

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
May 29, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 10:06 a.m. on Friday, May 29, 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

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Kevin R. Ranft, Region/Vice-President, American Federation of State, County and Municipal Employees Local 4041
Dennis Mallory, Chief of Staff, Carson City Office, American Federation of State, County and Municipal Employees Local 4041
Howard Skolnik, Director, Department of Corrections
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Chris Ferrari, Corrections Corporation of America

CHAIR CARE:

We will open the hearing on Assembly Bill (A.B.) 385.

Senate Committee on Judiciary
May 29, 2009
Page 2

[ASSEMBLY BILL 385 \(2nd Reprint\)](#): Makes various changes concerning private prisons. (BDR 16-523)

KEVIN R. RANFT (Region/Vice-President, American Federation of State, County and Municipal Employees Local 4041):

Assembly Bill 385 deals with private prisons and minimum staffing for the Department of Corrections. I have not completely read the mock-up ([Exhibit C](#)). For years, American Federation of State, County and Municipal Employees (AFSCME) has opposed private prisons in Nevada. Private prisons have started coming to certain counties, and we wanted to take action. We went to the Assembly for regulation of laws in Nevada because there are none. I am a correctional officer for the Department of Corrections (DOC), and our goal is the safety and security of our citizens, staff and inmates. Ultimately, our goal is to get something on the books, and we can build on it from there. We ask you to support A.B. 385. This is something that has been worked on by the Corrections Corporation of America (CCA) and AFCSME.

Assembly Bill 502 was amended into A.B. 385.

[ASSEMBLY BILL 502 \(1st Reprint\)](#): Makes various changes concerning private prisons. (BDR 16-1129)

During the amendment process, the DOC's minimum staffing clause was deleted. That was the original attempt of A.B. 385. Parole and Probation language was also removed from the bill. Some of the original language of A.B. 385 was ratio language, as in one correctional officer to seven inmates. That would have been expensive because they would not have been legislatively approved positions. We would have to readjust those positions, and in this economic downturn, that cannot be afforded.

I have not seen the full mock-up, but I do not believe the minimum staffing is in the amendment.

CHAIR CARE:

Does the mock-up have additional items?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Yes.

CHAIR CARE:

How many private prisons do we have in Nevada?

MR. RANFT:

There are no private prisons in Nevada. One broke ground a few weeks ago in Pahrump. It is a U.S. Department of Justice (DOJ) facility with 1,100 beds run by CCA. The women's prison was run by CCA at one point, but they were removed and the State took it back.

CHAIR CARE:

I do not know if we would have any jurisdiction since that is a DOJ project. Chris Ferrari has a client involved in that project, and he has proposed certain amendments. I do not know if we can do anything about a DOJ contract. Is your concern with the ground being broken for the DOJ facility that there may be private contracts down the road to run the equipment of a State prison with prisoners incarcerated pursuant to *Nevada Revised Statutes*?

DENNIS MALLORY (Chief of Staff, Carson City Office, American Federation of State, County and Municipal Employees Local 4041):

Yes. There was a proposal for Storey County to break ground for a private prison. Once we saw this trend of ground being broken in Pahrump with the federal prison and the possibility of another private facility being built in Storey County, we found no regulations on the books to monitor the way private facilities are run. We need to get ahead and put something on the books so we can regulate this trend. Assembly Bill 385 forces these private prisons to run under the same standards of the DOC. The Director would be responsible for going through the prisons periodically to make sure staffing numbers are met, the inmates are being fed appropriately and the facility is clean.

CHAIR CARE:

The Committee is being asked to regulate private prisons that do not yet exist. Please give us some background information.

HOWARD SKOLNIK (Director, Department of Corrections):

There have been two private facilities in the State: the women's prison and Summit View Youth Correctional Center. There was State oversight in both cases, and both facilities are currently run by the State. The women's prison is run by DOC, and Summit View is run by the Department of Health and Human Services.

I was not director during the time of transition. The problem that existed with the women's prison was payment of medical costs. The contract was not clear, and the agreement with CCA was not renewed at the end of the second five-year agreement. Prior to the end of that period, the State exercised its ability to buy the facility through bonds. When the terms of the contract ended, the contract was not renewed with CCA, and the Department of Corrections took the facility over. I had programs in the facility when CCA operated it. Overall, as far as a correctional facility, the facility was run well. It was clean, and the programs were in excess of what the State provided when the women's prison was in Carson City.

The Storey County facility being proposed would have no oversight because it would not house State inmates. The Pahrump facility is a federal facility with a federal contract and standards. The salaries would exceed those of the State. We have 40 officers working in our facilities who live in Pahrump, and if they are not vested, they might decide to take the extra \$5 or \$6 per hour. I would be concerned if the contract with the federal government runs out and they decide to take inmates from another jurisdiction because then there is no control.

The sheriff of Storey County asked us what his responsibilities would be for the proposed facility. There is no clear definition at this point because there are no regulations to oversee private facilities. The sheriff had concerns about manpower, response to escapes and other issues. We advised them to make sure stipulations in the contract allow the County to recover any costs they might incur as a result of that prison. There is no oversight. At this time, there is no way for the State to maintain or assure that a private prison maintains constitutionally accepted standards. It is wide open, and this bill should resolve that.

CHAIR CARE:

Does the Board of State Prison Commissioners have any existing criteria? Section 1.3, subsection 1 states, "To ensure the safety of the residents of the State of Nevada, the Board shall adopt regulations," maximizing the number of prisoners who may be incarcerated. Assuming we ever have them, who would decide which prisoners go to which private facility? Are there any existing regulations that would address this issue?

MR. SKOLNIK:

To my knowledge, there are no existing regulations. The Board of Prison Commissioners is a constitutionally established board that oversees the Department of Corrections in terms of policy. Our administrative regulations are promulgated by the Department and then referred to the Board. Our administrative regulations do not fall under the same requirements as other regulations within the State. They are reviewed and approved by the Board of Prison Commissioners; since the contracts are directly with the State for our other private operations there has never been an issue. To date, no regulations have been developed to govern this.

SENATOR WASHINGTON:

Based on this bill, I assume the Board will be the one to adopt the regulations to establish the maximum number of prisoners. Would there be a conflict of interest between the State and this private institution as far as establishing regulations if you are providing oversight for the number of prisoners and staffing ratios?

MR. SKOLNIK:

If you look at section 1.5, subsection 2 of the mock-up, [Exhibit C](#), there is a provision for monitoring the private prisons by the Department of Corrections, and the cost of such monitoring would be paid for by the private prison. That would be our vehicle to ensure that the constitutional standards and other standards promulgated by the Board of Commissioners are met.

SENATOR WASHINGTON:

I am not opposed to oversight, but I wonder if this is the right body to provide the oversight due to the fact that there may be some conflict between state-run prisons versus the privately run prisons. Sometimes those promulgated regulations can be too intrusive.

MR. SKOLNIK:

Across the Country, most states do have some level of oversight for the private prisons operating within their boundaries, and that oversight is provided by the department of corrections. There are no other bodies that have the skill or expertise to determine if an institution is operated appropriately.

SENATOR WASHINGTON:

New language in section 1.4 of the mock-up reads, "... establishing the maximum number of prisoners who may be incarcerated in a private facility or institution." If the State is going to provide the oversight, would that be a contractual issue? As the prison is built, they would determine how many prisoners that facility can hold or incarcerate. Setting a maximum number would preclude or define how big a prison can be. For example, if the maximum number is 100 prisoners, then a private institution can only build a 100-bed prison despite the capacity they think they could build.

MR. SKOLNIK:

When the standards are promulgated, we will talk about the necessary amount of space per inmate. There are standards set by the American Correctional Association regarding housing. We do not want to see a cell of 72 square feet with five people.

SENATOR WASHINGTON:

I would change the language by striking "establishing the maximum number of prisoners" and replace with "they meet the standards of the American Correctional Association." At that point, the State would provide the oversight within the contractual agreement to see that those standards are met so we do not find ourselves in court or they do not find themselves in court.

CHAIR CARE:

Director Skolnik was reading from the proposed amendment offered by Senator McGinness, [Exhibit C](#), which does have the American Correctional Association language.

MARK WOODS (Deputy Chief, Division of Parole and Probation, Department of Public Safety):

We have been following A.B. 385 from its inception. In reality, we were the cause of A.B. 385, and now we are not in the bill. Section 1 was all about us, and it was deleted—we are not certain why or how. In our discussions with Assemblyman William Horne, he had established our ratios as 70 to 1 for general supervision, 45 to 1 for sex offenders and 30 to 1 for intensive supervision. These ratios have been established by the Legislature, and we have been using them per The Justice For All Institute for the last 20 to 25 years. Assemblyman Horne felt if we fell below that ratio in funding, we could not do

our jobs effectively. He wanted to establish only a certain amount you could cut back; you have to stop at a certain place or you are worthless.

There was no fiscal note. The Legislature has always funded us according to those numbers. I signed in this morning in favor of the bill. Now that we are gone from the bill, I would like to change to neutral. We do not support this bill one way or the other because we no longer have a dog in this fight.

CHAIR CARE:

I thought there was an initial fiscal note of \$1.6 million.

MR. WOODS:

It was a negative.

CHAIR CARE:

The third page of the mock-up, [Exhibit C](#), has language to address staffing.

SENATOR WIENER:

You said it has not been an issue in the past because the ratios for the different populations that you monitor are legislatively determined. By deleting that section, would that continue to be the practice? You have been funded at those statutory levels, but that is a good-faith funding. Those ratios have been honored in terms of funding from the Legislature, but that has just been in practice, not in statute. Where did the numbers come from?

MR. WOODS:

Those ratios were established through a time study completed in 1980 and again in 1998. The National Council on Crime and Delinquency and the JFA Associates forecast not only for Parole and Probation but also the Department of Corrections. Legislative Counsel Bureau (LCB) has utilized those numbers, as has the Budget Division, to determine how many officers we need at any given time.

SENATOR WIENER:

The way we have done business is not based on statutory language. Did the deleted section tie the staffing ratios to a trigger from a study, or did it give statutory numbers that could not be implemented later as new studies were done? Were the ratios established in that section?

MR. WOODS:

There will always be forecasting, and we knew if we changed our way of doing business, the 70 could go to 75 or 65. If you reduce the staffing down to 100 to 1 or 120 to 1, officers cannot do their jobs. As Assemblyman Horne described it, this is the line in the sand. It cannot go any lower, and that was his concern.

SENATOR WIENER:

But it is gone. What happened? This is new to you. Does anybody have a recollection?

MR. SKOLNIK:

The original bill was for Parole and Probation. In the course of the first hearing, the Department of Corrections was added. We suggested the language reflect minimum staffing to be determined by the employee associations in concert with the Department of Corrections. The reason is because Ely State Prison's minimum staffing patterns would be significantly different than a camp. In fact, it varies from cell house to cell house depending upon design. When the language came out, it talked about ratios of correctional officers to inmates which were impossible for us to deal with. With AFCSME, we made multiple attempts to get LCB to put our suggestion into language. I have no idea why it did not get put in, but the DOC could not live with the language that came out of the bill initially. We did not address the issue of Parole and Probation. I do not know how that was removed. I do know that the language regarding the DOC was removed at our request because we decided we would do it administratively and do it the proper way as opposed to what the law required which was not proper.

SENATOR WIENER:

We have had measures here before where we statutorily addressed something already changed in practice. We are ratifying something that someone else decided is not working.

MR. WOODS:

People saw the fiscal note but did not see the minus in front of it. That could be why Parole and Probation was taken out.

SENATOR WASHINGTON:

I would be fearful of putting those numbers for Parole and Probation officers and ratios in statute because the fluctuation between years or decades could change at any given point in time depending on the number of crimes. By practice, that ratio has always been set. Since I have been here, the numbers have always been 70 to 1. Given different populations, the numbers change, but it has never been set in statute. It has been one of those givens.

MR. WOODS:

The section talked about not letting the funding fall below that ratio. At any given time, we could have more or less, but the staff section said you cannot fund below that. You cannot force them to be at 100 to 1 or 150 to 1.

SENATOR WASHINGTON:

I do not think we have ever funded below 70 to 1. I know there have been a few lean years after the Parole and Probation reforms. Since then, your funding has been accurate.

MR. WOODS:

The Legislature has never funded us less than 70 to 1.

SENATOR WASHINGTON:

I do not perceive they would do that now.

SENATOR MCGINNESS:

I support this amendment and Chris Ferrari.

CHAIR CARE:

Section 1.65, subsection 10 in the mock-up, [Exhibit C](#), is not specific as to staffing levels. This includes a meet-and-confer. Does anyone have a problem or difficulty with that concept?

MR. RANFT:

We have a meet-and-confer. Unfortunately, we have a breakdown sometimes. The wardens conduct these meet-and-confers and say we can administratively regulate minimum staffing. With all due respect, our lives are on the line. We have officers working with 204 inmates to 1 officer 24 hours a day, 7 days a week. That is not right. There are legislatively approved positions to staff these facilities, but that has not taken place because of short staffing or the warden

wants to save on staff to prevent higher overtime. He does not staff a facility or unit with a level of officers safe enough to provide the needed security. Maybe Director Skolnik feels he could get this as an administrative regulation, but he will not be around forever. I respect Director Skolnik, but under his administration, we are looking at 204 inmates to 1 officer 24 hours a day, 7 days a week which is not appropriate. It is only a matter of time before one of my fellow officers dies.

CHAIR CARE:

With only four days remaining in this Session, it will be difficult to get into a lengthy discussion about funding and staffing levels. I also have the proposed amendment by Chris Ferrari and Dennis Mallory ([Exhibit D](#)).

MR. RANFT:

These legislatively approved positions are not new positions; they have already been funded. Time and time again, they are not used appropriately. We want to utilize these positions in place. The Department has pull-and-shut-down positions. They are taking legislatively approved positions and shutting them down, causing the short staffing in certain units. We are asking in this language for a day shift and swing shift requiring a minimum of two officers. During the graveyard shift, we would only need one officer because the inmates are locked up. These are legislatively approved positions, and we are not asking for any new funding or new positions. We are asking for safety and security for our staff.

SENATOR WIENER:

In the amendment provided by Senator McGinness, [Exhibit C](#), we have references to standards adopted by the American Correctional Association. Do they have standards that could help address the staffing issue to which you refer? We are talking about inmate or population standards. Do they have something we could use as a measurement? I want to look out for the safety of the officers, the inmates and the public to make it work together. We want to do the right thing with the time we have. When we put a specific number on a shift and a location within a facility, I am concerned that putting something like that in statute could cause unintended consequences. Is there a standard from the Association we could put in statute that may give us a way to address your safety concerns about certain populations, certain times of the day and week? Is there a standard they use that we could adopt?

MR. RANFT:

Those facilities are not ACA-accredited. Yes, there is some language, but it does vary. A ratio of 64 to 1 has been recommended. We are the lowest-funded state for staff-to-inmate ratio. If we went with the 1 to 64 suggestion, we would have a major problem because we would have to come to the Legislature and ask for more officers. You have legislatively funded a number of line-item positions for the Department of Corrections. You know exactly what position goes to what prison and what unit. We do not want to go under the level of legislatively approved positions. That would not work because they are 40 or 70 positions short at Ely State Prison. We would like to see those funded positions utilized. At this point, that is not the case.

MR. SKOLNIK:

The American Correctional Association has not set standards on staffing because of the variance between states, between the type of construction, etc. There are no clear standards. The language in this bill was agreed upon by the DOC, AFCSME and other associations as a vehicle to allow us to identify what we ought to have on any given shift. It would not be by unit. For example, let us say the swing shift at the Northern Nevada Correctional Center is funded for 72 positions. When you take pull-and-shut-down positions into consideration, we are supposed to operate at no less than 60. Right now, the lieutenant or sergeant who is the shift commander has to go through his staff, position by position, to identify who he might need to hold for overtime or who to call back. This would allow that individual to say he only has 57 people, and he needs three more to make sure he operates his shift safely. That is the intent. It is not to go point by point. We cannot do that. The Legislature funds us and then takes away. You identify our vacancies, take 80 percent of the money and revert it before the year even starts, so there is no way we can ever fund to full capacity without overtime under the current situation.

CHAIR CARE:

Let me go back to the mock-up. Section 1.6 is the DOJ-contracted unit in Nye County. We cannot regulate a contract like that. Is that suggested amendment even necessary?

MR. WILKINSON:

I agree with your assessment that we cannot regulate contracts with the federal government. This language is not necessary in the sense we cannot do it.

CHAIR CARE:

Section 1.7, subsection 2 of the mock-up, [Exhibit C](#), states, "... a person employed by a private facility or institution to perform the duties of a correctional officer is not required to be certified as a peace officer." Do we have any discussion on that subject?

CHRIS FERRARI (Corrections Corporation of America):

The American Correctional Association has a similar standard to that which is offered in peace officer standard training and is the benchmark across the Country for such training on a national level. We want to make sure that equivalent language is stated in the bill.

SENATOR WIENER:

Is that we?

MR. FERRARI:

Yes.

CHAIR CARE:

We have a bill in the form of a proposed amendment. I do not know if the Committee has any difficulty with the amendment except the issue of staffing. I am looking at the mock-up, [Exhibit C](#), and the other proposed amendment, [Exhibit D](#). The discussions between AFCSME and Director Skolnik get you closer to where you want to go than what is contained in the mock-up without getting into specifics of staffing ratios. We just cannot do that.

MR. MALLORY:

That is fine with us. Our main objective in this language was to develop a process where we could sit down with the Director, establish what that number is at each facility and, more specifically, each unit within a facility. Our intent was not to establish that number in this bill.

MR. FERRARI:

From a policy perspective, you are asking the questions we have asked through this debate. In the case of Corrections Corporation of America, this is a contract with the Department of Justice to hold federal detainees in Nye County. It was a two-and-a-half-year project with 16 public meetings that was unanimously approved by the Nye County Commission.

Senator Wiener, to answer your earlier question as to why this bill looks like it does today, the provisions in the bill affecting my client began in A.B. 502. That bill died for fiscal reasons as outlined previously, and the content was moved into A.B. 385. Philosophically, we are all trying to figure out how the State can play a role with a private contractor who is working for another governmental entity. It is a challenging issue to get your arms around, and we have tried to come as close as possible. We understand the challenges of creating policy under those premises.

SENATOR PARKS:

The changed wording references private facilities and institutions. Would a federal government-owned facility be regarded as a private facility or institution? I do not want us to think we hit the mark and then find we missed. Do we need to go into any specific reference relative to a privately operated governmental institution?

MR. WILKINSON:

By the terms of the definition, a federal institution would be covered in this, but we cannot regulate those in any way, so it is irrelevant. Can you repeat your second question?

SENATOR PARKS:

I want to make sure that any regulations we put forward would include that a privately operated government-owned facility would not escape our scrutiny by virtue of the fact that the facility itself was government-owned.

MR. WILKINSON:

The terms of the definition as used now refer to the facility being operated by a private organization. It does not refer to whether it would be owned by a governmental entity, so I think it would apply.

Senate Committee on Judiciary
May 29, 2009
Page 14

CHAIR CARE:

We will have an opportunity to have a meeting at the bar, if you would like to gather your thoughts to prepare a suggested motion. We are adjourned at 10:51 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____