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

Seventy-Fifth Session
February 24, 2009

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:02 a.m. on Tuesday, February 24, 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

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Julie Butler, Manager, Records Bureau, Records and Technology Division, Department of Public Safety
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services
David M. Smith, Hearing Examiner II, State Board of Parole Commissioners, Department of Public Safety
Connie S. Bisbee, Parole Commissioner, State Board of Parole Commissioners, Department of Public Safety
Don Helling, Deputy Director, Operations North, Department of Corrections
Tonja Brown, Advocate for the Innocent, Carson City, Nevada
Patricia Hines, Advocate for Criminal Justice Reform, Yerington, Nevada
Florence Jones, Private Citizen, Las Vegas, Nevada

Chairman Horne:
[Roll called. Opening remarks.]

Today we will be hearing two bills. We will start with Assembly Bill 81.

Assembly Bill 81: Makes various changes relating to the Central Repository for Nevada Records of Criminal History. (BDR 14-314)

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety:
With me today is Julie Butler, Manager of the Records Bureau. We are here today from the Criminal History Records Repository (Repository) to present A.B. 81, which was requested by the Records Bureau to update various

sections of Chapter 179A of *Nevada Revised Statutes* (NRS), our authorizing legislation, so that it is consistent with current practices and policies of the Federal Bureau of Investigation (FBI). I will now turn it over to Ms. Butler who will walk you through the various sections of the bill as originally drafted, and then, as we have proposed our amendments.

Julie Butler, Manager, Records Bureau, Records and Technology Division, Department of Public Safety:
[Read from written statement (Exhibit C) pages 1-5.]

Chairman Horne:
I noticed that you are going through the amendments that you are striking from the bill now; so to save time, let us not go over the sections that later you are going to tell us no longer apply.

Julie Butler:
Absolutely. If you want to switch over to the amendment (Exhibit D), what we would like you to consider today is to adopt the amendment and scrap the original.

[Continued to read from (Exhibit C) pages 9-12.]

Chairman Horne:
Even after going through the amendment, I find it rather convoluted. Can you identify by one, two, three, four, which duties you currently have that you are trying to pass on to another agency with this bill?

Julie Butler:
What we would like to do is have the Office of Disability Services, which is part of the Department of Health and Human Services, and the Health Division, Bureau of Licensure and Certification, be responsible for screening the applicants who apply to work in the facilities that those two entities license, such as nursing homes, assisted living facilities, group care facilities, et cetera. Of the approximately 45 state agencies that we do background checks for, these are the only 2 that ask the Repository to screen their applicants. What happens in those situations is that the Repository gets the criminal history records on the applicants who are applying to work in those facilities. We look at the criminal history and match it against a set of disqualifying criteria referenced in other statutes, and then we tell the Health Division and Office of Disability Services if the applicant has either a positive criminal history or a negative history, or if we cannot tell because the record is incomplete.

Because of the way the statutes are written, and because Health and Disability Services do not see the records that we see, some people who they are hiring to work in these facilities have horrific criminal history records such as: attempted murder, battery, spousal battery, battery on a police officer, habitual criminal, and assault with deadly weapons. People with records like these are being licensed to work in these facilities. We feel that it would be important for the agencies that actually license these facilities to see this information and make that screening determination rather than our seeing it. Those are the duties that we are proposing to transfer to the other agencies.

Chairman Horne:
You want the agencies to determine for themselves whether or not a person has a criminal history that would preclude them from working for these state agencies? You do not want to be the one to say that this person has had an attempted murder case?

Julie Butler:
We will continue to do it if that is the pleasure of the Committee. However, after looking at some of the individuals who are being licensed to work in these facilities, we felt it was necessary to bring it to the attention of both the Health Division and the Office of Disability Services, which we have done. But we also want to bring to your attention that some of these people who are working in nursing homes and assisted living facilities are not nice people. These are people who, quite frankly, I would not want taking care of a relative of mine in those facilities.

Chairman Horne:
Under the current system, if you already have this information and do these checks, where is the disconnect? If you have the information that John Doe is not suitable for this employment, are you not getting the information to them, or are the state agencies hiring them counter to your advice?

Julie Butler:
The problem is in the way the statutes are written; there is a seven-year statute of limitations on some of these offenses. For example, if an individual has been incarcerated for the last ten years, offenses in his criminal history beyond the statutory limitation of seven years would not appear. We are not allowed to share the full record with them; all they would see is that the person has a criminal history, or they do not. We are not allowed to share specifics with them. Again, because of the way the statutes are written, and the seven-year limitation, some individuals with very serious convictions are being passed.

What we would like to do is to have these two agencies have their own statutes, which have been approved by the FBI. They would receive the criminal history directly so they could screen the applicants that are working in those facilities themselves, since they know their business better than we do.

Chairman Horne:
In section 2, subsection 5, paragraph (c), subparagraph (5), and section 16, subsection 1, paragraph (d), where you are changing from "legitimate need" to "authorized by law," I understand what you are saying, but the simple "authorized by law" seems too broad. A request could be made just because they are authorized by law to do so. They do not need a reason to obtain a record, only be authorized to have it. It seems dangerously intrusive.

Julie Butler:
The FBI's legal division requested that particular wording change. We have changed it according to their requested, approved language. We could tweak it, but we would then need to send it to the FBI legal division for their approval no matter what this body passes.

Chairman Horne:
And if we do not?

Julie Butler:
They could refuse to process our criminal history background checks.

Chairman Horne:
Have they been doing that to date?

Julie Butler:
They have not yet, although they have threatened to under Chapter 239B of *Nevada Revised Statutes* (NRS). They were threatening to refuse to process background checks for applicants for various licensures, such as liquor licenses, adult entertainment licenses, et cetera, if local governments did not have a qualifying local statute under NRS 239B. We made the local governments pass local statutes; now we have to change NRS 239B in the way the FBI requested, to "authorized by law" rather than "has a legitimate need."

P.K. O'Neill:
The authorization would come from their own statute. We had an incident several years ago in which the state passed a law regarding dissemination of criminal records that did not pass FBI muster. We were restricted from disclosing information, which caused a two-year gap in information and some challenges and issues within both our division and the agency disseminating the

information. It seems like a minor issue to change the law from "legitimate" to "authorized by law;" it seems like the same thing to me. But then again, I am not an attorney, and I have already learned that "very minor changes" do not exist.

Chairman Horne:
I am an attorney and for me they are not the same thing.

P.K. O'Neill:
That is right, so that is why I say the authorization for an agency to receive a record would actually be in the law, the statute, the ordinance, or the code. That is where it would be determined. That is where that authorization would be for them.

Chairman Horne:
In section 3, subsection 8, dealing with the prospective current employers, I am particularly concerned about paragraph (b) where it says "Is not liable in an action alleging discrimination based upon consideration of the information obtained pursuant to this section." If I understand, if an employer gets information from the Repository and makes a negative determination on employment, we are going to grant them immunity from a civil action?

Julie Butler:
I am sorry, sir. Are you on the amendment or on the bill itself?

Chairman Horne:
I am on the bill because I wrote my notes on the bill. So, we are on section 3, subsection 8, paragraph (b), of the bill.

Julie Butler:
We are proposing to strike that whole section in the amendment, so that is deleted. Actually, in the bill, we would still like the Office of Disability Services and the Health Division to do their own background checks, but in the amendment, we are just proposing to take it back to status quo and continue doing the backgrounds for those agencies.

Chairman Horne:
Finally, on your section that dealt with defense attorneys not being entitled to reports from the Repository, explain again the rationale. Why does your department believe that defense attorneys are not entitled to them?

Julie Butler:
It is not the Department's belief; it is that providing reports in this case goes against the *Code of Federal Regulations*, Title 28, and the criminal justice agency definition does not include "defense attorney." Defense attorneys are allowed to get criminal history information on their client in one of three ways: they can get it from their client directly, they can get it from a court order from the judge to the Repository, or they can get it from the discovery process. So they do have alternatives available to them to get that information. They just cannot run over to the Repository and say, "Hey, I'm P.K.'s attorney; give me his records," or they cannot run down to the Las Vegas Metropolitan Police Department and say, "Give me P.K.'s record; I'm his attorney."

Chairman Horne:
Are they saying that their federal law is prohibitive?

Julie Butler:
By federal law, it is prohibitive to give defense attorneys criminal history information directly. A law enforcement agency cannot do that.

Assemblyman Carpenter:
In section 19, why are you taking out the Central Repository regarding missing children?

Julie Butler:
Very briefly, section 19 of the bill would delete references to the Repository for information concerning missing persons, which is housed in the Central Repository per NRS 179A.400 to 179A.410. We are proposing to repeal that section because there is really no reason for the Repository to house this information. Local law enforcement agencies currently are required to enter reports of missing persons into the FBI's National Crime Information Center (NCIC) database, which gives the reports both state and nationwide exposure. Sending the same information to the Repository is really a duplication of effort and does not serve any useful purpose.

Assemblyman Carpenter:
How hard is it to get information out of the federal government?

P.K. O'Neill:
Dispatch for a law enforcement agency goes to their computer terminal, puts in information, makes an appropriate search request, and gets the information instantaneously, 24/7, 365 days a year. It is a very quick and easy method for an agency to retrieve information or to enter information that goes out to all 50 states and is compared to the other states' missing persons files, too.

Assemblyman Carpenter:
You have been doing this, but nobody wants the information?

Julie Butler:
That is correct. This section of NRS was added in 1997. Since that time, however, the Repository has no records of requests for missing persons' reports.

Assemblyman Anderson:
I realize that the purpose of the Records Division is to utilize access to the federal government's computer system and the network between states. Therefore, since the federal government has set up the guidelines so all the states will play together on a relatively equal basis, we are concerned about keeping the federal government happy. Is that a fair statement? I am a bit concerned when the federal government states: "We do not like the semantics of the way the *Nevada Revised Statutes* are as compared to the way we want them to be." Why are we trying to play nice?

P.K. O'Neill:
I understand your concerns. In this case, it brings Nevada's statutes into conformity. We are trying to go along with the Uniform Law Commission (ULC). The FBI's Criminal Justice Information Services (CJIS) is asking us to come into consistency with the other states, and consistency with the *Code of Federal Regulations* on dissemination of information and its verbiage, so that there is a standard across the nation. That is why we are requesting to change "legitimate usage."

Assemblyman Anderson:
Recognizing that Nevada was one of the early groups that tried to get this going, I am somewhat concerned. Have the Health Division and the Office of Disability Services agreed to do this? Will they have to add to their structure an investigator who will be dealing with just this part of the process, which is outside their traditional role of being concerned with the licensing requirements? In other words, have they signed off on all of these proposed changes of responsibility, and are they going to have to set up another subdivision within their department in order to carry out this function?

Julie Butler:
The short answer is no. We did meet with the Health Division, and they did send a representative to our office to actually see what our process is. They indicated that they were going to submit a fiscal note to A.B. 81, as originally proposed, to add three-plus full-time equivalent employees (FTEs) to do this function. We currently have one FTE that is devoted to making these

determinations on behalf of the Health Division. We offered possibly to transfer the position to the Health Division and/or to train the new employees if they were to take this function on, but not to provide the funding.

Obviously, now that we have amended the bill to remove those sections, it becomes a moot point for this bill; however, we may bring it up again in a different bill. At that point, it would be at the pleasure of the Legislature whether they would desire to transfer that function over. But again, we just wanted to bring this matter to the attention of these agencies and also the Legislature as to what is going on in these determinations.

Chairman Horne:
Is there any reason we would transfer the function and not the funds?

P.K. O'Neill:
Currently, our division is fee-funded. It also receives funds from the court assessments. The other agencies have always assumed that statute would not allow us to transfer the fees that we generate to support the Criminal History Repository and its duties over to another agency.

Assemblyman Anderson:
One of the discussions that has come up relative to the Criminal History Repository is the difficulty with getting information that may be misapplied. I believe Captain O'Neill spoke here the other day relative to the concern of inaccuracies in the records, how they can be taken care of, and the difficulty when dealing with the federal government in trying to clarify the records. If we turn the responsibility over to one of these other agencies, and there is a similar set of problems, will you be able to guarantee the same kind of clarifying event within the records so they will recognize that it has gone through another change?

P.K. O'Neill:
The challenge on the record would still be our Division's responsibility, to correct the wrong information. It would still be the same process where the individual, who feels there is an inappropriate record attached to his name, would come in and follow procedures. We do the background work on it: taking fingerprints and comparing them to make the determination. We then make the appropriate correction to the record. The responsibility still rests with us. Once the FBI has determined that it is an appropriate action, they make their corrections, too.

Assemblyman Anderson:
While the federal government can mandate our behavior when they make a mistake, do we require them to prove to us that they have corrected their mistake in the record? Do they send us an acknowledgement that they have corrected the record appropriately to reflect what we have asked them to rectify?

P.K. O'Neill:
Correct. The federal records, the records of the United States of America, are based upon the information that we give to them. Every night we run the FBI's Interstate Identification Index report that we call our Triple I (III) report. The corrections will actually be made on our part and then sent up to them for the modifications to their record.

Assemblyman Anderson:
Is there an assurance that a correction has been made merely because you sent it in, or is there a response from them noting your change, whether it is as small as, "I was not born in 1942; I was born in 1962"?

P.K. O'Neill:
Usually, the record correction is not that type. It is, "I am not the P.K. O'Neill that you are saying did this robbery, murder, burglary, whatever the crime may be. It is somebody else." It is not a date of birth issue or the spelling of the last name. It is usually the substance that is being requested to be changed, and it has always been "It is not me." We have not had a person who has volunteered to have a crime attached to his record. That is one of the reasons we stress that all criminal records must be fingerprint-based records. Information cannot be attached to a record unless there is a unique identifier, the fingerprint. Yes, we do get the information, we transfer it to the Bureau to make the corrections, and we do confirm that the corrections are done.

Assemblyman Anderson:
If I am pursuing an "I may have committed crimes A, B, and C, but I did not do crime D," and then an inaccurate misdemeanor or smaller crime appears on my record, it may have an affect on the enhanced crime that a judge may be considering. I may not even know that it is there until I am hurt by it. I guess that comes back to the question of the defense having an opportunity to review the record. You are saying that it should not be relied upon, but your agency relied on the district attorney's office to provide that as part of discovery. If I am an attorney and I am trying to make sure that my client's record is as he portrays it to be, and I ask you for the record, you say that it is part of discovery and has to be given to you. If we pass this law, I would not have the right to come to you directly to ask for it. Is that right?

P.K. O'Neill:
Actually, you have three ways: your client is permitted to request the information; you can obtain it through discovery from the district attorney's office, which is what you are correctly saying; and third is to have a court order issued from the court of jurisdiction, and we will supply it. What we have had is attorneys coming in and asking for extensive amounts of records, not only on their own client, but also on other individuals.

Assemblyman Anderson:
If I have confidence in my client that he has given me all of the information, I may still want to go back and recheck it since his memory may be selective. Unless he has already given me a specific document from you, he may not have the ability to produce such a document again. He may have asked for it three months ago, and now his attorney has changed. I can think of all sorts of scenarios, but from past experience, relying upon the district attorney's office to readily make available to the defense *all* information at discovery is not prudent, and may not happen until the day before the court date. If I can prove that he is my client, why would I not be able to get his records?

Chairman Horne:
Let me interject, Mr. Anderson. We will call up Mr. Frierson later on that very issue and get his insight. I have some problems with the defense attorneys not only asking for their clients' records, but others' too. I do not know of any judge who would not write the order if I said I need my client's record. The district attorney's office can be delayed in getting the request to you through discovery. The third way is through your client, but, if your client is a resident of the Department of Corrections, things may move slowly. I do not see a problem with cutting out the middle man if I am John Doe's attorney and I go to the Repository and ask for his records. We will get more on that later. We are going to move on.

P.K. O'Neill:
Not to belabor the point, but the part about the three methodologies for the attainment of records for your client is not at our desire. It is not something that we came up with at Records and Technology; it is actually being assigned to us under the guidelines of CJIS record requirements. It will put the state in a very unusual position if we do not abide by the requirements of federal agencies. The best that we could probably do is to release only state information, nothing beyond state boundaries.

Chairman Horne:
I have quite a number of questions on the "Text of Repealed Sections." One thing that jumps out is that you want to repeal a Legislative Declaration: "The Legislature hereby finds and declares a significant number of offenders in Nevada have been convicted of sexual offenses." This is NRS 179A.270. Why would the Repository seek to repeal a Legislative Declaration?

Julie Butler:
If you read on further in those sections, it discusses the Repository having the responsibility of taking the information that is collected on juvenile sex offenders and analyzing that information to determine whether or not treatment programs are effective for juvenile sex offenders, whether punishment is working for juvenile sex offenders, et cetera. We do not employ any psychologists or mental health professionals, or carry out psychological treatment within the Repository. We never have, we do not intend to in the future, and we feel that it really is beyond our expertise to analyze a treatment program and determine whether it is effective in rehabilitating a juvenile sex offender.

Chairman Horne:
Ms. Butler, at the beginning of your presentation, you mentioned that you are attempting, with this piece of legislation, to bring "the law consistent with current business practices." We have had a problem with agencies coming before the Legislature and saying, "We know it is law, but we are not following it anyway, so can we change it to the way we are already doing it?" Please point out some of the laws that you are not following now that you want us to change.

Julie Butler:
We are not creating reports of the analysis of juvenile sex offenders or taking missing persons reports. The "1-800" telephone number for missing persons is not set up and never has been. It would cost several hundred thousand dollars to establish and would only duplicate information in the National Crime Information Center (NCIC).

Chairman Horne:
You said the information is duplicated, so are you reporting it somewhere?

Julie Butler:
It is being reported by law enforcement. It would remove the requirement for the Repository to set up a toll-free telephone number to collect reports of missing persons and to report the information again.

Assemblyman Carpenter:
Regarding these repealed sections, do they all apply to your agency?

Julie Butler:
Some of them do. They either have a reference back to our agency or they somehow impact it. In our original draft, when we sent it over to the Legislative Counsel Bureau (LCB) Legal Division, we did not include those sections. It was actually the people who draft the bills who caught that there was a cross-reference in these other sections to functions that we either wanted to change or repeal. That necessitated them being either changed or repealed in the final version of the bill.

Assemblyman Carpenter:
So, all of these other agencies, like the Division of Child and Family Services, agree with what you are doing here?

Julie Butler:
I do not know. We did not specifically consult with Child and Family Services about their not sending reports of juvenile sex offenders to our office. I do not know if they are even sending those reports. Like I said, although this Legislative Declaration was passed telling us to analyze the data from the other agencies, I do not know if we are getting the reports. Repealing it would remove their responsibility to send the reports to us that they may not be sending.

Assemblyman Carpenter:
If you do not get it, then who is going to get it? We get reports on a lot of these things in the "Text of Repealed Sections." I thought that was the reason they were sending them to you, so that we could get them.

P.K. O'Neill:
We are not getting reports now on the juvenile sex offenders to make the determinations on the validity of a program. We do get uniform crime reports from the various law enforcement agencies throughout the state on what crimes are committed, and we report on those. We also report on domestic violence and crimes against the elderly.

When I recently started this job and Ms. Butler assumed her duties as the bureau manager, we started analyzing what the bureau does and what we are required to do. Some of these issues came up, and they had been the responsibility of the Bureau for several years. Although we have been requested, or mandated, to do these, they have not been the policy and procedure for the Division at all. Since no one has asked for the information to

date, and no one has even sent us the records to date, we would like to have these reports removed from our requirements, as an unnecessary burden to us, if you are in agreement. If you feel we should continue with these responsibilities, we will have to look for additional funding to complete them. It will be a challenge for us with our limited funds to do this. We also do not have the ability to do the analysis. It is probably best to have the people who deal with the juveniles, and understand the programs, make that determination. We do not have the level of qualified staff that is required.

Mr. Chairman, we understand what you were saying about business practices, but we have reviewed ours and are coming to you honestly to bring this to your attention, and to admit that some of our shortcomings have been buried.

Chairman Horne:
I never suggested that you were trying to hide the ball, Captain O'Neill.

Assemblyman Carpenter:
It makes it difficult when I spent a few hours reading your first proposal, and now I have only a few seconds to try to read the amendments.

Chairman Horne:
There is some work left to be done with this. Is there anyone opposed?

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:
Like all of you, I have just seen this amendment, so I had signed in to oppose the original bill. I think it is still important to be on the record as opposing the original bill. We very much oppose the broad grant of immunity, as well as the expansion of the direct criminal record information that employers are entitled to, mostly because we feel it erects more barriers to rehabilitation and reentry into society in ways that are counterproductive. However, I will not belabor it since the bill sponsors have requested that those sections that we found most problematic be deleted. I just want to put on the record that we are strongly opposed to the original bill.

With respect to what I have been able to glean so far from the amendments, I would say we are closer to neutral on this bill, since much of it is housecleaning. However, I would like to put on the record our opposition to two pieces that have already been mentioned by members of the Committee. The first is on page 4 of 11 of the proposed amendments and is the removal of the ability for the attorney of record to get criminal history. We feel that would put a needless burden on the courts to have to get a court order every time an attorney requests a document on his client's behalf. Attorneys generally act as

agents of their clients, and I think it is needless to have to go through the court system simply to obtain an order for information that you would normally be entitled to as someone's attorney. We think it is unnecessary, and we would simply oppose it, even if the FBI is requesting that language.

The second comment that I have has to do with the text of the repealed sections. We certainly respect that the department has a huge job and there may be things that they simply cannot do. We would not criticize that; we know they are working with limited funds and doing their best, but we at the ACLU Nevada believe very much in the collection of data. I would say one theme that underwrites a lot of our work, and a lot of our positions, is that the government should be as informed as possible, particularly in the criminal justice arena. We support the work of the Advisory Commission on the Administration of Justice (ACAJ), because one of the functions that it has served is compiling and aggregating data and giving it to the Legislature so it can make informed decisions on criminal justice policy. The Legislative Declaration in NRS 179A.270 states that data collection, specifically with respect to sex offenses, is important and is near and dear to the ACLU of Nevada.

As you know, we filed a federal lawsuit against prior sex offense laws that were passed by the Legislature last session. One of the arguments we made was that the system, which had been requested by the federal government, went from one that was coupled with risk to one that was uncoupled from individual risk assessment, and went to an automatic penalty based on the severity of the crime. Our argument against that, both here and before the courts, has been that it takes away the statistical analysis and the use of logic in assigning these criminal penalties. While we understand there may be practical limitations in having the Central Repository fully complete what these statutes ask them to do, rather than repeal a very positive Legislative Declaration that makes it clear that criminal policies should in part be based on this kind of data, we believe the department should be asking for the tools to implement it, or be reaching out to other agencies that are able to do so.

With respect to the first repealed section, NRS 62H.220, all it does is mandate that they collect the data, not that they analyze or evaluate it. If they are not currently in a position to adequately fund the analysis of that data, or they do not have the scientists in place, we do not think that not collecting the data is the answer. Perhaps we could find someone else to do the analysis that the Legislature thought was so important.

Again, we agree with the Legislature in terms of that declaration that facts and statistics are important in formulating criminal justice policy, particularly when

we are talking about children. This is our one chance in the system to change someone's life, to focus on rehabilitation. Some of these kids' records have what we later consider minor crimes, even though they are included in the very broad definition of sex offender. We think it is critical to have science there to make sure we are doing whatever we can to keep these kids out of the system later. Again, we would oppose the repeal of that section. We understand the practical limitations, but we think creating a solution should be the way, not undoing a Legislative Declaration that we think is very positive in its nature.

Chairman Horne:
At this time I am going to call Mr. Frierson. I am sorry to do this, but this issue needs to be touched on, and you are my resident defense attorney expert. Please discuss the entire section on denying defense attorneys access to reports from the Repository.

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
We did not express a position on A.B. 81, recognizing that there were likely some goals with respect to the bill that did not directly impact our role in the criminal justice system. I believe, Mr. Chairman, that you are referring to page 9, section 9(b), and, admittedly, striking that language struck me as odd, as I would imagine it did most defense counselors. As Ms. Rowland represented, a defense attorney is acting on behalf of his client in most instances, and when it refers to the defendant in most statutes that I can recall, it is also referring to the counsel for the defendant. I cannot imagine circumstances where a person who is the subject of a record, and a party of the proceedings, would not allow his attorney to have access to the type of material that clearly would be relevant.

Mr. Chairman, you referred to a situation in which a person is incarcerated. That is a particularly difficult time for counsel to obtain records. When we have to get releases, whether it is criminal background or medical history, there are mechanisms by which we can get them. I do not believe the attorney would be excluded by statute in any other of those examples.

Chairman Horne:
You heard the explanation made by Captain O'Neill that, this is a mandate by the federal government. We will not be in compliance, and will put ourselves at risk, if we keep in statute the requirement that the Repository release those records.

Jason Frierson:
I believe there was testimony that defense counsel often requests records now. I would like to see the statutory language to determine what we are doing now when there is a request for those records. If there is an absolute federal bar on it, then the Repository would not be able to provide the records anyway. But if they are able to provide them now, I do not know what the federal bar would be to providing the records. There may be some hoops that an attorney will have to go through to verify representation, which I imagine is happening now. I am unaware of the federal guidelines' language that the sponsors were referring to in their goal of trying to be consistent.

Chairman Horne:
Captain O'Neill, if you have something that precludes the dissemination to defense attorneys of information on their clients, please give it to Ms. Combs. Ms. Combs, will you find out for me exactly what type of prohibitions the federal government has on dissemination of the information from the Repository. The way I see it the federal government is saying that they are providing information to the Repository, and if it is information that they gave you, then you cannot give it to the defense attorneys for their clients. If you were allowed to give information, it would be state information only.

P.K. O'Neill:
I just pulled up some information giving the definition of a criminal justice agency and administration of criminal justice, found in *Code of Federal Regulations,* Title 28, Chapter 1, Part 20, as well as in our own statutes, including NRS 179A.020 and 179A.030. They exclude criminal defense functions as such, and local law enforcement cannot disseminate information from these two systems. The only record we maintain is the criminal record—not any medical records, not any records related to the crime, or anything else—just an individual's criminal record. When attorneys come forward now, we tell them to follow the procedures: the client can fill out a form and submit it with his fingerprints, and we will give the attorney copies; get a court order to obtain the criminal record, which is usually not a problem; or get it from the district attorney who will provide it during discovery. The two most common methods of attainment are from an individual request or from a court order. As I stated, the information is in 28 CFR 20.3(D).

Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services:
I am here today to reiterate that reviewing the criminal history records of all employees that are employed by nursing homes, group homes, personal care attendant agencies, and one other type of facility would be a new function if it were passed to us as it was proposed in the original bill. We currently only

review the positive reports from the Criminal History Repository. They receive all of the requests for records directly from the employees of the facilities. They review the records and send us only those where there is a disqualifying conviction. Then we have the obligation to ensure that the facilities terminate the employees because of the disqualifying convictions. The limitations right now on those disqualifying convictions are laid out in statute. Nobody can go beyond the statute of limitations, so even if someone had a ten-year-old murder conviction, the law limits what he can be excluded from employment for.

The only other thing that I wanted to put on the record is that the difference between other licensing agencies and us is that other agencies license employees, but we license facilities. We do not license individual employees of the facilities. For example, the State Board of Nursing licenses the employees, like nurses and Certified Nursing Aids (CNAs).

Assemblyman Carpenter:
Does there need to be a change in the statute as to what prevents a person from working in one of these facilities?

Marla McDade Williams:
I am not able to make that decision today. We hear occasionally from employers who have an employee they believe would do a good job for them who they will have to disqualify and terminate from employment. They would like to hire him despite his convictions, but there is the limitation in the law. The statutory history of those particular convictions was decided by the legislators.

Chairman Horne:
So, if your agency were to transfer over the responsibilities that are suggested in this bill, would you be capable of doing that?

Marla McDade Williams:
Right now we are not capable of doing it. We understand that the positions performing the functions now are more clerical in nature. We also are a fee-funded agency, so there is a point in time when we would have to figure out how to pay for those additional positions that we would have. We anticipate at least two additional clerical positions. When we met with Captain O'Neill and Ms. Butler in January, they indicated they had reviewed 15,000 records in the preceding six months, so we are looking at probably over 30,000 records a year that we would have to review. There are some records where the information is not clear as to what the conviction is; there is additional research that goes into verifying that information. I believe we submitted a fiscal note for two additional positions.

Chairman Horne:
It sounds to me that if we are to do this, the Repository would end up with fewer duties and keep the money, and you would have more duties and ask for more money.

P.K. O'Neill:
We redacted that part; that is part of our amendment. We will maintain that duty. Originally we hoped to transfer that responsibility, but after meeting with various agencies, we removed that from our amendment, and we are keeping that responsibility.

Actually, some other legislators have seen the bill and asked us about it. They were concerned, so we told them some of the issues that have been brought forward. We explained that we are pulling it, and they said they may look at it again for another bill. Right now, we have no intentions of attaching it to another bill unless there is a legislator who wants to champion that effort.

Chairman Horne:
I am going to close the hearing on A.B. 81.

We will take a recess.

We will open the hearing on Assembly Bill 117.

Assembly Bill 117: Makes various changes relating to prisoners and parole. (BDR 16-630)

David M. Smith, Hearing Examiner II, State Board of Parole Commissioners, Department of Public Safety:
I am David Smith with the Parole Board and this is Commissioner Bisbee.

Connie S. Bisbee, Parole Commissioner, State Board of Parole Commissioners, Department of Public Safety:
Justice Hardesty sends his regrets that he was not able to be present. He had another commitment. He asked us to assure you that the Advisory Commission on the Administration of Justice (ACAJ) unanimously approved A.B. 117 as it is written. Justice Hardesty did say that they do not view the interpreter request as different from an indigent defense, and they are in support of using professionals to provide these services. I think I have now addressed everything Justice Hardesty asked us to present to you.

I believe you have our memo (Exhibit E) regarding this bill on behalf of the Parole Board. Along with the Board, the Commission is happy to ask for

clarification on the Mandatory Parole Release (MPR), and on behalf of the Board, we are happy to get some direction on the MPR. We look forward to what the Committee may ask of us. The Advisory Commission is also in support of the proven efficiency of the Parole Board and supports the section for particular hearings being heard in absentia.

I would like to present some information on A.B. 117 to you from the Board for your consideration. I will tell you that we have spoken in length with the Department of Corrections (DOC), and I believe that we are essentially in agreement on the direction that we would like to take.

As to sections 1 and 3 regarding interpreters at parole hearings, we believe this change will have little or no effect on the operations of the Pardons Board. Because of the small number of interpreters used, and because the Board meets over one day or a couple of days, the same interpreter can be used at all of the hearings. However, we do believe that it will have an impact on the operations of the Parole Board, and hope to explain how we utilize interpreters at this time and how that might change.

It is to my embarrassment that you received the fiscal note that was prepared February 5, 2009. I tried to pull that back when we were able to sit down and work up some alternatives. It had the worst-case scenario in terms of fiscal notes, and we have been able to spend some time and reduce that considerably. I do apologize if you have that original February 5, 2009, note.

Currently, the way we do interpreter services is that we use employees within the DOC. These are folks who receive an additional 5 percent in compensation to translate as necessary. Their main purpose is for the use of the DOC, but over the past several years they have been very gracious in providing these services to us when we have someone who does not speak English at a parole hearing. *Nevada Revised Statutes* (NRS) 50.054 requires a person to perform the task of interpreting while under oath, not being biased, and not having an interest in the outcome of the proceeding. We have not had a problem with this in the past, but we believe, if the use of the interpreter becomes an entitlement, using a DOC employee in this manner might appear improper for the obvious reasons. Most generally, these are the correctional officers who are providing services to the Department and incarcerated folks, so we do not want to have any issue with that. We are concerned that it may lead to complaints and lawsuits from inmates who were denied parole and who used the services of a DOC employee, in an attempt to invalidate the decisions of the Parole Board.

The solution that we have come up with involves the Nevada Offender Tracking System (NOTIS) which actually has a section in it that identifies whether or not

English is the first language of an inmate. We can, with a small programming change—and the DOC has stated that they are willing to assist with that—schedule parole hearings in groupings. Now, when we have an agenda, we do not necessarily know if anyone is going to need interpreter services when we start the hearing; that is the reason for the original fiscal note. The DOC will say that we have three gentlemen or three ladies who will need an interpreter today so we will bring in someone to do those services. If we were required to provide a professional interpreter, that person would be jumping around constantly, and that is where huge costs come in. However, if we use the NOTIS system to identify and group the inmates who are going to need interpreter services, we can set agendas so that the entire agenda will be inmates who will need the translation services of someone who is bilingual. We can set them all for the same day, and then we will need only to contract interpreter services for one day. We will need only to provide travel and other expenses for that one day. For the inmate population with English as a second language, or who do not speak English at all, we could group them to approximately six hearing days a month with translators at the major institutions, and we could schedule hearings one or two days a month for those who are in the rural areas. We could mitigate costs.

What we have now are interpreter services ranging from $60 to $80 an hour, and travel times ranging from no charge for local travel up to $35 an hour plus the cost of gas. So based on these rates, and by scheduling hearings by language and conducting times, and having hearings with inmates housed in rural conservation camps, we estimate that the annual fiscal impact would more realistically be approximately $66,000. We could reduce that a bit more if we required the interpreters to be present at the Parole Board in one place, either the north or the south. The problem with that is the interpreters have told us that it is difficult to provide those services over videoconferencing. It is much more effective and accurate if they are actually sitting with the inmate who is receiving that service.

We have thought about a compromise to limit the fiscal impact which essentially means that we would not change anything, and that is the language that we have offered here that says, "No person may bring a cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees, when an employee in state service, who receives a special adjustment to pay for his bilingual services, translates for a prisoner during a meeting of the State Board of Parole Commissioners, or the State Board of Pardons Commissioners." That is what I want to clarify. Justice Hardesty felt that the amendment allowing the DOC to do this would not be appropriate, that it should be a professional. As I said, it equates to the same thing as providing indigent services for defense. Again, the DOC also

believes that. It is not the Board's position that we go with professionals or we go with the way we are doing it; we wanted to offer those two different options and tell you what the impact would be. The only thing with using the state employees is that it would only be a slight cost to make the program changes, and we are waiting for an estimate from Syscon Justice Systems to see how much those programming changes would actually be. I do want to clarify that we are not trying to push either direction; we are comfortable whichever way the Legislature decides they want us to go.

The next section that we would like to discuss is the change to the language pertaining to the release on mandatory parole. For me personally, this is a very exciting opportunity. There have been, especially in the last 18 months, so many varied opinions as to the intent of mandatory parole and that statute, which gives us the opportunity to find out what the Legislature actually means by it and what they want us to do with it. The amendment to the MPR statute clarifies that an inmate must only be "considered" for release, and we are not sure if that is what the Legislature actually intended. I have not been with the Board long enough to know the history and the beginning of the MPR statute, and we are not sure that the legislative intent was ever that they must only be "considered" in terms of what a mandatory parole release is.

We have added two attachments, and I once again will clarify that the Commission and Justice Hardesty have told us that they have no position on the attachments that we have given to you. The attachments are two alternative versions for the Legislature to consider. We are hoping that, by providing this information, we can work towards a change in the specific language so we are following what the legislative intent was regarding the release of prisoners on parole in accordance with NRS 213.1215, which is the mandatory legislation. I believe we have provided that for you under Attachment 1.

We have two scenarios to offer. The first scenario is related to making mandatory parole release mandatory, if that is what the intent of the Legislature is. The exception that we would ask for is sex offenders who fail to be certified by the psychological (psych) panel. The changes that we have proposed would make it automatic that a prisoner be released on mandatory parole unless the Division of Parole and Probation does not have a suitable plan in place. They would then be released as soon as an approved plan is submitted. The exception would be psych panel failures, and we would recommend that they not be mandatorily released. This allows the Parole Board to set conditions without meeting. The Board would set standard conditions for all MPR parolees, and then if the Division of Parole and Probation wanted additional conditions because of risk, they could request those, and the Board could set

them without a meeting. This is similar to lifetime supervision, in which the Board sets the conditions and the Division of Parole and Probation, if they want special conditions to the standard, request them.

The changed language in the proposed amendment under section 2, subsection 1, paragraph (b), adds, "Such conditions may be prescribed with or without a meeting of the Board." It also strikes section 3, starting with, "If the Board finds, at least 2 months ...," and we are asking to add a number 6, "If the prisoner is subject to the provisions of NRS 213.1214, he may not be released pursuant to this section unless he has been certified as not representing a high risk to reoffend ...." That is where we are suggesting that sex offenders not be automatically released at mandatory parole unless they have been certified as not representing a high risk to reoffend. The new wording that we have added in this particular scenario, in subparagraph 6, to exclude NRS 213.1214 failures—that is the sex offenders not certified by the psych panel—would not prevent the release on parole of high risk sex offenders. The original intent of the psych panel was to prevent the early release of high risk or predatory sex offenders, but there has been a lot of litigation on this particular issue, and the Nevada Supreme Court has narrowed the applicability of the psych panel because of ambiguities in the psych panel statutes. Sex offenders who are serving sentences for lesser crimes, the crimes that are not sex offenses, are no longer reviewed by the psych panel, and the Parole Board no longer receives information related to risk on sex offenders. That is someone who is now serving a lesser crime that is not a sex crime. It would not prevent their release on the mandatory.

The alternative version, scenario 2, provides stricter controls on who may be released. Release would require that the DOC perform the evaluations on all sex offenders before the Parole Board conducts hearings.

The following is related to making mandatory parole release mandatory, except for high risk offenders. For a prisoner to be automatically released on mandatory parole, he would have to meet the same conditions, and they would have to have an approved plan by the Division of Parole and Probation. It would require that all sex offenders be evaluated using the standard method of assessment, and would prohibit the release of a sex offender deemed to be a high risk to reoffend. It, again, would allow the Parole Board to set the standard conditions without a meeting for mandatory parolees and allow the Division of Parole and Probation to add conditional additions because of risk.

The change that we are suggesting under NRS 213.1215, subsection 1, paragraph (b), is that "Such conditions may be prescribed with or without a meeting of the Board." We recommend the cross-through on section 3, and the

other change is the new subsection 6, "A prisoner who is a sex offender must not be released on parole unless he has been evaluated using a currently accepted standard of assessment for determining the risk to reoffend in a sexual manner, and it has been determined that the prisoner does not represent a high risk to reoffend. The evaluation must be conducted by a psychologist licensed to practice in the State or a psychiatrist licensed to practice medicine in this State."

The difference between the two scenarios is that the wording in section 2 on scenario 2 would require evaluations of all sex offenders before automatically releasing them on mandatory. If the psychologist or psychiatrist determines that the sex offender represents a high risk to reoffend sexually, the prisoner would not be released on parole, and his sentence would expire. The NOTIS system currently identifies all sex offenders in its system. It may require programming changes to generate the reports necessary to identify those who would need that evaluation prior to release on MPR because it is not necessarily the instant offense.

The Department of Corrections would have to reinstate performing these assessments because they have not been conducting them on all sex offenders lately. That was the result of the recent Supreme Court ruling that narrowed the applicability of the psych panel.

Sections 4 and 5 allow for the Parole Board to grant parole without a meeting. The Parole Board uses the guideline and risk assessment that assist the Board in making consistent decisions. The guideline will suggest that inmates who are serving sentences for low level crimes and who are determined to be at low risk to commit new felonies, be released at the initial parole eligibility. The guideline will suggest that inmates who are serving sentences for moderate level crimes, but are low risk to commit another felony, be released at the first or second parole hearing. During the months of November and December 2008 and January 2009, inmates who fell into the parole-at-initial-hearing category were paroled at a high rate of approximately 85 percent. This equated to approximately 63 inmates each month on average. Inmates who fell into the category of parole at first or second hearing were paroled at a rate of 65 percent. This equated to approximately 157 inmates each month. These actions include both discretionary and mandatory parole actions. We estimate that of approximately 240 hearings that are likely to grant parole, we may be able to grant approximately 120 to 150 without holding a meeting. This would reduce the Board's in-person caseload each month and allow for growth as needed without having to increase staff. Initially, it is a lot of hard work; we are willing to do this.

Once we established the review process, we could make determinations on parole without a meeting for approximately 240 people before being required to hear cases. We would be able to grant somewhere between 120 and 150 parole releases. What that would do is allow for the growth that happens. We have a high caseload this month. It would allow us to have less than 150 physical face-to-face hearings, which puts us in a better position not to need an increase in staff. We are trying to be proactive in terms of how can we get this work done; how can we do it smarter? Like I said, initially it would be a lot of work, but once we got it implemented, I think it could work well. The process would be difficult to implement unless reports from the Department were received more timely and review of the files was quicker. But once we have a full month's caseload arranged in a manner to support this type of review, and we continue on that type of schedule, we are in a much better position to complete each month's caseload in a timely manner, even if we have an increase in caseload. So, we are asking you to consider it.

Although we are requesting the statutory change of allowing inmates to be granted parole without a meeting, we would not want to include certain inmates or sentences. We would not want to include those serving time for murder, those serving a sentence of life, sex offenders, habitual criminals, inmates with victims who have requested to be notified of parole hearings in accordance with the NRS, and cases where someone objects to its being conducted without a meeting. Those objecting may be the district attorney's office or the repeat offenders' program, or there may be objections in other cases that require three commissioners to sit as a panel.

After subsequent discussions regarding other recommendations made by the Advisory Commission on the Administration of Justice, the Board is recommending an additional paragraph in section 5 following the new text in paragraphs 8 and 9 as follows: "10. The Board may review the case of a prisoner without a meeting: (a) For the purpose of making recommendations for the consideration of clemency by the State Board of Pardons Commissioners; and (b) To consider advancing the parole date of a prisoner who was previously denied, set in accordance with NRS 213.142." Some very specific examples of how we have done this in past years are when we considered the illegal alien population at the request of the Pardons Board. We have, in the past, reconsidered large groups of inmates at the request of the DOC when bed space had become a serious problem.

Chairman Horne:
On the release without meeting or a hearing, is there any concern about victims or advocates not having a say? You are eliminating that group of persons.

Connie Bisbee:
Yes, sir. That is why we put in that the ones we could not see and grant without a meeting would include those that have a "victim notify."

Chairman Horne:
So, the "victim notify" would come in and they would ....

Connie Bisbee:
They would not be qualified to be heard without that victim present.

Chairman Horne:
Next, the more controversial one, is the mandatory release provision, section 2. I was here last session serving on that committee, and I chaired the interim committee prior to that. My recollection is that one of the issues in the mandatory release is that we did not want inmates' sentences to completely expire, and then let them back out into the community. If you keep that year over their heads, you have a leash on them. So, in the bill, when you strike "must be released" and put "considered by the Board for release," that can be undermining. One of the problems that we had was that there seemed to be a high number of inmates who were getting denied for no apparent reason. There was also the issue of reducing prison population by finding low-risk offenders. That is why we took that small group to say we were going to have mandatory release, except for those determined to be a danger to the community. This takes that group and puts them right back in there for consideration, so it undoes what we did.

Connie Bisbee:
This is why we want to have that leash on them when we release these inmates at mandatory.

Chairman Horne:
That was why my explanation was more for your edification and for the new members of the Committee.

Connie Bisbee:
The Board's position is that we are happy to do it as "considered for," or we are in full support if you wish to change it to a true mandatory release. Our only concern with that would be the sex offender population would have to be determined to not be a high risk to reoffend sexually. There is great value in having people supervised.

Assemblyman Carpenter:
In one proposal, you would be getting rid of the psych panel, right? You would just have a psychiatrist or psychologist examine them?

David Smith:
Scenario 2 would require all sex offenders, anybody that statute defines as a sex offender, to be evaluated. It could be worded to require the psych panel to conduct it instead of just a psychologist. We are just trying to provide some suggestions. Because the number of people to whom the psych panel applies is less than the number of sex offenders, it would be more work for the psych panel if they had to consider all sex offenders before release.

Assemblyman Cobb:
Is there some type of federal mandate that requires us to provide interpreters at these hearings?

David Smith:
I am unaware of any federal mandate, but I am aware of a Supreme Court case in Nevada, *Caballero v. Dist. Ct.*, 123 Nev. Adv. Op. No. 34 (2007), in which an inmate requested an interpreter at a small claims court proceeding and he was not provided an interpreter. The Nevada Supreme Court ruled it would be frustrating the whole judicial system to not provide the interpreter since this person brought the claim forward. With regard to parole hearings, and this is what Chief Justice Hardesty mentioned, for these people to participate, it would be appropriate for them to have the ability to communicate at those parole hearings.

Assemblyman Cobb:
So the answer is right now there is no mandate.

David Smith:
Not a federal one, but there could be one in Nevada.

Assemblyman Cobb:
Do you attempt to have the individuals who are using these services pay for them?

David Smith:
Not at all. Right now, if a DOC employee can interpret for them, they do so. If they need a Chinese or Vietnamese or some other language interpreter, we pay to have an interpreter brought in.

Assemblyman Cobb:
Do you think it would be appropriate for an individual who is potentially here illegally, committing illegal acts in our state, to pay for the services of an interpreter?

David Smith:
That would probably have to be a legislative policy decision. If they are in the system and the Parole Board is trying to conduct a hearing with them, there has to be some way to communicate and get the facts of the case. There has to be some way to have that information provided to the Board.

Assemblywoman Parnell:
My question is about the interpreters, too. I have worked on this issue for a few years and I know, often times—especially in rural areas—we cannot find certified interpreters. Is this language loose enough that an employee who you are currently using that just happens to speak Spanish, for example, would be considered a casual interpreter? Are we going to find ourselves in a situation where we cannot find the required interpreters?

David Smith:
The language specified for the interpreters requires the person to take an oath that he is not related to the witness, he is not biased, and he is not interested in the outcome of the proceedings. If it was a DOC employee, he would have to affirm that under oath. I think that is one of the things the DOC does not want to do because it puts them in a position that the ones confining the inmates are the ones acting as their interpreters. As far as having professional interpreters, it does not require that they be certified by the court or certified by the state, but we would draw from the interpreters who are under contract with the state to provide those services. Regarding the rural areas, if there was not an interpreter in an area, we would have the interpreter come to our office to provide the service via videoconference.

Assemblyman Kihuen:
Aside from Spanish, there are other languages required by the inmates, correct? Chinese and some of the European languages?

Connie Bisbee:
Yes, in fact, we do have a rather large list of qualified translators who do provide the other languages. We have used Chinese and some very interesting languages. Primarily, excluding Spanish, the translators that we use most frequently are for hearing impairments. We do have a ready list, and we are able to pull from certified interpreters.

Assemblyman Kihuen:
And you would not automatically assume that someone who is not proficient in English is undocumented?

Connie Bisbee:
No, sir. They would not be identified as being undocumented.

Assemblyman Kihuen:
The reason I mention that is there are certain people who believe that, just because someone does not speak English, they are here without documents or illegally.

Connie Bisbee:
We had a case where a person who legally lived in the United States for 35 years needed the services of an interpreter. Because of his particular situation he was not afforded the ability to learn English, so we would make no such assumption.

Assemblyman Kihuen:
This is related to section 2. I am looking at one of your amendments on section 2, subsection 1(b), of NRS 213.1215 that says, "Such conditions may be prescribed with or without a meeting of the Board." Currently, such prescriptions could go along without a meeting of the Board, correct?

Connie Bisbee:
No. The way it is currently, we hold a physical hearing for those who are eligible for mandatory parole. What we are suggesting about the conditions without a meeting of the Board is if it is the intent of the Legislature to release at mandatory parole, there would be no reason for a meeting of the Board to consider that hearing. We would just be in a position of setting the conditions. We would set standard conditions, which would be typical for any parolee, and then if the Division of Parole and Probation saw a specific need for a specific condition for that particular inmate, they could request that we add that.

David Smith:
If I can add to that. Currently, the prisoners do not have the opportunity to discuss those conditions with the Board. If after they have set the conditions, there is an issue, they can go through Parole and Probation and the Board can review it. But typically, when the conditions are set, they are set at the conclusion of the hearing.

Assemblyman Ohrenschall:
I have a question about the suggested paragraph 10 (a): "The Board may review the case of a prisoner without a meeting for the purpose of making recommendations for the consideration of clemency by the State Board of Pardons Commissioners." What currently happens when you review someone who hopes to be before the Pardons Board?

David Smith:
Basically, the purpose for this section is that a new law providing certain rights to inmates at parole hearings becomes effective on July 1, 2009. One of those rights is that the Board cannot deny someone parole without affording him a personal hearing. Prior to the law going into effect, there have been times when the Board would just do a paper review of cases and then make suggestions as to whom they might release early, or parole, with regards to the immigration cases that were seen in 2007. There were around 2,000 cases. The Board looked at about 900 and made suggestions on a couple hundred of those that, if their sentences were commuted, the Board would let go earlier than the minimum sentence imposed by the court. Those are typically based on the risk, the criminal history of the person, et cetera. The reason we have asked for this language is the potential that, if the Board were to conduct such a review of cases and provide recommendations, it could be construed as being a denial to anyone else, and that could preclude the Board from being able to consider this without offering a hearing to those other inmates.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:
We do support A.B. 117. We think it is very creative and an excellent balance between preserving due process rights for folks who will be deprived of their liberty by denial of parole, and hopefully, lifting the Board's workload by releasing those against whom there is no objection, which exempts the most serious crimes. We think that is a great balance to strike.

The one concern that we have about the bill would be taken care of by either of the proposed amendments that have been put forth before you today, which is either scenario one or two. One of these scenarios eliminates paragraph 3 of NRS 213.1215, which gives blanket permission for the Parole Board to not even consider someone for parole if he is a danger to public safety. That is a provision that we have heard, at least anecdotally in our office from prisoners, and has been overused in a way that is confusing to the inmates. Whether you agree or disagree with the granting of parole, we always give information to the inmates, so they understand what is going on and what they might be able to do to get released, while protecting public safety. Again, that is anecdotal. We do not have a study on that, but, at least from our office's point of view, that is

the one provision that seems to be used in a way that there is not a lot of communication to the inmates. So, we think limiting that exception down to the appropriate NRS provisions that actually require that, whether or not someone is a high risk based on a sex offense, is more appropriate. I have just seen these for the first time, so I am not sure I have a position between one and two, although I would say that scenario one is obviously less of a burden on the Board. If the primary goal of the bill is to ensure that the Board can meet its responsibilities and see people as is the Legislature's intent, then probably that option accomplishes that better. Over all, we are certainly in favor of the bill. We thank the sponsor for bringing it, and we thank the Board for supporting it and offering these amendments, which we would support either of.

Don Helling, Deputy Director, Operations North, Department of Corrections:
We have a concern about using staff as translators. We are not against having certified translators; we are concerned about using DOC staff who are bilingual as official translators. The staff gets their 5 percent for operational needs—they help in intake, medical, and even in visiting—to assist inmates and staff in doing their jobs. There is really no established standard as to what is a bilingual officer. Many times in parole hearings, and we have been assisting the Parole Commissioners for many years, an inmate would give a 2-minute explanation; and they would get a 30-minute summary translation; or if they give a 15-second explanation, they get a 2-minute translation. So there are no standards used. If you make this an entitlement, you set a whole new level of standards that are required. A disclaimer will not stop an inmate from suing us; it has not in the past, and I do not think it will in the future. We have a limited number of bilingual staff: six camps with no staff getting the 5 percent, two camps with only one. There would be scheduling issues and possibly overtime costs. I do not know if the staff would be willing to be sworn in.

Chairman Horne:
So, is it the DOC's position that, although you have been helpful in assisting the Parole Board in translating over the years, you would not like that particular gratuitous act to be codified into statute? I see the Director in the back nodding his head "correct" as well.

Assemblyman Mortensen:
You are talking about bilingual, but there are hundreds of different languages. What if the person is Swahili and only speaks Swahili? You probably do not have bilingual Swahili translators, so what happens in that case?

Chairman Horne:
They will hire someone who speaks those languages at the expense of the state.

Assemblyman Anderson:
Do you represent the DOC or the guards?

Don Helling:
Hopefully both, but right now the DOC.

Assemblyman Anderson:
Have the employee groups taken a position on their involvement in this? Like you, I was under the impression that if they happened to be bilingual, that was a condition within their correctional duties. Why are the employees themselves concerned over this? I want to make sure I understand what the employee point of view is.

Don Helling:
The concern is that they have not received any formal training in being translators. They mostly summarize what is said. The necessity of being a translator versus an interpreter, I would guess, is a much higher qualification.

Tonja Brown, Advocate for the Innocent, Carson City, Nevada:
I am not in agreement with A.B. 117. I prefer that they leave the 2007 language as is. Also, I am asking that you propose an amendment.

[Read from written statement (Exhibit F).]

Chairman Horne:
I am going to stop you because I do not know what that has to do with the paroling of those currently incarcerated who are coming up for parole. This is not about their guilt or innocence; we are not addressing that. I believe you have your issue with section 2 on whether or not we are going to continue to have them automatically released without consideration, or with consideration, and the proposed amendments that the Parole Board brought.

Tonja Brown:
I would like to add my proposed amendments that deal with the psych panel and the Parole Board.

[Continues to read from prepared statement (Exhibit F).]

I have attached some other information and some newspaper articles. Right now, we are dealing with approximately 12 to 17 percent of those who have been wrongly convicted, or actually convicted, serving time in the prison system who are innocent. That is coming out of the U.S. Justice Department. So, they should not be denied a chance to be paroled based on the fact that they refused to admit guilt to the psych panel or the Parole Board. That is what is happening to some of these.

Patricia Hines, Advocate for Criminal Justice Reform, Yerington, Nevada:
You have a handout (Exhibit G) and, of course, after hearing all of this, I would like to go through some of these issues with you. As you can see, my number one relates to the word "released" being removed and "considered" being put in. I would just like to remind you that the intent of the legislation in 2007 was not for these inmates to be "considered." They had earned mandatory release.

On line 3 of page 13, wording such as "as soon as practicable" needs to be taken out of the Parole Board's vocabulary. The things that wording like that are used for may not have significant meaning to the Parole Board, but they do to the inmates. I am requesting that, any place you have to use that type of wording, you submit a specific time frame there. What I am submitting, in this case, is that there be a 30-day limit unless it is coming from an out-of-state agency, and then you might need to have a 60-day limit.

On page 4, section 2, lines 5 through 9 need to be removed. This wording, that says a prisoner may not bring a cause of action against the State of Nevada, is used in relation to the psych panel. Because of this wording, there can be no appeal to a psych panel decision. Is this really what you want for the Parole Board, to have wording like this in there? Legislative Counsel Bureau (LCB) File No. R018-08, which was just approved in April 2008, allows requests for appeal for severity levels, risk levels, and the parole hearings. Which is going to take precedence, this wording in the amendment, or the wording in LCB File No. R018-08? You need to do some investigating on that; I would like to see Research look into it.

I have put in a number 4, which is not really listed in this bill, as to the difference between quasi-judicial and being under the open meeting law.

Chairman Horne:
If it is not in this bill, we are not going to address it.

Patricia Hines:
It is in the bill. It says that the meetings are quasi-judicial on page 4, line 16. If you are going to use a term like that, you need to come up with a definition of it. I know there are requirements for quasi-judicial.

Number 5 will be taken up at a different time.

Number 6, again, is removing the word "may" and adding "must within 30 days," or a specific time frame.

Number 7 is not in here and it needs to be. You talk about risk assessments, mandatory parole, parole worksheets, and you talk about discretionary parole worksheets. I would like to ask you to read number 7 because there needs to be a separate risk assessment for those who are coming back, being reincarcerated for technical parole violations.

As far as the psych panel goes, and this wording being in there, you have brought up that perhaps the psych panel can be eliminated. Nevada is the only state that has this kind of psych panel in its laws, and I think Assemblyman Carpenter's concept of eliminating the psych panel would be a good one. In other states, the final decision on release of sex offenders is done by the Parole Board, but in our case, the psych panel can usurp the authority of the Parole Board. You need to look into that.

I heartily agree that we should eliminate the psych panel and let the Parole Board have the authority and the funding, if an extra evaluation is needed and if they are expected to make a good decision.

Florence Jones, Private Citizen, Las Vegas, Nevada:
I am a nonpaid lobbyist and I am speaking directly to A.B. 117. I believe it negates the work of the 2007 Legislature, especially in the Mandatory Parole Release area. The area that I am so concerned about is the threat to society. That is the only time the Parole Board does not use the custody level that the prison has established. I believe that part of the bill needs to be clarified. Instead of just a "threat to society," it must be tied to the DOC which has set minimum security on these folks. In the DOC's Administrative Regulations, inmates can be minimum security only if, in fact, they are not a threat to society.

Chairman Horne:
I am going to close the hearing on A.B. 117 and bring it back to Committee.

There being no other business before the Committee, we are adjourned [at 10:26 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: February 24, 2009 Time of Meeting: 8:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 81	C	Julie Butler, Manager, Records Bureau, Department of Public Safety	Written testimony statement
A.B. 81	D	P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety	Proposed bill amendment
A.B. 117	E	Connie S. Bisbee, Parole Commissioner, Board of Parole Commissioners, Department of Public Safety	Memo to the Committee
A.B. 117	F	Tonja Brown, Advocate for the Innocent, Carson City, Nevada	Memo to the Committee
A.B. 117	G	Patricia Hines, Advocate for Criminal Justice Reform, Yerington, Nevada	Memo to the Committee