another jurisdiction, has anyone anticipated how that would operate? Would there be a likelihood that this defendant may be jumping through hoops for more than one jurisdiction at the same time?

Ben R. Graham, Private Citizen, Las Vegas, Nevada:

I think the effort was to allow misdemeanor jurisdictions to use alternative sentencing programs. I think this is enabling legislation. The limited jurisdiction courts, I think, are in support of this. It is going to be an obligation for defense attorneys and prosecutors to coordinate these court appearances. I think it would be helpful for a good number of people.

Chairman Horne:

I do not want to hold up the legislation. I would like anybody who is listening to know that it is my hope that these learned judges would understand and not overburden a defendant. That is not to dismiss them from their obligations in their jurisdiction, but if they are currently under those obligations in another jurisdiction and they are going through an alternative sentencing program somewhere else, they should not be overburdened with additional things. Sometimes, in my practice, I have had the judge say, "We are going to continue

this for three months until you are complete in North Las Vegas. We will see how you do over there."

That is how I hope this practice will go forward. We do not want to set them up for failure. I am not saying they are not going to be obligated to meet their duties that they have burdened themselves with by their crimes in other jurisdictions. I do not want multiple jurisdictions piling on at the same time.

Assemblyman Anderson:

Recognizing that Washoe County has drug courts in two cities—the Municipal Court in Sparks, the District Court in Washoe County, and the Reno Municipal Drug Court—all of which utilize different kinds of programs to manage their people, are you aware of how they handle it?

Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada:

We have several drug courts. Technically, we do not have a misdemeanor drug court, but there is a program administered by the Department of Alternative Sentencing (DAS) which is run through the Reno Justice Court. Municipal court does not have a DAS course, and I am not certain if they use the Reno Justice Court DAS services or not.

Orrin Johnson, representing the Washoe County Public Defender's Office, Reno, Nevada:

I have more direct experience than Ms. Erickson does with alternative programs in the justice courts at the misdemeanor level in DAS. In the Reno Justice Court there is a program called the core compliance program. It is run like a drug court, but it is not a drug court because your sentence does not get overturned or set aside. You just avoid a lengthier jail sentence. It is the same DAS that is used to supervise from both the Sparks Justice Court and the Reno Justice Court. Often that is a condition imposed from a suspended sentence, so they have to check in regularly with DAS. For the most part it has been pretty positive, although sometimes I have concerns with not overburdening people and setting them up for failure. It often provides an alternative to simply putting them in jail.

Chairman Horne:

The Chair will entertain a motion.

ASSEMBLYMAN HAMBRICK MOVED TO AMEND AND DO PASS
SENATE BILL 84 (1st REPRINT).

ASSEMBLYMAN ANDERSON SECONDED THE MOTION

THE MOTION PASSED. (ASSEMBLYMEN COBB AND MORTENSON WERE ABSENT FOR THE VOTE. ASSEMBLYMAN MANENDO RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Assemblyman Kihuen will handle this on the floor.

Our final bill is Senate Bill 238 (1st Reprint).

[Senate Bill 238 \(1st Reprint\)](#): Revises certain provisions relating to the restoration of civil rights for certain criminal offenders. (BDR 16-895)

Allison Combs, Committee Policy Analyst:

Senate Bill 238 (1st Reprint) authorizes the State Board of Pardons Commissioners to adopt a policy to provide an expedited process for restoring civil rights without the need for a meeting of the Board. As part of that process, the person must submit an application and meet certain conditions in the bill. The conditions include no objection from the court in which the judgment was rendered, or the district attorney, and there cannot be any request from a victim for notice of a clemency hearing. There were no amendments proposed on this bill during the hearing.

Chairman Horne:

Ms. Bisbee, I am concerned about these expedited hearings for restoring civil rights. I do not want it to be an expedited process for denial. I know you get inundated with requests, and I know time is a precious commodity, but I do not want this to be a rubber stamp denial process. We propose to amend it to say that it is expedited for granting the restoration of civil rights.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety:

That is correct. These are people who would end up on an all day agenda, which essentially the Pardons Board would do as a consent agenda approval. This allows those people who would be on that consent agenda to, as they qualify, apply to the Pardons Board only one time a year. It allows the Division of Parole and Probation to continually conduct investigations instead of investigating 35 cases at one time. It is not intended to deny them. These are people they would want to approve. They would approve them in a consent agenda form that one time per year if they manage to get to the Pardons Board. It is not at all meant to be a way to deny anybody. It is to expedite the process by lessening the burden on the Division of Parole and Probation from doing all of those investigations at one time. If investigations can take place throughout the

year, these people, who would normally have them restored on a consent agenda in an actual full-blown hearing, can get their rights restored.

Chairman Horne:

I want to put on the record that I have a concern about this being used to get their gun rights back. Mark Woods said they would still conduct investigations and background checks on individuals seeking to have their right to bear arms restored. Is that correct, Ms. Combs?

Allison Combs:

Yes. Mark Woods indicated that they will still do the investigations. This will facilitate that process so that they do not get a large batch at one time. They indicated that they will contact the victim as part of that investigation process.

Chairman Horne:

The Chair will entertain a motion.

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS
SENATE BILL 238 (1st REPRINT).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND
MORTENSON WERE ABSENT FOR THE VOTE.)

Assemblywoman Parnell will handle this on the floor

We have a concur/not concur for Assembly Bill 259. It was amended in the Senate. It was proposed by Mark Woods of Parole and Probation. This bill was the bill that provided for forfeiture of good time credits and restoration of those good time credits. Parole and Probation wanted an added amendment that says, "A person sentenced to serve a period of probation for a felony or a gross misdemeanor or who owes any restitution ordered by the court, including without limitation any payment or restitution required, must be allowed a deduction from the period of probation for making payments of restitution only if the person pays the full amount of restitution imposed."

I understand the sentiment of that. We want these individuals to pay their restitution. However, someone may owe \$5,000 in restitution. This person may be doing everything that is asked of him; he is staying clean, he has a job, and he is staying out of trouble. Because of his educational experience he may be a dishwasher making between \$8 to \$10 an hour. He is only putting \$50 a month towards his restitution, but he is doing it consistently. With this

amendment, this person could term out without ever having completely paid his restitution, but I believe this person has earned his good time credits and should be entitled to them. It does not absolve him from his responsibility to pay that restitution. I believe that you are going to capture too many people who are not going to get those credits solely because they have not completed paying their restitution. On the floor, I am not going to concur with this amendment sent over from the Senate.

We are going to recess [at 9:06 a.m.].

[The Committee reconvened behind the bar and was adjourned at 1:39 p.m.].

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: May 14, 2009

Time of Meeting: 8:31 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 47 (R1)	C	Allison Combs	Work session document
S.B. 84 (R1)	D	Allison Combs	Work session document
S.B. 238 (R1)	E	Allison Combs	Work session document