

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
April 22, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:08 a.m. on Wednesday, April 22, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**GUEST LEGISLATORS PRESENT:**

Assemblyman William Horne, Assembly District No. 34  
Assemblywoman Sheila Leslie, Assembly District No. 27

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Nathan Ring, Extern to Assemblyman Horne  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Janet Sherwood, Committee Secretary

**OTHERS PRESENT:**

Elizabeth W. Neighbors, Ph.D., ABPP, Director, Lake's Crossing Center; Division of Mental Health and Developmental Services  
John Reese Petty, Chief Deputy Public Defender, Washoe County Public Defender's Office  
Jesse A. Wadhams, Black Jack Bonding Inc.  
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada

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Howard L. Skolnik, Director, Department of Corrections

CHAIR CARE:

We will open the meeting on Assembly Bill (A.B.) 264.

**ASSEMBLY BILL 264 (1st Reprint)**: Revises provisions relating to defendants who are incompetent. (BDR 14-995)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

I am presenting A.B. 264. We are sending the wrong people to Lake's Crossing Center. I became aware of this problem through my professional job as Specialty Courts Coordinator for the Second Judicial District Court in Washoe County. When I administer the Mental Health Court, I work closely with Lake's Crossing Center on a number of issues. This problem came to my attention after we changed the law last Session.

The Assembly worked with Dr. Elizabeth Neighbors and members of the Public Defense Bar to amend the bill, giving judges adequate judicial discretion to make certain our most violent and dangerous offenders are sent to Lake's Crossing.

ELIZABETH W. NEIGHBORS, PH.D., ABPP (Director, Lake's Crossing Center, Division of Mental Health and Developmental Services):

I am here in support of A.B. 264. Last year, we experienced problems with inappropriate commitments for our facility. Assembly Bill 264 will change *Nevada Revised Statutes* (NRS) 178, allowing us to have more input about the commitment of incompetent, dangerous individuals having no probability of attaining competence. Assembly Bill 264 defines the circumstances under which an individual who falls into that category can be committed to Lake's Crossing or any other maximum security forensic facility. Because they are considered sufficiently dangerous for that level of care, this bill makes the judge's decision in those cases discretionary rather than obligatory.

In one instance last year, the judge had no discretion in committing an individual charged with a serious offense to Lake's Crossing Center. This individual was confined to a wheelchair, had congestive heart failure, suffered from dementia and required care you would find in a nursing home. At the time he was sent to us, he was no longer considered a risk if placed in an appropriate setting and properly supervised.

Under statute, we have had several attempts to commit similar individuals. These people could be cared for in a less costly setting with more appropriate care than what Lake's Crossing Center can provide.

We are concerned we will become the alternative for individuals who have these problems when they get involved in the criminal justice system. Lake's Crossing Center is not designed to be a nursing home, nor do we have staff trained or equipped to deal with this population. At the present time, most placements for these individuals are out of state. If we discharge them, we send them out of state under a conditional-release status, which means we supervise them at a remote distance. This is difficult to accomplish. When these individuals do not present a high risk, it is not necessary to maintain that level of care.

The proposed language changes would correct this situation. We modified the Category B felonies that qualify, making the individuals committed to us more appropriate.

CHAIR CARE:

Please give us a review of the demands on Lake's Crossing Center given the need for placement.

DR. NEIGHBORS:

Our population is broadly defined. We take individuals whose competency to stand trial is questionable. We have male and female patients ranging in age from 15 to 80 years old. Reasons for incompetency can be schizophrenia, bipolar disorder, brain trauma or dementia. We take people who do not qualify for a civil commitment to other psychiatric hospitals. These individuals are accused of crimes from misdemeanor trespassing to domestic violence to multiple murders. We want A.B. 264 to focus on individuals we cannot get competent. We want to focus this commitment on the violent offenders who present a significant danger to the community rather than someone who could be cared for someplace else if we are unable to treat them to competency.

JOHN REESE PETTY (Chief Deputy Public Defender, Washoe County Public Defender's Office):

I act as the liaison between our office, the Second Judicial District Court and Lake's Crossing Center. I have worked with Dr. Neighbors on A.B. 264. The Washoe County Public Defender's Office supports the bill.

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CHAIR CARE:

I note the bill came out of the Assembly with a vote of 40 in favor, none against and two excused.

SENATOR COPENING MOVED TO DO PASS A.B. 264.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

This closes the hearing on A.B. 264.

We will open the hearing on A.B. 462.

[ASSEMBLY BILL 462](#): Revises the provisions governing sureties. (BDR 14-838)

Assemblyman James Ohrenschall, the sponsor of the bill, is sick. In the testimony on the Assembly side, Mr. Ohrenschall made a presentation. Was it substantive? Does he need to be here? Are there others who would want to testify on the bill?

JESSE A. WADHAMS (Black Jack Bonding Inc.):

Not to my knowledge. It is his testimony. I can present the bill.

CHAIR CARE:

Go ahead and present the bill.

MR. WADHAMS:

Assembly Bill 462 says a corporate surety approved pursuant to NRS 680A, which is in the Nevada Insurance Code, would be allowed to transact business in all the courts of the State. The issue arises from a 2002 order in the City of Las Vegas that says in order to do business in that court, a surety company must have a B+ + rating. We have talked to Las Vegas a number of times, trying to work toward a resolution. This bill would say an insurer who has a Nevada license is permitted to transact business in this State. This would provide full oversight and regulatory authority because a Nevada company with

a certificate of authority is fully regulated by the Division of Insurance. If there are any issues, the City of Las Vegas or any other aggrieved person could call Scott Kipper, Commissioner of Insurance, and he can send in market conduct examiners. It is a simple bill stating we can do business in Las Vegas.

CHAIR CARE:  
That was a 2002 order?

MR. WADHAMS:  
It is a 2002 order by the late Chief Judge Toy Gregory. I have spoken with the City of Las Vegas, and we are talking about a different version of this that works for both parties.

CHAIR CARE:  
Are you suggesting there might be a proposed amendment?

MR. WADHAMS:  
We are working toward one.

CHAIR CARE:  
If there potentially is a proposed amendment, we will not do anything with the bill today. We will close the hearing on A.B. 462 to be reopened at a later date.

We will open the hearing on A.B. 473.

**ASSEMBLY BILL 473**: Revises provisions relating to medical and dental services for prisoners. (BDR 16-1128)

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union of Nevada):  
I am in favor of this bill. It adds a minimal amount to existing requirements addressed by the Department of Corrections relating to medical and dental issues in the facilities. Section 1, subsection 7 requires staff training in medical emergency response, and section 2, subsection 2, paragraph (c) calls for maintaining inventory of essential medical and dental equipment.

The American Civil Liberties Union of Nevada (ACLU) is litigating an issue of medical and dental care at the Ely State Prison. One reason we come to the Legislature is to avoid and decrease future litigation. Our proposed amendment (Exhibit C) adds that standards adopted by this bill should comply with the

National Commission on Correctional Health Care (NCCHC). In front of the Assembly, we suggested the standards comply with the American Public Health Association because they are the blue-ribbon group. Not many jurisdictions adopted those standards because they are so high. While the ACLU would not term the NCCHC a blue-ribbon group, they are the group most frequently used by jurisdictions as a set of external standards. They are also responsible for accreditation. They have national standards that are easily followed because they accredit health care within correctional facilities. This would be a good external bar to set to make sure these regulations are compliant with national expertise and constitutional minimums. There are concerns in those areas because we are in litigation. We need to have some ties to external standards to make sure the Department is following current trends in health care.

CHAIR CARE:

Fill us in on the status of the litigation. There have been instances in the past where oftentimes, depending on the circumstances peculiar to the case, people have come before the Legislature to terminate or shortcut pending litigation. There are good reasons to do that and reasons not to do that. I assume the basis of the litigation is a constitutional violation.

MS. ROWLAND:

Yes. We are cocounseling this case with our National Prison Project and alleging there are systemic Eighth Amendment violations. The Eighth Amendment is the prohibition on cruel and unusual punishment, and that devolves from substandard medical and mental health care at the Ely State Prison. The federal judge certified this case as a class action; it will be brought on behalf of all prisoners in the Ely State Prison. Evidence showed the issues were systemic and not related to a few individuals.

The changes proposed in the amendment will not do away with our lawsuit. This is not an attempt to litigate through Legislature but an attempt to have ties to outside standards. It does not substantively change the bill. It says when the Department of Corrections develops those regulations, they should look at a national model set of standards. This does not promise to avoid or decrease litigation. It is good insurance for the State to make certain, when developing those practices, there is something akin to best practices that reduce the risk those standards will constitutionally be out of the mainstream. This was the attempt, and it was not directly related to the litigation. I would be exaggerating if I said this will terminate a lawsuit. Hopefully, this will be part of the puzzle

bringing us to best standards so we do not need to be in court about these issues.

CHAIR CARE:  
I appreciate your candor.

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):  
With me today is Nathan Ring, a student from the William S. Boyd School of Law, University of Nevada, Las Vegas, who has been assigned to me through the Legislative Counsel Bureau (LCB) as an extern for this Session. Mr. Ring will broaden his experiences by presenting Committee bills on the Senate side.

NATHAN RING (Extern to Assemblyman Horne):  
I am a nonpartisan staff member, and I do not take a position on A.B. 473. I will explain the changes in law made by the bill, and Assemblyman Horne will explain the arguments and reasoning behind and in favor of the bill.

The bill grew out of recommendations made in an audit of the Department of Corrections by the LCB Audit Division in the interim. There were two specific findings of the audit. One finding showed medical and dental supplies necessary to the care of inmates were missing in the institutions. Two institutions went six months without dental chairs. Inmates had to be transported back and forth to other facilities for needed dental care, requiring inmates to wait longer than necessary for their care. The transport of inmates created a security risk.

A second specific finding of the report pertained to systemwide, improper filing of emergency medical response reporting documents. The emergency response reporting times are to be recorded at the time of the call and at the time of the response. These forms were not being filled out correctly; the same time was being used for each category. For instance, if 6:33 was the time a call was made for emergency medical care, the response time was also recorded as 6:33.

The first section of the bill requires the director of the Department of Corrections (DOC) to establish regulations governing staff training in medical emergency response and reporting. The second section of the bill requires the director of the DOC to establish standards for maintaining an inventory of essential medical and dental supplies to prevent the circumstances that happened prior with the dental chairs and other medical supplies.

SENATOR PARKS:

Did this study look into the fiscal impact and costs associated with performing these functions and whether the State budgeted sufficient funds to adequately treat inmates for dental care?

MR. RING:

The principal findings of the audit dealt with inmate programs on grievances and access to health care. It did not deal with budget constraints or considerations of the Department of Corrections.

SENATOR MCGINNESS:

The bill says, "Maintaining an inventory of essential medical and dental equipment ... ." Is there a definition of essential? This can be rather broad.

MR. RING:

There is no definition of essential. The Department of Corrections promulgates standards, and they determine what is essential. They are in the best position to determine what is essential for the inmates.

CHAIR CARE:

Section 1, subsection 7 addresses proper measures protecting the health and safety of the staff and offenders. Does this include medical emergency response and reporting and training? Section 2, subsection 1 addresses a healthful diet and appropriate sanitary housing. Does this include what is proposed to be added in statute?

HOWARD L. SKOLNIK (Director, Department of Corrections):

The Department is not in favor of A.B. 473 or the proposed amendment. Assembly Bill 473 puts audit findings into law before the Department of Corrections has had the full period of compliance with that audit, much of which has already been done. In the full audit, the Department was found to be generally providing at or above standard access to medical care for a correctional facility.

Our inventory for equipment and replacement of that equipment is described and proposed by the funding we receive from the Legislature. Our funding is for the minimal amount of equipment necessary to stay functioning which does not afford an opportunity to replace equipment when something breaks. There are no dental chairs manufactured for high intensive use in an institutional facility



such as ours. We have administrative regulations in place consistent with correctional health care standards. We have utilized those standards in the redrafting of those regulations, many of which are being reviewed at the Office of the Attorney General and will subsequently be taken before the Board of State Prison Commissioners.

If the Legislature charges the Department to comply with accreditation according to the proposed amendment, we are talking about a lot of money. This will require a fiscal note from the Department.

CHAIR CARE:

The bill does identify an effect on the State. I have looked at the fiscal note, and I thought it said Department of Corrections. At the time this was done, there was no fiscal impact. Am I missing something?

MR. SKOLNIK:

There is no fiscal impact on the original bill. There was an amendment proposed in the Assembly creating a substantial impact, but it was not approved. We would not have a fiscal impact when writing the regulations and creating training standards because those resources already exist within our Department. There will be a fiscal note if we are required to provide additional equipment and resources. We would not know the impact until the regulations were approved by the Board of State Prison Commissioners.

The LCB conducts numerous audits on the Department of Corrections. In spite of the lawsuit, the quality of care we provide is constitutional, and we will fight that lawsuit. It is not necessary to pass a law telling the Director of the Department of Corrections to comply with audit findings when I am already required to comply.

SENATOR AMODEI:

Section 1, subsection 7 says, "... establishing regulations ... ." Your testimony states you are going to do that.

MR. SKOLNIK:

We have done most of that.

SENATOR AMODEI:

The bill does not say regulations have to be done by an effective date.

Section 2, subsection 2, paragraph (c) mentions, "... inventory of essential medical and dental equipment ... ," which I assume is a function of the appropriation process.

MR. SKOLNIK:

That is correct.

SENATOR AMODEI:

Ms. Rowland's amendment would impose national standards in these areas. If I have heard your testimony correctly, meeting standards is a function of the appropriation process.

MR. SKOLNIK:

Not exactly. Developing standards is already in process to our regulations. Meeting the standards and becoming accredited would require an appropriation because the accreditation process is not free and will require additional funding in certain areas of the Department. We would never achieve some standards because of the rural nature of some of our institutions. We have proposed the construction of a regional medical facility in Clark County as part of the Capital Improvement Program proposal from the Governor for this coming biennium. We anticipate this will solve many of our medical problems, allowing us to bring some of the more rural inmate medical needs into an urban environment where resources are available.

We are not substantively opposed to what this bill proposes because we have accepted all recommendations and findings from our audit. We oppose the need for legislation to have the Department of Corrections comply with audits.

SENATOR AMODEI:

Let us assume we adopt the language on page 2 in lines 39 and 40 telling you to maintain an inventory, and we adopt Ms. Rowland's amendment requiring the standards be met. If policy says you will comply, but the appropriation process does not fund it, how does that work? Are we sued for violating our own statute? Was there any discussion on the Assembly side about policy running into appropriations?

ASSEMBLYMAN HORNE:

A discussion on policy meeting appropriations was not discussed. However, the proposed amendment offered on the Assembly side was not adopted for a few reasons. The primary reason was we did not have the time or opportunity to discern those policies. Without doing so, you cannot get to the question on what impact those policies would have if adopted.

SENATOR AMODEI:

The language at the bottom of page 2 says, "Maintaining an inventory of essential medical and dental equipment at each institution or facility." Was there any discussion of language that might say, "within guidelines allowed by the appropriations process?"

ASSEMBLYMAN HORNE:

There was not.

SENATOR AMODEI:

Do you have any thoughts on that?

ASSEMBLYMAN HORNE:

You are asking my opinion on whether we should be providing appropriations to meet this?

SENATOR AMODEI:

No, I would not put you in that position. But if we say a department must do something that requires resources, i.e., maintain an inventory, would you be opposed to putting in language that says, "subject to availability of resources," as opposed to setting a standard that says a department must comply and if the standard is not met because there are no resources, it is a slam dunk to say you are in violation of provisions of NRS.

ASSEMBLYMAN HORNE:

You are saying we would like you to keep these standards only if we can afford to keep these standards. If the policy is sound, these standards that we are setting are the floor, something we should be able to maintain in our prisons. If we set policy saying what we should maintain as our floor in the prisons, it is incumbent upon us to provide Director Skolnik with those resources. The alternative is not to put in language saying you have to meet this floor only if

we can afford it, but if we cannot afford it, you do not have to meet the standards.

SENATOR AMODEI:

I do not disagree with your analysis, but there are policies not funded sufficiently for implementation. We have a choice between saying, "Here is the standard, but only if you get the money," which is unacceptable to you, and I understand why. On the other hand, you can say, "Here is the standard, and we assume you will get the money." When you do not, then it is not much of a lawsuit. You would go to Ms. Rowland's people and say, "We did not get the money." They respond, "That is not a defense." Now we have the courts running prisons in the State of Nevada.

ASSEMBLYMAN HORNE:

I made it clear before our Committee that it is not our intention to get in the middle of the lawsuit between the ACLU and the Department of Corrections. I do not know how we get around doing that, but it is not uncommon for this legislative body to enact laws stemming from information received from audits.

CHAIR CARE:

Chair Horne, I assume you have had an opportunity to see the proposed amendment from the ACLU.

ASSEMBLYMAN HORNE:

When I walked in, I heard Ms. Rowland recommending a different organization to model the standards than the organization offered in the Assembly. Our objection was the timing. We had no information on how these organizations set the standards, what they are compared to and what other groups set standards that would be adequate for our State. There is the question if implementing these standards would interfere with this ongoing lawsuit. If we adopt these standards from either the American Public Health Association or National Commission on Correctional Health Care during the lawsuit, would the ACLU then say, "We were right because the Legislature implemented these standards, requiring the Department of Corrections to do so." Our other argument is you cannot come back and say somebody has mitigated and used that against them in litigation.

CHAIR CARE:

The allegations in the lawsuit are more broadly alleged than what we have in the bill. This bill would not necessarily moot any litigation timetable. Chair Horne, please talk to the ACLU about that proposed amendment. I would like to get a copy of the audit. Mr. Skolnik, in light of the proposed amendment, is it possible to get us a projected fiscal impact of this bill?

SENATOR AMODEI:

Mr. Skolnik, when does your budget close?

MR. SKOLNIK:

It closes next Tuesday.

SENATOR AMODEI:

Could you let me know if there are add backs in your closing budget that allow this provision in section 2, subsection 2, paragraph (c) to be met? Has anybody asked for them? Has anybody said when A.B. 473 goes through, your Department will need to buy things for those facilities that do not have the needed essentials?

MR. SKOLNIK:

No, there has been no discussion regarding add backs in our medical area. We did not reduce our medical budget as part of the Governor's recommendations.

SENATOR AMODEI:

Does the submitted budget contemplate additional inventory expense to meet this? Does your medical inventory meet this standard presently?

MR. SKOLNIK:

By our definition of essential, yes, it does. We have dental chairs in place where there were problems before. We continue to maintain some level of inventory repair parts, although not adequate if there are major problems with our dental chairs.

SENATOR AMODEI:

As I go back through the bill, you said you were doing regulations. I am not sure anything in the bill requires them to be done by a certain time. The gist of your opposition is passing legislation that tells your Department to do what it is already doing.

MR. SKOLNIK:

Yes. Why pass a law to make us do what we already do?

SENATOR PARKS:

You mentioned the high use of your equipment. There is a market of available dental equipment no longer wanted by a practicing dentist. Resale market dental chairs and equipment are at nominal prices. When replacing equipment, have you looked at buying used rather than new?

MR. SKOLNIK:

No, we have not. There are restrictions put out by the Purchasing Division on purchasing used equipment. I am not certain if medical equipment would fall into that category, but we can look into that idea. We have the chairs, but they were not operable at the time, and until we received the parts necessary to repair, we transported inmates to other locations. Additionally, part of our problem is filling all positions because of competition from California.

SENATOR PARKS:

Do you ever track the costs of transporting inmates from one facility to another for dental or medical treatment?

MR. SKOLNIK:

No, our transportation costs are not part of our budgetary process. They are extra nonfunded positions that we have to come up with. As far as the audit is concerned, that was correct. It was an excessive expense for us to transport inmates to another facility. It is our responsibility to provide medical care, so we transport inmates when necessary. We are requesting the funding of the regional medical facility to reduce the need to transport chronically ill patients from southern Nevada to Carson City. Transportation for medical purposes is one of the most significant areas of transportation in our Department.

SENATOR PARKS:

Are inmates charged a fee for dental services provided?

MR. SKOLNIK:

Inmates would be charged a fee for exceptional service not part of standard medical care. They are entitled to dental examinations for which there is no copay.

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CHAIR CARE:

Since the audit is 97 pages, Linda Eissmann will send us the link to view the audit. Mr. Skolnik, please send us your estimate of the fiscal impact. Assemblyman Horne will be discussing the proposed amendment by the ACLU with Ms. Rowland. We will set this for work session. We will close the hearing on A.B. 473.

There being no further business, we are adjourned at 9:03 a.m.

RESPECTFULLY SUBMITTED:

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Janet Sherwood,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE: \_\_\_\_\_