

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

**Seventy-Fifth Session
April 9, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:18 a.m. on Thursday, April 9, 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:

Assemblyman Lynn Stewart, Clark County Assembly District No. 22

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ben Graham, representing the Administrative Office of the Courts,
Carson City, Nevada
Connie S. Bisbee, Parole Commissioner, Board of Parole Commissioners,
Department of Public Safety
Howard Skolnik, Director, Department of Corrections
Kevin Ranft, representing American Federation of State, County, and
Municipal Employees Local 4041, Carson City, Nevada
Rebecca Gasca, American Civil Liberties Union of Nevada, Reno, Nevada
Samuel G. Bateman, representing the Nevada District Attorneys
Association, Las Vegas, Nevada

Chairman Horne:

[Roll called. The Chairman reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.]

We are going to begin the hearing with Assembly Bill 117. We have some issues.

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

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada:

Disregard anything about interpreters ([Exhibit C](#)). These folks are provided interpreters and will continue to be provided interpreters. If there are problems later with litigation, we will be back in 2011.

The issue of mandatory parole is a difficult area to comprehend. The public and the Legislature would still like some safeguards that certain people will not be

released under the mandatory parole system. We would like to exclude that from consideration and discussion.

We would like this Committee to process and move what is in section 4 of the bill. In the last legislative session or so, expedited processes were put in place where the parole staff would put together a group that was going to be paroled. Notice would still go out to everyone who is entitled to notice, but it would be expedited. Of course, those who are not expedited complain, "What about me; I should have been put in. I am suing the Parole Board and the State of Nevada," even though they still have all the normal rights for hearings and parole under the original procedure. We would like to limit lawsuits to allow the Board to continue the expeditious release of hundreds of inmates who would not have to wait for a hearing to be released, and the State of Nevada would be protected from lawsuits.

Nicolas Anthony, Committee Counsel:

For clarification, the proposed amendment would be just to keep section 4 and section 5 in the bill?

Ben Graham:

Mr. Chairman, if I might defer to Ms. Bisbee.

**Connie Bisbee, Parole Commissioner, Board of Parole Commissioners,
Department of Public Safety:**

That is what we are suggesting: that sections 4 and 5 of A.B. 117 are passed.

Chairman Horne:

Mr. Graham, this bill comes from the Advisory Commission chaired by Supreme Court Chief Justice Hardesty. Did you run this by him?

Ben Graham:

I met with the Chief Justice yesterday, and he apologizes for not being here this morning. There are some matters that are pending for the Court. He understands the potential confusion here and feels that if we can get this one provision through that would be a significant improvement. We will take a more careful look over the interim on this mandatory parole issue.

Assemblyman Anderson:

We often hear that the person who has been denied parole does not know why. At the bottom of page 6, subsection 9, lines 34 through 43, there is the opportunity for the entire Board to turn down the recommendation made in the paperwork, saying that he is not an acceptable person. Why there is no requirement that he be told?

Connie Bisbee:

I am getting confused. Are you looking at section 6 of A.B. 117?

Assemblyman Anderson:

I am looking at the original bill, and I am looking on page 6 at section 5, subsection 9, lines 34 through 43, at the bottom of the page. It appears that someone reviews the paperwork and indicates that everything is correct and there is no reason for this person to appear. It is going to be recommended that he be moved to the next sentence that he has against him. There is no need to come in front of the Board because they are going to move him. There is the possibility that, "Such action may be taken at a meeting of the Board or without a meeting of the Board by delivery of written approval" It appears that there is a possibility that the Parole Board could still deny that recommendation. Right?

Connie Bisbee:

Yes. That is just the recommendation of a case hearing representative or one commissioner. You are absolutely correct. If they look through this group of inmates and that one particular person says, "I think we should grant him without having a hearing," it still has to be ratified by four commissioners. The other commissioners could look at it and the majority of them could say, "No, I do not think so," and deny the recommendation of the commissioner. That means that the inmate would appear at a regularly scheduled in-person hearing.

Assemblyman Carpenter:

You said that you are going to continue to handle the interpreter situation the way you do now. Does that mean that you are going to use employees of the Department of Corrections (DOC) as interpreters?

Connie Bisbee:

There is no legal right to the use of an interpreter the way the law reads now. What has historically happened is that we have staff members with the Department of Corrections who get a 5 percent differential in pay for being bilingual. The Department has been gracious and arranged to have one of those persons available when an interpreter is needed. It is not a legal requirement; that is the way we have always done it. If there is not an interest in making it a legal requirement that inmates have a right to an interpreter, then we do not need to change the current process.

Assemblyman Carpenter:

So, you will change the way the bill is written now?

Connie Bisbee:

Yes. We are just suggesting that we pursue sections 4 and 5 and that we pursue the other recommended sections at a later date.

Assemblyman Carpenter:

Then you are going to take them out?

Connie Bisbee:

Yes, sir. That is what we are recommending at this point.

Assemblyman Carpenter:

Have you ever had a suit against you for using an employee as an interpreter?

Connie Bisbee:

No, sir. There is not a legal right to have an interpreter, so to my knowledge we have never been sued over the services that were provided.

Assemblyman Carpenter:

I thought the Supreme Court had ruled that inmates have to be provided an interpreter?

Connie Bisbee:

What that refers to is—and that is why I believe Justice Hardesty and the Commission were originally looking at this—there was a suit, *Caballero v. Dist. Ct.*, 123 Nev. Adv. Op. No. 34, regarding a friend interpreting for him. It had nothing to do with a parole hearing. The Supreme Court found that Cavalier could have used an interpreter, whether appointed or a friend, for a small claims court situation. Justice Hardesty was anticipating that it is not yet part of the law, but it might be in the future, and this is how it could be handled at parole hearings. Again, the court action was not related to a Parole Board or Pardons Board issue.

Assemblyman Carpenter:

It seems to me it is already in the law in section 3.

Chairman Horne:

Clarification please, Mr. Anthony.

Nicolas Anthony:

Yes. It appears on page 3 of the bill, section 3, subsection 1, at line 20, "existing law does provide for the use of an interpreter to a person with a communications disability." Subsection 2 would expand existing law for the

use of an interpreter if a person speaks a language other than English. Currently, there is no such provision in the law.

Assemblyman Carpenter:

What is a "communications disability," then?

Chairman Horne:

I would say it would be the hearing impaired; someone who uses sign language to communicate, or something like that, not a language barrier.

Assemblyman Carpenter:

I am uncomfortable with not providing them with an interpreter.

Ben Graham:

Interpreters are provided and will continue to be provided. The issue was asking for immunity for interpreters in the event a person was to sue the interpreter. We do not want the damages to go against the interpreter. That raised other issues, so we are here this morning to take the expedited process out. We are not asking to change existing procedures.

Chairman Horne:

They have the interpreters now, and they are going to continue to provide them.

The Chair will entertain a motion, deleting the provisions of A.B. 117 with the exceptions of sections 4 and 5. Everything else is gone.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 117.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CARPENTER VOTED NO. ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE. ASSEMBLYMAN MCARTHUR RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

The next bill is Assembly Bill 238.

Assembly Bill 238: Provides that persons who are convicted of certain offenses involving pandering or prostitution of a child are subject to lifetime supervision. (BDR 14-177)

Allison Combs, Committee Policy Analyst:

Assembly Bill 238 is on page 18 of the work session document ([Exhibit D](#)), and there is a mock-up ([Exhibit E](#)) that was prepared by the Legal Division for this bill. This measure would add the crime of pandering and related crimes to the revised list of sexual offenses that subject a person to lifetime supervision if the victim was under the age of 18 when the offense was committed. There was a lot of discussion in the Committee surrounding the pandering crime. The proposed amendments on this page include adding Mr. Hambrick as a cosponsor. The other is the reason the amendment has been handed out to you. This was drafted by the Legal Division at the request of the Chairman to try to address his concerns on this measure.

Nicolas Anthony, Committee Counsel:

For purposes of clarification, this amendment would strike all the existing provisions in A.B. 238 relating to pandering and replace that with a new section 1.5, which deals with our solicitation statute. The bill would make it a penalty for any person to solicit a child for purposes of prostitution. The penalty would be a category E felony. A child is defined as "a person less than 18 years of age" in those provisions of *Nevada Revised Statutes* (NRS).

Chairman Horne:

We are running up against multiple problems with the pandering statutes, et cetera. We are trying to get to the "johns," and the "johns" are going after the kids. They were only getting slapped on the hand for misdemeanors. Now it is a category E felony, which is mandatory probation, but we send a strong message.

Assemblywoman Parnell:

I want to clarify for the record that one of my concerns was in the original language. The same punishment would have been true for both the pimp and the customer, and I want to confirm that we are only talking about the "john" and not having the same level of offense for the customer.

Chairman Horne:

This is the "john," the one that goes out looking for a prostitute. The others, the pimps, have other statutes that deal with them.

Assemblywoman Parnell:

Has the customer been taken out of the language that was originally in the bill? That is my question.

Chairman Horne:

The customer is the "john."

Assemblywoman Parnell:

I did not mean the customer, I meant the girls.

Chairman Horne:

The Chair will accept a motion. We have a motion to Amend and Do Pass.

ASSEMBLYMAN HAMBRICK MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 238.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman McArthur:

We went through this pretty fast; I want to know if we are accepting all of these conceptual amendments?

Chairman Horne:

No. We will be accepting number 1—adding Mr. Hambrick as primary cosponsor—and 2 and 3 are not needed.

Assemblyman McArthur:

Since the age of consent is 16, why are we leaving that at 18?

Chairman Horne:

Because we are talking about the crime of prostitution of a minor and you are still a minor under 18.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT
FOR THE VOTE.)

The next bill is Assembly Bill 385.

Assembly Bill 385: Makes various changes concerning the maximum caseload of parole and probation officers who supervise convicted persons. (BDR 16-523)

Allison Combs, Committee Policy Analyst:

The next bill is A.B. 385 ([Exhibit F](#)). This is a measure that would require the Chief Parole and Probation Officer, essentially the Division of Parole and Probation (P&P), to adopt a policy establishing guidelines for maximum caseloads for his officers. There were a couple of amendments proposed during the hearing. The first one was to conform the statutory language to the current practice of the Division and lower the number on line 10, on page 2, from 75 to 70, the maximum caseload for offenders who are not subject to

paragraphs (a) or (b), which are essentially the lower level offenders. According to the testimony, 70 would reflect the current standards that are being used.

The second proposal addresses the requirement under the bill to report to the Interim Finance Committee (IFC) if the Chief is unable to comply with the maximum caseloads. There was a proposal from Assemblyman Carpenter to require reporting to IFC regardless of whether the caseloads are met or not. Another proposal along those lines was to require quarterly reporting in lieu of the annual report.

The third amendment was proposed to add caseload standards for correctional officers to the bill. Page 21 is the amendment that was submitted to address these concerns. It would provide for the Director of the Department of Corrections to develop and maintain approved minimum staffing levels. There are certain exceptions provided for facility emergencies.

There were two other proposed amendments that were submitted verbally, relating to Parole and Probation operations on page 20. It requires more officer training and the need to include "good" items in the records concerning an offender. I do not have any more details on those amendments at this time.

Chairman Horne:

For proposed conceptual amendment number 1, offered by P&P, are there any questions or concerns? This is to lower from 75 to 70 the maximum caseload for offenders who are not subject to paragraphs (a) or (b). What were they?

Allison Combs:

Paragraphs (a) and (b) were the more close-supervision levels of those involved: offenders on intensive supervision, residential confinement, and sex offenders, so they require a lower caseload.

Assemblywoman Parnell:

I have a generic question that affects anytime we talk about approved staff levels, and I have been curious about this with the prison system. It is my understanding that it is going to be very difficult for the Ely facility to have a decent staffing level because they are having a difficult time hiring. Is there any way there can be, and I do not know if this is common practice, the transferring of inmates so that we can always have the safest level of correctional officer-to-inmate ratio? I do not know if there is someone in the audience who could let us know if we could consider the possibility for some movement, when we are talking about ratios, to always keep it at the best level possible.

Howard Skolnik, Director, Department of Corrections:

To some degree, yes we can do that. The problem with Ely is that it is our only maximum security facility and the only facility staffed to be one. We can probably modify some of the staffing patterns by moving some positions down to High Desert and up the security level of that facility. We would be happy to take a look at that as an option. You are right; we have a very difficult time staffing Ely.

Assemblywoman Parnell:

It is frightening since Ely is where you have the greatest need. So to be short staffed at your highest-need facility really is worse-case scenario.

Chairman Horne:

Mr. Ranft, will you please come up for clarification. The amendment is missing the exceptions and emergencies. Was it your intention to remove that?

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

Our intent was to pass out the one that you have just received ([Exhibit G](#)). We were asked to email the amendment to your Committee Manager, but our staff sent the wrong amendment in the email. It is similar language, minus the exception. We spoke with the Director of the Department of Corrections, and he said he is already doing the exceptions administratively.

Chairman Horne:

So it is just the handout that everyone just received?

Kevin Ranft:

Yes, sir.

Chairman Horne:

Mr. Carpenter's proposed amendment revises the requirement for the Division to report to the IFC on caseloads regardless of whether the Chief is able to meet the maximum caseloads or not.

As for 2(b) from Ms. Hines, it would require quarterly reporting to the IFC. It is very expensive to report quarterly instead of annually. I do not think it is needed. Are there any questions or concerns?

Regarding number 3, we just discussed the amendment that was passed out; it does not include the exceptions that are in your work session document.

Number 4 addresses Parole and Probation operations, but Ms. Hines' recommendations were general in nature and did not provide enough information for amendment consideration to add anything to the bill. Therefore, we are not considering number 4.

The amendment would be to accept number 1, 2(a), and 3, not including the exceptions. I will accept a motion.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 385.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

Assemblyman Cobb:

I will be opposing this bill. We heard testimony that this is already the practice of the Department of Corrections. If we put this into law, it is inviting potential lawsuits either from employees or inmates. They might claim that we are not following the law if, for a couple of days because of a transition problem, we go over the 70 or 75 listed in the bill. Many of us are familiar with the profusion of lawsuits and writs and motions that the courts receive from prisoners who having nothing better to do. I would hope that we could keep this in the informal and regulatory side of the practice as opposed to codifying it in statute and providing for more expensive lawsuits.

Assemblyman Anderson:

I want to clarify that we are keeping the new language rather than what was in the first work session document. I agree with Mr. Cobb that people who are incarcerated have nothing better to do than create lawsuits against the state, but I think this is an important piece of legislation relating to staffing needs. This is one of the concerns that we hear frequently regarding the problems of correctional officers and the system as a whole. We are often asked to become involved in this issue; therefore, I think it is a needed piece of legislation.

Assemblyman Gustavson:

It seems we have a difference of opinion on this issue, and I agree with Mr. Cobb. This could be very problematic if we do not have the staffing available. I realize that we have a high unemployment rate, but the Director is still having problems hiring staff for one particular prison. I agree with Mr. Cobb that this could be an issue for both inmates and officers who could file lawsuits. This is something that I do not think we need to be going after right now.

Chairman Horne:

I take the prerogative of the Chair in that I think it is needed and is an important piece of legislation, particularly now with cuts across all departments due to our state fiscal problems. This is an area where we need to have a floor to say, "While it may be expedient, we are not going to go below this floor because it is not safe." It is not safe for the public, the officers, or the inmates if we go below a certain level, although there may be a time when someone does not see it that way and makes cuts forcing them to operate below these levels. I think it is alright to have a floor and to strike now before something happens because of staffing levels. I will be supporting the bill.

Assemblyman Segerblom:

I concur. It would be one thing to have too many kids in a classroom, but too many prisoners relative to officers jeopardizes all of our safety. I think it is a wise bill, and I support it. I cannot imagine a prisoner suing and saying there were not enough officers.

Assemblyman Carpenter:

I guess we are going to use the amendment that we just got, and I was wondering about where it says, "Overtime shall be provided." I was wondering what the current policy is regarding that?

Chairman Horne:

"Shall be provided and used as necessary to meet these minimum staffing requirements." Who wants to field the policy standards now?

Howard Skolnik:

We currently use both mandatory and voluntary overtime to meet staffing patterns. We are not funded for either and have traditionally come to IFC to request the funds necessary to cover any discrepancy between our original funding and the overtime that has been required. Traditionally, there has been a pattern of vacancy projections based on the prior year, and 80 percent of the funds for the projected vacancies are taken from our budget at the very beginning of the budget cycle. So in essence, due to the requirement for overtime staffing, we have to go to IFC to get our money back.

Assemblyman Carpenter:

Do you think this will invite more lawsuits if we put it in place?

Howard Skolnik:

As has been pointed out, our inmates are willing to sue over almost anything already. I do not think this would generate a lot of new lawsuits. I believe we will be able to meet with our associations and identify a floor that we ought to

maintain at each institution. That will make it much easier for our staff to identify when they need callbacks or overtime. Right now it is an individual decision made by a lieutenant based on who shows up to work and who does not. If we had, for example, identified that we need 48 people to operate swing shift at Northern Nevada Correctional Center, and we had 46 show up, the lieutenant does not have to go through each post to see if there is a problem. He knows that he needs two people.

Assemblyman Cobb:

Given the amendment regarding overtime, do you feel that it would change the \$1.7 million fiscal note on this bill now?

Howard Skolnik:

At this point, we do not know what the fiscal note would be since we have not determined a minimum staffing pattern in conjunction with the associations. Currently, we identify positions that we call "shut-down positions" where we feel we can operate the facility without anyone at that location. For instance, we may close visiting if we need to pull officers to do transportation. The fiscal note might increase if we, with the association's assistance, identify some positions that currently fall in the shut-down pool that we should not shut down. We are already running from \$6 million to \$8 million a year in overtime costs.

Chairman Horne:

This fiscal note is based on the ratio of 75-to-1, but we are putting it back to 70-to-1.

Howard Skolnik:

That fiscal note is not from the Department of Corrections; it is from Parole and Probation.

Chairman Horne:

All those in favor of the motion... Do I need to repeat the motion? The motion is accepting numbers 1, 2(a), and the new handout as number 3, and that is it.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON, AND MCARTHUR VOTED NO.)

The next bill is Assembly Bill 473.

Assembly Bill 473: Revises provisions relating to medical and dental services for prisoners. (BDR 16-1128)

Allison Combs, Committee Policy Analyst:

Assembly Bill 473 is on page 22 of the work session document ([Exhibit H](#)). It is the bill that would require the Director of the Department of Corrections (DOC) to establish regulations governing staff training and medical emergency response and reporting and to establish standards for maintaining an inventory of essential medical and dental equipment.

There were proposed amendments during the hearing, the first of which was presented by the American Civil Liberties Union of Nevada (ACLU) and is attached. To summarize the two proposed amendments, the first one would require that the medical emergency response standards comply with the American Public Health Association standards. Similarly, 1(b) would require the Department to comply with the American Public Health Association standards for (a), (b), and (c), shown in blue ink or italics, the hygiene of offenders, medical and dental services, and maintaining the inventory of essential medical and dental equipment. Number 3 would require an independent outside audit annually of the medical and dental conditions at Nevada's prisons.

The second proposed amendment, from Ms. Hines, is also attached in writing. It would create an unpaid, public taxpayer position to serve as an ombudsman for the Department of Corrections. The details of that proposal are on page 25 of the work session document.

Chairman Horne:

We requested some information about the American Public Health Association standards and any other such organization, but I have not received anything.

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

We found out there are two organizations in the nation that deal with medical and dental standards for prisons. One is the National Commission on Correctional Health Care and the other is the American Public Health Association. The National Commission publishes standards for health services, which is a set of best practices for the provision of health services in the prison systems around the nation. They also provide an accreditation program for jails and prisons across the nation. The Public Health Association, however, is not an accreditation program, but it is the oldest national organization of public health professionals. They have long led the fight to establish adequate medical and dental care for prisoners and to provide humane and constitutional services. They publish their own standards for health services in correctional settings.

The American Civil Liberties Union (ACLU) recommends the American Public Health Association standards because they are reflective of best practices that have proven to be humane practices. The problem that we see with the

National Commission's standards is that they have accredited several prisons and correctional facilities just before federal courts ruled that those practices are unconstitutional. We understand that the provisions put forward by the American Public Health Association are very high standards. There are a few jurisdictions that have actually adopted them. We would certainly understand if this Committee would be more comfortable with the National Commission's standards and, while we would still support the Public Health Association, we think it is important that there be some standards adopted in state law.

Chairman Horne:

I think one of the problems is that the Committee has not had an opportunity to review either standard. I do not recall whether Director Skolnik said they comply with either standard. If you are going to say the DOC should comply with certain standards, at the least the Committee should be able to review those standards, but they have not had that opportunity.

I will accept a motion of Do Pass.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
ASSEMBLY BILL 473.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

Assemblyman Cobb:

I thought Director Skolnik gave a pretty impassioned and thoughtful response to this bill. He said that it was unnecessary and just more regulations to deal with instead of actually giving care. He said they do listen to the audits and respond and make changes. I am going to trust the Director to follow through with what he said, and I am going to vote against this as being unnecessary.

Chairman Horne:

I will be supporting the bill. We have a motion of do pass.

Assemblyman McArthur:

I also have the same concerns; I wonder if this is doing anything that is not already being done. I will vote yes with the right to change.

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

Chairman Horne:

The next bill is Assembly Bill 474.

Assembly Bill 474: Revises parole eligibility for certain offenders.
(BDR 16-1127)

Allison Combs, Committee Policy Analyst:

The next bill is A.B. 474, on page 26 of the work session document ([Exhibit I](#)). This is the measure that would require mandatory parole of prisoners— if certain conditions are met—sentenced to life imprisonment with the possibility of parole and who were less than 16 years of age at the time of the offense. There are some proposed amendments that were submitted after the hearing by interested parties; they are set forth below.

The proposal addresses whether the conditions to be met before release are strong enough and whether the individuals would still be subject to the parole provisions once they are released.

On page 26, the first set of amendments relates to the conditions of mandatory release, and 1(a) relates to infractions. The proposal is to increase the period of time that has to pass without a major infraction of the Department of Corrections' regulations from 12 to 24 months, and to require that they not have been housed in disciplinary segregation during that 24-month period. The second one changes the requirement to complete a program of general education "or" the completion of an industrial or vocational program, not both.

On page 27, along the same lines, 1(c) also provides that the prisoner must not be "a validated gang member in accordance with the Department's gang-validation procedures"; 1(d) is to "provide that a prisoner is not eligible for release unless he is recommended by the Director of the Department"; and 1(e) states, "a finding by the Parole Board that there is not a reasonable probability that the prisoner would be a danger to the public while on parole."

Numbers 2 and 3 address the concerns of parole. The mandatory parole statute that is in place now for other offenders would pull in the provisions from that statute, so this is a direct copy of that statute under NRS 213.1215. Under number 2(2), on page 27, the parolee would now be closely supervised. If the Board found that the prisoner would be a danger to public safety—number 2(3)—they could pull the person back in, or essentially not grant the parole. Number 2(4) would provide that, if the prisoner is subject to lawful arrest in another jurisdiction, he would not be released. If the Division has not completed a supervision program—2(5)—he would not be released. Number 2(6) relates to the calculation of credits.

Number 3 attempts to ensure or clarify that all of the statutes that relate to someone released on parole would also apply in these cases. There is a listing

of statutes that would also apply to these individuals. The Board would impose conditions and restitution, prohibit association with a gang, and so forth. If an inmate was convicted of certain sexual offenses, he would also have to be reviewed by a psychological panel.

It also includes the duties of Parole and Probation (P&P) to approve a plan for placement that is acceptable and to notify victims if the offender were to be released.

Assemblywoman Parnell:

I am just confirming that this is still a prisoner sentenced to life in prison with the possibility of parole who was less than 16 years of age when the offense was committed. Is that the only population we are talking about?

Chairman Horne:

That is correct. I believe that Mr. Skolnik said there are fewer than six persons who would meet those qualifications.

Assemblyman Cobb:

Is there a chance that we could hear from a deputy attorney general or district attorney on their comfort level with the amendments?

Chairman Horne:

I believe Mr. Bateman helped craft this amendment.

Samuel G. Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada:

As the Committee probably recalls, the Chairman asked me to sit down with the public defender's office to see if we could come up with some added language that would make the comfort level of the Nevada District Attorneys Association a bit better. From a conceptual perspective, the Nevada District Attorney's Association is still uncomfortable with the idea of mandatory parole for offenders who committed either a murder or a sexual assault. We are additionally concerned when you have mandatory parole and are taking victim input out of the equation. The Nevada District Attorneys Association remains concerned about taking away the discretion of the Parole Board. It is like seeing legislation that takes away the discretion of a prosecutor. It gives me some concern. Nonetheless, in an attempt to comply with the request of the Chairman, I sat down with members of the Parole Board to learn more about the process and what would be important safeguards. These are the conditions that I included that I think would give us more comfort—I cannot say I am entirely comfortable—if the legislation goes forward.

I note with regard to the recommendations from the Director, which is letter 1(d) on page 27, we withdraw that recommendation. After speaking with Director Skolnik, I think that would be inappropriate. With regard to subsections 2, 3, and all of the statutes that still need to be in play—for someone to be given mandatory parole—there is a provision in the bill that says, "notwithstanding any other provision of the law." I think were you to draft a proposal, we could put "notwithstanding any other provision of the law with the exception of all of these statutes," and then you would not have to go through listing them.

In number 1, on page 26, which is the infraction section, there was an issue that an inmate may not be committing major infractions because he was put in the hole. This should not be to someone's benefit. A major concern is that we might be mandating parole for an active gang member. I certainly recognize the dynamics of the prison system and how oftentimes an individual feels the need to get into a gang to protect himself, but I think we cannot be mandatorily sending someone out who is currently an active gang member. My guess is that a lot of these younger offenders were probably in a gang when they committed the offense. Before sending someone out, I believe it is important to determine how dangerous he is, since he was in there in the first place for committing a very violent offense.

Assemblyman Anderson:

This may not be an appropriate question for this particular witness, but I have a question about the recommendation under (c) of number 1, gang activity. It says, "Provide that a prisoner must not be a validated gang member in accordance with the prison system's gang validation procedures." It seems that an inmate is protected by a group within the prison system—and there are many groups—some of which are recognized as gangs and others that only exist in the prison system. Inmates must belong to one group or the other. Is that still the case? You have to be protected by someone?

Howard Skolnik, Director, Department of Corrections:

We have a fairly involved and court-approved process for identifying security threat groups. Depending on how it fits into our criteria, everyone that says he is a member of a gang may not be in a security threat group. Once a group is identified, and ultimately the approval to create a security threat group rests with the Director of the Department of Corrections, there is a validation process for individuals. There is also a debriefing process for individuals. Individuals who have been identified as members of a security threat group can remove themselves from that group through a process that has been developed, reviewed, and then approved by the courts.

The answer to your question, does everyone have to belong to a security threat group, is no. That may be the case in certain parts of certain institutions, but that is not generally the case throughout the Department. The vast majority of our inmates are not identified as members of security threat groups.

Assemblyman Anderson:

Looking at gang activity, the security criteria that you already have established within your court-approved process determines if it is gang validated?

Howard Skolnik:

That is correct. It is not a matter of gang affiliation; it is a matter of the identification of a group of inmates who pose a security threat to the institution through their behavior. Most of those groups ultimately fall into the gang category, but they do not have to.

Assemblyman Anderson:

I just want to be reassured that we are not excluding the entire prison population immediately based upon the question of gang activity.

Howard Skolnik:

My recommendation would be to change the word "gang" to "security threat group member" or "validated security threat group member." If you do that, you have eliminated about 80 to 90 percent of our population from consideration. I am sorry, I have that backwards. You have eliminated most of the population from being considered members of security threat groups.

Chairman Horne:

Are there any other questions or concerns?

Assemblyman Cobb:

This is directed to the District Attorney's Association. You had testified during the hearing that you had concerns about consecutive sentences and how it all interacts. I just want to ensure that it is addressed. I do not see it in the amendments, but I guess you are handling this issue separately.

Samuel Bateman:

I could not see a way to amend that issue. Some of my concerns in the beginning related to the practical application of the way the statute was written. I do not see a way of improving the language regarding my concerns.

Chairman Horne:

I do not think the bill absolves any subsequent consecutive sentences. If they are paroled from their first sentence, they start their second consecutive sentence. It does not go away.

Samuel Bateman:

That is my understanding as well.

Chairman Horne:

The Chair will entertain a motion to Amend and Do Pass with the amendment being number 1(a), 1(b), 1(c), and 1(e), number 2, and number 3, including drafting to incorporate the statutes by reference without listing them as Mr. Bateman suggested.

Assemblyman Anderson:

Was it the intention of the Chair to take the suggestion about the term "validated gang" and exchange it for "security threat group"?

Chairman Horne:

It was.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 474.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN PARNELL WAS ABSENT
FOR THE VOTE.)

We have two bills that are not in your documents that we are going to quickly consider. We will start with Mr. Stewart's bill, Assembly Bill 325.

[Assembly Bill 325](#): Revises provisions relating to sex offenders. (BDR 14-1028)

Mr. Anthony, will you explain the proposed amendment.

Nicolas Anthony, Committee Counsel:

Being passed out to the Committee is a mock-up dated April 9, 2009, prepared for Mr. Stewart ([Exhibit J](#)). The intent of this mock-up is to replace the bill with new provisions requiring anyone convicted of a sex offense, who is currently on probation, parole, or lifetime supervision, to not have any contact or communication with the victim of the sexual offense. You will see in section 1 of the bill that there is already existing language in statute providing such.

We are clarifying that you may not have such contact unless it is approved by the Chief or his designee. The same thing at page 4.

On page 6 of the new provisions, the Board must require, as a condition of lifetime supervision, that the offender not have any contact with the victim unless approved by the Chief or his designee.

At page 9, the bill requires that the paroled person not have any contact with the victim unless approved by the Chief or his designee. The remainder of the bill deletes all the prior changes in A.B. 325.

Chairman Horne:

Mr. Stewart, we are having problems with the distance issue, and you heard about the litigation on the Adam Walsh Act. I told you we would try to get you a bill, and I understand where you are trying to go, but this is what we could come up with. How does it sound to you?

Assemblyman Lynn Stewart, Clark County Assembly District No. 22:

I very much appreciate what you have done. I think it is very workable. The Department of Public Safety is agreeable. We have just one minor change to section 5, subsection 1, on the last page of the mock-up, page 10, line 32. We would like to change it to, "Section 1 of this act applies to a person whose conviction was on or after October 1, 2009." So we would strike "granted probation" and put "whose conviction was on or after October 1, 2009". Then in subsection 3, line 36, strike "is released on parole" and change to "apply to a person whose conviction was on or after October 1, 2009." That was at the suggestion of the Department of Public Safety.

Chairman Horne:

Does that work, Mr. Anthony?

Nicolas Anthony:

We can certainly work those into the bill. I think the bill language there was specifically applying to different sections; for instance, section 3 only applies to parole, so it might be a little awkward to make it say "only applies to a person after their conviction." But we can work on the change. I certainly understand the intent, so we can do that.

Assemblyman Anderson:

If I am to understand Mr. Stewart's suggestion of the date change, what we would be doing is reaching back to those people who are already in prison. Whereas, the way it is currently structured, it would be an effective date for those people who are going to be released. It seems to me it raises, at least in

part, the question of ex post facto since that was not a condition at the time, and that may have a dilatory effect.

Chairman Horne:

Let us get clarification from Mr. Anthony about your ex post facto concern.

Nicolas Anthony:

I believe the proposed amendment would only apply to any person who is convicted on or after October 1, 2009. It would be going forward starting this October.

Chairman Horne:

The Chair will entertain a motion.

ASSEMBLYMAN GUSTAVSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 325.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The last bill is Assembly Bill 265.

Assembly Bill 265: Revises provisions governing juvenile justice. (BDR 5-834)

This was Mr. Denis' bill. They did not have a way to deal with juveniles who do not follow the rules, and they do not really have contempt. It is just an addition to this section and is not applicable to a child adjudicated as a child in need of supervision pursuant to NRS 62B.320. There are issues with that category of children who are currently in the juvenile system, and this is going to exclude them and deal with the more hardened juveniles.

Mr. Bateman, you aided Mr. Denis with his bill, A.B. 265. What exactly does this amendment do to Mr. Denis' bill?

Samuel G. Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada:

Yes, I did do that.

Some of the individuals from Douglas County had concerns about truants. The concern was that we were encompassing what I will refer to in the juvenile system as "status offenders." This language exempts those individuals—status offenders—and it would only deal with people who were facing more serious

charges and were placed on informal probation, delinquents if you will. The delinquents are the ones who are actually committing the crimes, misdemeanors and felonies. This language would apply the 10-day contempt time only to those individuals who were on informal probation or formal probation for delinquencies. It would take out all of the other individuals ([Exhibit K](#)).

Chairman Horne:

I appreciate your helping Mr. Denis with that.

The Chair will entertain a motion on A.B. 265.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 265.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We have one more, Assembly Bill 252.

Assembly Bill 252: Provides for the waiver of fees for the issuance of certain forms of identifying information for certain persons released from prison. (BDR 40-521)

This bill is Mr. Anderson's bill and deals with fee waivers for issuance of identifying documents. Page 2 of the bill, section 1, subsection 3, paragraph (a), subparagraph (2), applies to "A person who submits documentation from the Department of Corrections verifying that the person was released from prison within the immediately preceding six months." It allows these persons, who are getting out of prison without having proper identification (ID) or money to get it, to get that documentation in order to get employment and other services needed. That is NRS 440.175, section 1 of the bill.

Was there a proposed amendment with this bill that added children who were released from state custody? Sorry, we do not have this document in written form. NRS 440.700 is amended to add, "A person who submits documentation from the Division of Child and Family Services verifying that the person was released from state custody within the immediately preceding six months or is scheduled to be released in the following six months."

Assemblyman Segerblom:

Just yesterday, Mr. Cobb complained they were giving prisoners all kinds of free things, so I am saying that this really helps all of us because it is a bill sponsored by Religious Alliance in Nevada (RAIN) for people who are trying to bring prisoners back into society when they get out. A lot of them get jobs, but you cannot get a job without identification, and that is all this provides. It does not give anything special to prisoners; it just allows them to have an ID like you and I have.

Assemblyman Cobb:

My comments during the hearing had to do with the fact that we are already giving them money, which would pay for an ID if they wanted to use that money for that purpose. Additionally, to your point about privileges, my point was directed to the person who argued before us a couple of days before that veterans did not deserve special privileges. I said, "This seems to be contrary to what you were just arguing a couple of days earlier," when they came forward and said offenders deserve some type of privilege. That is why I was making that argument at the time. I am not going to oppose this bill; it will have a miniscule effect on the budget, and I think it can be helpful.

Chairman Horne:

I will accept a motion to Amend and Do Pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 252.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We have no further bills before this Committee. We are not going to adjourn; we are going to recess until Friday in case something comes up that we need to come back for since Friday is the deadline. We are in recess [at 9:50 a.m.].

[Meeting was called to order on Friday, April 10, 2009, at 12:10 p.m.]

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The Committee meeting on Assembly Corrections, Parole, and Probation from April 9, 2009, is reconvened. Since there is no further business, the meeting is adjourned [at 12:10 p.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: April 9, 2009

Time of Meeting: 8:18 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 117	C	Ben Graham	Work session document
A.B. 238	D	Allison Combs	Work session document
A.B. 238	E	Allison Combs	Mock-up of proposed amendment
A.B. 385	F	Allison Combs	Work session document
A.B. 385	G	Kevin Ranft	Proposed amendment
A.B. 473	H	Allison Combs	Work session document
A.B. 474	I	Allison Combs	Work session document
A.B. 325	J	Nicolas Anthony	Mock-up of proposed amendment
A.B. 265	K	Samuel Bateman	Proposed amendment