

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

**Seventy-Fifth Session
March 12, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:13 a.m. on Thursday, March 12, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Bernie Anderson
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary

OTHERS PRESENT:

Janet Traut, Senior Deputy Attorney General, Office of the Attorney General
Howard Skolnik, Director, Department of Corrections
P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Diane J. Comeaux, Administrator, Division of Child and Family Services, Department of Health and Human Services
Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety

Chairman Horne:

[Meeting called to order. Roll called.]

You have before you your binders containing work session documents for the two bills, Assembly Bill 34 and Assembly Bill 81. We will begin with A.B. 34.

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

Allison Combs, Committee Policy Analyst:

Thank you, Mr. Chairman. Assembly Bill 34 was heard back in February 2009. It is a bill that authorizes prisoners to use electronic communication devices, as defined by the bill, under certain circumstances if authorized by the Director of the Nevada Department of Corrections (NDOC). As you will recall, those authorized uses include, without limitation, the transmission of electronic mail, visitation by video conference, participation in parole hearings, education programs, and purchasing certain items. At the hearing, three amendments were proposed by the American Civil Liberties Union (ACLU), which are listed

down below ([Exhibit C](#)). A copy of the letter that was submitted originally is on page 8. Subsequent to the hearing, a second letter was submitted, which is included on page 6.

The first of the three amendments would amend existing law to expand the list of confidential communications made by an offender to include communications with a doctor or other medical professional. The second proposed amendment would add to the list of authorized communications the facilitation of communication by inmates with disabilities. The third conceptual amendment relates to what was phrased originally as existing rights and the authorization to use electronic communication devices. The language is set forth on page 1 of the work session document. Subsequent to the hearing, the second amendment submitted by the ACLU revised this language a little bit to try and address some concerns raised by the NDOC and the Attorney General's Office. The language is set out down below. The area of concern is whether this language adds rights to the statute that may or may not already exist. The letter from the Attorney General's Office is provided on page 3. Mr. Chairman, I understand that people are here to answer questions if need be.

Chairman Horne:

Thank you, Ms. Combs. I would like to first thank Director Skolnik, the ACLU and those with whom you worked to try and reach a compromise on this bill. We try to do that whenever possible to get all the parties to work together to find some consensus. But, even after best efforts, sometimes it is not possible. It appears that this is one of those instances. I do applaud the effort.

Janet Traut, Senior Deputy Attorney General, Office of the Attorney General:

I am here today to answer questions for you about this bill. You have a copy of my letter to Director Skolnik.

Chairman Horne:

This pertains to the proposed language that the ACLU was requesting regarding the rights of inmates to in-person visitation. The gist of the Attorney General's opinion, I believe, is that this may be proposing to create or expand rights that currently do not exist.

Janet Traut:

That is my concern. In terms of general visitation, we begin with a prison system that is closed; it has restricted access. Someone who wishes to meet with an inmate in the prison must go through an application process. They are subjected to a background check, and if they pass that background check, then they are permitted visitation. There is a regulation, NDOC Administrative Regulation (AR) 719, on visitation, which lays out four or five pages of what the

parameters are for the visiting privilege. The Department certainly does restrict visitation to certain individuals, even if they are family members. It is important to remember that, for prisons, inmates' constitutional rights, in many cases, are severely curtailed. This is one of those instances. For the Department of Corrections, we recognize that this is one of the risky, if not the most risky, parts of the business: letting other people into the prison. This is where the majority of their contraband exchange occurs. So restricting visitation is very important to the Department. They can validly do that under the existing constitutional law.

In terms of attorney visitation, which is also at issue here, even attorneys can be restricted from the Department of Corrections. These guidelines are included in NDOC (AR) 722, which lays out the inmates' legal access rights, including law library access. We do have attorneys, unfortunately, who are bad actors and serve to introduce contraband into the prisons. So I can represent to you in truth that there are injunctions that have been issued, and I am aware of other jails in the state where there are actions against attorneys, both before the bar and as prosecutorial actions. This is not something that the Department is exaggerating. It is not bent out of shape. There are valid reasons. My concern with putting a visiting right into the statute is that we know that many inmates are litigious. Looking at that, federal law, case law, and the Constitution tell us that a right can be created by statute. I believe that by mentioning a visiting right in the statute, even though it is a very narrow application, the state will be defending many lawsuits, over visitations which are unnecessary. Since the Department has regulations that control both of these areas of visitation, the most appropriate place, if any, for visitation rules to be changed would be the applicable regulations by amendment. The ACLU should be presenting amendments to the Board of Prison Commissioners for inclusion in the regulations.

Chairman Horne:

Ms. Traut, there are two different issues. We are talking about visitations with attorneys and visitations with everyone else. It is my understanding that access to their attorney is a right. If they have a genuine legal issue—particularly in the case where there is a constitutional concern regarding their incarceration, their case is ongoing, et cetera—access to an attorney is a right they have, as opposed to being able to see their family members or friends or people who want to visit them, which is a privilege for which certain permits have to be put into place and certain hoops have to be jumped through in order for that privilege to take place and continue to exist. I am not saying that both do not have controls on them, but one is clearly more of a right that an inmate is entitled to have, as opposed to the other.

Janet Traut:

While you are correct that there are certain inmates who do have a Sixth Amendment right to counsel, in the Department of Corrections setting where the Department is primarily working with convicted felons, unless they are working on a habeas corpus action or a civil rights action concerning the conditions of their confinement, they do not have a right to counsel. The right to counsel only attaches to their underlying sentence. The majority of attorneys are there under privilege and not under right. You are correct that there is a difference between attorney visitation and general visitation, but the Department can still set the rules for both. The right to an in-contact visit with counsel is not inviolate.

Assemblyman Anderson:

Ms. Traut, I understand that the Department of Corrections would be able to, even for an attorney, control the time when visitors come and subject them to the necessary security measures. I thought the Sixth Amendment made it very clear that we always had the right to an attorney. If I am hearing you correctly, if I were to be incarcerated, I would not have the absolute right to an attorney, even if I had an attorney on retainer? Furthermore, in my conversation with him, if I brought up other issues, would that attorney not be able to pursue them?

Janet Traut:

That may be the case if it is private counsel. It goes beyond the authorization of public defenders offices to do that kind of representation. In *Storseth v. Spellman*, 654 F.2d 1349 (9th Cir. 1981), the courts have laid out that there is no right to counsel for those different kinds of things. Certainly, while the Department recognizes that the attorney/client relationship is very important and that many inmates have this relationship; nevertheless, the Department, for cause, has the authority to restrict counsel. Then it would become an issue. For instance, if an attorney visited the prison and provided an inmate with contraband, that violates the regulation, and the attorney can be completely banned from the institution. We are talking about valid regulations of the Department that set the parameters of the right or privilege, as the case may be, and this amendment from the ACLU is too expansive. If we are looking at having some visitation rules codified into the statute, then those other parts explaining how the Department administers visitation should be put into the statute as well. I am not suggesting that. The details go much beyond what the statute needs to be. Any changes belong in the regulations, not in statute.

Assemblyman Anderson:

I am a bit concerned that this might require a larger dialog between public defenders and the Attorney General. I thought every attorney had an obligation

as an officer of the court to pursue issues that were brought to their attention, if so requested and if retained to do so. Even a public defender, therefore, would have an obligation to at least determine the legitimacy of a complaint of a problem.

Janet Traut:

I do not think that any of the Department's regulations on visitation at this point restrict an attorney's right on a private basis to pursue anything. We are talking about court appointed counsel. The distinction is whether or not the attorney can be paid by the state.

Assemblyman Anderson:

Is there a citation in your letter here?

Janet Traut:

I do not have one, sir. I can tell you that I know that the federal public defender's charter limits them, and they are not permitted to take that action. We have had litigation in the District Courts of Nevada and federal court, over that issue.

Assemblyman Anderson:

You mentioned a court case. What was that case again?

Janet Traut:

Storseth v. Spellman talks about the right to counsel for a civil rights action. I am sorry I do not have the citation.

Chairman Horne:

Ms. Traut, I still have some concern. I understand and appreciate what you are saying about the Department being able to limit access to attorneys in certain circumstances. Imagine a scenario in a habeas corpus case, where the inmate needs access to his attorney. This inmate is not following the rules of the prison, and the result is that he loses his visitation privileges to meet with his attorney. I think that would end up being problematic with the possibility of a lawsuit, as opposed to violating those very same rules and losing visitation with family members for a month or two. I think there is a difference.

The ACLU's proposed second amendment, at the second sentence says, "An inmate's right to in-person visitation with any individual other than his or her attorney may be replaced by electronic communication devices when supported by a written directive...." If you struck the part where it says "any individual" and substituted "his attorney," that is, "an inmate's right to in-person visitation with his or her attorney may be replaced by electronic communication devices,"

under these conditions, you remove the creation of a right to visitation in those general visitation scenarios, but you clarify the understanding that there is a certain right to have access to one's attorney. If it is the Committee's pleasure to make it clear that an inmate has that right to his attorney, the Committee could make the change I just described.

Janet Traut:

I will note that right now we are talking about the detail of contact visitation, the attorney sitting in the room with the inmate. There are other available means of communication that the Department can offer. For instance, a non-contact visitation behind glass can be provided. Attorneys are not permitted to exchange documents with the inmates during the visit, whether it is a contact visit or not. All of those documents get screened separately. So it may be that the attorney is permitted into the institution but not to have a direct meeting. Additionally, the inmates have phone privileges, and they are able to make phone calls to their attorneys that are not supervised or monitored by the Department. So the privilege remains. It is still a situation where the Department has appropriate regulations. If the Committee likes, the Department can certainly make those available, and they are posted online at the Department's website. You can see the degree of care that we go through.

One of the concerns with requiring a written notification of the violation is that it can create certain other safety and security issues within the Department. For instance, if an inmate knows about the violation and has the letter, other inmates could intercept that information. They know that there is an attorney who might have some issues. It could put other staff, other inmates, or the attorneys themselves at risk. So what we are really doing by this bill is increasing the right. If an attorney gets to the point where visitation in person is not available, this adds another alternative. I think you recognize that the Department has staff who deal directly with visitation. You provide that staff through the budget. The Department has not represented this at all in terms of limiting rights. Giving the inmates this limited computer access would actually expand the availability of certain rights to them. The Department has no wish or call to exchange those things, it is merely to be able to use today's technology to give alternatives where there is an issue on safety and security.

Chairman Horne:

Just at the end, you included an additional concern. You believe there may be an increased risk with the written directive portion of it, which had not been articulated to me until just now. Does the Committee have any questions or concerns?

Assemblyman Cobb:

I am very uneasy with the entire concept of this bill, and I agree with the Attorney General's Office on the amendments. I oppose them. Thank you.

Assemblyman Carpenter:

It seems to me that the bill as presented opens up some ways of communication. I do not see where it takes any attorney's rights away, but I do think it gives the inmates another way to communicate with people. Maybe there would not be any harm to it.

Assemblyman Anderson:

I have a tendency to agree with the Attorney General's letter. In terms of the overall question, I believe the purpose of incarceration is to remove you from society. That is part of the penalty. The fact is that we now live in a communication world that has changed the whole dynamics with cell phones, thus creating an additional burden for the Department of Corrections. At the same time, it defeats the purpose of prison. If we are putting someone in prison, we are recognizing that they are to be removed from society. I believe that the medical question clearly should be addressed, and part of those amendments relate to the offender's medical issues. I think there has to be close monitoring of the use of cell phones or any other kind of electronic device by the Department of Corrections. I would not like to expand that use in any way without the director's supervision. At the same time, I am concerned about education, the opportunity for changing behavior through education, which I think is the only way that it can be done for those inmates who do not have degrees or who have not completed their high school education. We need to utilize the system for education. As long as it is monitored, I would feel comfortable. Without very close monitoring by the Department of Corrections, I would not expand existing or create additional rights. I do somewhat disagree with some of the discussion on other areas here.

Assemblyman Hambrick:

I would like to echo Mr. Anderson's comments. I think what this Committee needs to do is to step back a pace or two and keep in mind the difference between rights and privileges. We must make sure privileges do not become rights.

Chairman Horne:

The Chair will entertain a motion.

Assemblyman Segerblom:

I move to pass A.B. 34 without amendments.

Chairman Horne:

Please look at your document, amendments number 1 and number 2. Ms. Combs, could you assist us?

Assemblyman Segerblom:

The Attorney General did not object to those?

Chairman Horne:

From what I understand, the issue was with amendment number 3 and the ACLU's proposed language. Is that correct?

Janet Traut:

If I may, Mr. Chairman, I believe that the Department addressed their objections to the medical portion based on that issue being controlled by the Department at the original hearing.

Allison Combs:

Regarding amendment number 1, my notes do not reflect any concern on the record regarding that amendment. And amendment number 2 was just to add the facilitation of communication by inmates with disabilities to the list of authorized uses.

Assemblyman Segerblom:

I would amend my motion to move to amend and do pass A.B. 34 with amendments 1 and 2.

Chairman Horne:

We have a motion by Mr. Segerblom to amend and do pass with the amendments in your documents: number 1, dealing with confidential communication with doctors and other medical professionals, and number 2, dealing with the facilitation of communication by inmates with disabilities.

Assemblyman Anderson:

Will those communications mentioned in the amendments be monitored or subject to the usual monitoring by the Director of the Department of Corrections?

Assemblyman Segerblom:

Absolutely. They would still be subject to the rules and regulations of the Department of Corrections.

Assemblywoman Parnell:

I am fine with amendments 1 and 2. I assume we go back to the bill as is, with just the two amendments. But tell me if I am reading this correctly. We still have most of the language on page 2 of the bill remaining in it, starting with the new language on line 5 of page 2, going down to line 36. We are still including in line 22 "the purchasing of certain items," and line 35 will still have "has no access or restricted access to the Internet." Is that language still in the bill?

Chairman Horne:

That is correct, Ms. Parnell.

Assemblywoman Parnell:

I had more of a concern with that language than I did with the amendments. I just wanted to clarify that, thank you.

Assemblyman Carpenter:

It seems to me that these first two amendments could also be included in the original bill where they talk about telemedicine and so forth. Maybe I am wrong, but it seems to me that it would be something that the director could include in the original bill if he wanted to.

Chairman Horne:

If I am recalling the original bill correctly, these proposed amendments were to clarify the type of access, particularly to medical care and medical professionals, and to address those inmates with disabilities. That was the ACLU's concern, to make sure that those matters were clarified.

Assemblyman Carpenter:

Could we ask the Director what his concern is?

Chairman Horne:

Director Skolnik, do you have concerns with amendments 1 and 2?

Howard Skolnik, Director, Department of Corrections:

We are already providing the substance of amendment 2 to our disabled inmates. We always had Americans with Disabilities Act (ADA) requirements which compelled us to do that. It is covered by federal law. Additionally, the confidentiality of medical records is also covered by federal law through the Health Insurance Portability and Accountability Act (HIPPA), and we are complying with that as well. Since we are already doing both of these things, I have no objection to the amendments, but they are also not really necessary.

Chairman Horne:

What does the maker of the motion think?

Assemblyman Segerblom:

We have Mr. Skolnik on the record, so I do not personally think that the two amendments are necessary; however, I would defer to Mr. Anderson and the Chairman.

Chairman Horne:

If you can get a second, we will go and vote for it.

Assemblyman Anderson:

Second.

Chairman Horne:

Okay, we have a motion to do pass by Mr. Segerblom and a second by Mr. Anderson. Is there any discussion? Mr. Cobb.

Assemblyman Cobb:

Thank you, Mr. Chairman. If this bill were to pass, I do hope for the best in terms of what they can use this for in a positive sense. I am just very worried about security. I am sure they are going to do everything in their power to make sure that this is a secure system and there is no unauthorized access outside the walls. We have just heard testimony that, in other states, there have been instances where inmates have hacked into the computers and done all sorts of inappropriate things. I do not doubt the veracity of the NDOC; I am just saying that there are a lot of things that could happen with a system like this. It makes me uneasy. Thank you.

Howard Skolnik:

The director and the head of security for the Department of Information Technology have reviewed our plan and have approved it.

Chairman Horne:

I apologize for neglecting to bring that information to the Committee.

Assemblywoman Parnell:

I would echo some of my colleagues' comments. I am just a little uneasy about the bill. I will vote for it in Committee, but I also reserve the right to look further into it. I will let you know if my vote changes for the floor. Thank you.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS
ASSEMBLY BILL 34.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON, HAMBRICK, AND MCARTHUR VOTED NO. ASSEMBLYWOMAN PARNELL RESERVED HER RIGHT TO CHANGE HER VOTE ON THE FLOOR).

Chairman Horne:

Ms. Dondero Loop will handle the bill on the floor. Let us move to the next bill, Assembly Bill 81.

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

Allison Combs, Committee Policy Analyst:

Assembly Bill 81 is a bill from the Central Repository that changes a number of the processes relating to the Central Repository's operation. Testimony indicated that a number of these changes were in response to federal laws. The bill aims to revise Nevada law to make it consistent with federal law. During the hearing, a rather large amendment was presented to essentially remove or delete a number of the sections of the bill ([Exhibit D](#)). The work session document, I believe, will reflect the document you just received in the handout ([Exhibit E](#)). Both are available for you. To summarize, the majority of the amendments involved deletions from the bill. The work session document lists what will be deleted from the bill. A couple of those have some revisions to them. I will go through those and be glad to try and answer any questions. Also included is a more detailed chart that does more of a sectional review of exactly what sections would be deleted. That is on pages 3 and 4 behind this tab. But, again, the work session document summarizes them, so I will go through them.

In the first one, the two sections of the bill revise the definition of a sex offender to reference another section of *Nevada Revised Statutes* (NRS). The testimony was that this is a technical change resulting from Assembly Bill No. 579 of the 74th Session, which is the Adam Walsh legislation. But, with that in litigation, the desire was to keep the statutory language as it is right now. Section 1 of the bill would have amended NRS 179A.072, for example, to change the statutory reference for the definition of a sex offender. The proposal is merely to keep the law in the books as it is right now. There would be no changes under this amendment.

Chairman Horne:

Everyone remembers, for review, there is currently ongoing litigation concerning the Adam Walsh Act and what the Legislature did in 2007 with two particular bills, where the federal court ruled that they were unconstitutional. It is currently before the federal Ninth Circuit Court of Appeals. We are not acting on those issues, where it could undermine the Attorney General's ongoing litigation in that matter. Whenever we work in the area of the Adam Walsh Act, we do so cautiously.

Allison Combs:

The second deletion from the bill would be to delete the sections that would have shifted investigations into criminal history issues from the Repository to certain health-care-related agencies. The proposal would be to remove those sections from the bill and keep the statutes as they are currently.

The third deletion relates to the record of criminal history, and throughout the bill there is new statutory language to define criminal history record. The proposal is to delete that new language throughout the bill and to add—in the beginning of each chapter of NRS there is a section that has definitions for a variety of terms for that chapter—one definition to Chapter 179A of NRS: records of criminal history of the United States or another state means records which originated in an agency of criminal justice of the federal government or an agency of criminal justice of another state.

The third deletion reinstates the requirement for the Division of Child and Family Services (DCFS) to collect certain information regarding a child, adjudicated delinquent for a sex offense, and puts those provisions back into statute.

The next proposed amendment relates to data collection. There were three sections that were proposed to be repealed under NRS 179A.270. Those sections required the Central Repository to collect and analyze data. The proposal is, instead, to move those statutes from the responsibility of the repository into the Department of Health and Human Services and provide that a task force would examine that information, and limit this data collection to juvenile offenders.

The final portion that would be changed from the bill relates to the bill's repeal of a statute requiring sheriffs and police chiefs to forward registration information to the Central Repository. That would be put back; it would not be repealed under this proposed amendment. We would keep existing law there.

Chairman Horne:

Most of the items are going back in, with the exception of defining records in number 3 of the work session document. I, for one, had a particular problem with number 5. I believe the testimony was, basically, to the effect that, "we are not doing it anyway," and we want to pass this on to the Department of Health and Human Services to do. Can I get some clarification?

Allison Combs:

The proposed amendment that you have was revised from the original hearing. The Department of Health and Human Services was not present at the original hearing. My understanding is that 5 and 4 on the work session document, on page 2, were presented subsequent to the hearing after discussions with the Department of Health and Human Services and DCFS. The testimony, regarding number 4 and number 5, did not specifically reference transferring the data collection responsibility to another department. The testimony was that the provisions of NRS 179A.270 through NRS 179A.290 were not currently being implemented because the agency did not have the resources at the time to do that.

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

I want to be clear. It is not that we do not want to do it, it is that we are not capable of doing this task. I think it is a valuable task to look at the programs of juvenile offenders, but we are not staffed for it. It is my understanding that DCFS is willing to address the issues with juveniles. They deal with juveniles and receive that information. They are better staffed and could better coordinate with other agencies. It is really putting the program where it legitimately would best be addressed. In short, we do not want to do it because we are incapable of doing it.

Diane J. Comeaux, Administrator, Division of Child and Family Services, Department of Health and Human Services:

We did work through this amendment with Ms. Butler, and we have no issue with this amendment at all. This is information that the Division is currently collecting. We have a task force that already looks at this type of data, and it would simply change their scope a little bit. We believe that this is important for our youth, and we do not have an issue with doing this. We support the amendment as written.

P.K. O'Neill:

I support the amendment.

Allison Combs:

This amendment is the same as the one in your work session document. At the hearing, there was someone here from health licensing on the other issue.

Chairman Horne:

Was that other issue addressed in here?

Allison Combs:

It is addressed in number 2 of the work session document on the amendments, and it eliminates from this bill the change in the conduct of the background investigations for those particular agencies that were in question.

Chairman Horne:

So that is still here?

Allison Combs:

It takes those sections out of the bill and returns the law to where it is now.

Chairman Horne:

Are there any other questions for clarification? Ms. Parnell.

Assemblywoman Parnell:

I am looking where you have the chart of the amendments, on page 4 of the work session document, the second box down. I would just like a little more clarification on keeping the deletion. It deletes authorization from the central repository to release records to the attorney of record. Could somebody explain that to me? It reminds me a little bit of the previous issue on access to records. I know there is an attempt to explain it, but I prefer to hear it from someone.

Allison Combs:

I would be happy to defer to legal counsel, if need be. On page 2 of the work session document, the explanation from the agency is that this is required under the *Code of Federal Regulations* (CFR). The two sections referenced there are included on pages 19 and 20. There are some arrows pointing to the sections that are referenced. The issue is that criminal defense counsel are not included in the definitions of administration of criminal justice and criminal justice agency under the CFR. That is the reason for taking this out of the Nevada laws to make it consistent with the CFR.

P.K. O'Neill:

The defense attorney still has access to information. This language clarifies the procedures through which he or she can obtain that information and keeps us in line with federal regulations. There has been some conflict in the past between

state statute and the federal regulations. We are just trying to make them consistent. We are not denying the information to defense counsel.

Assemblywoman Parnell:

Is one any more restrictive than the other, or is it a common level of access? If you look at the federal regulations versus what we have now in statute, is one any more restrictive than the other as far as gaining access?

**Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety:**

No, the State of Nevada has essentially adopted the federal definitions of "agency of criminal justice" and "administration of criminal justice." One is not more restrictive than the other.

Chairman Horne:

The Chair will entertain a motion.

Assemblyman Hambrick:

Mr. Chairman, if I may make a motion to amend and do pass.

Chairman Horne:

We have a motion to amend and do pass, with the proposed amendments that we all have in front of us. Is there a second? Mr. Carpenter seconds with a question.

Assemblyman Carpenter:

Thank you, Mr. Chairman. Regarding a defense attorney's right to see and review these documents, I am wondering, if we do adopt the federal regulations, is that going to make it more difficult for them to get these records? I did not quite understand your answer.

P.K. O'Neill:

No, actually it clarifies the conflict that we have been suffering through in the past. It will make it easier for the defense counsel to receive the information.

Assemblyman Carpenter:

Okay. I hope my friend, Mr. Horne, does not come back next time and want to change this. I second.

ASSEMBLYMAN HAMBRICK MADE A MOTION TO AMEND AND
DO PASS ASSEMBLY BILL 81.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Horne:

Mr. Cobb will present this bill on the floor. That completes our work session.

[Meeting was adjourned at 9:16 a.m.]

RESPECTFULLY SUBMITTED:

Robert Gonzalez
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Corrections, Parole, and Probation

Date: March 12, 2009

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 34	C	Allison Combs, Committee Policy Analyst	Work Session Document Suggested amendments by the ACLU.
AB 81	D	P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety	Proposed amendments
AB 81	E	Allison Combs, Committee Policy Analyst	Work Session Document