



WORK SESSION DOCUMENT

NEVADA LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY SENTENCING AND PARDONS, AND PAROLE AND PROBATION

(Assembly Concurrent Resolution No. 17 [File No. 98, *Statutes of Nevada 2005*])

June 8, 2006

The following "Work Session Document" has been prepared by the staff of Nevada's Legislative Commission's Subcommittee to Study Sentencing and Pardons, and Parole and Probation (A.C.R. 17). This document contains a compilation of recommendations within the scope of the study that were presented in hearings and submitted in writing during the course of the study for the Subcommittee's consideration.

The recommendations listed in this document do not necessarily have the support or opposition of the members. Rather, these recommendations are compiled and organized so the members may review them to decide if they should be adopted, changed, rejected, or further considered. Please note that specific details of approved requests may need to be clarified by Subcommittee staff prior to drafting.

Pursuant to *Nevada Revised Statutes* (NRS) 218.2429, the Subcommittee is authorized to request five bill draft requests for consideration during the 2007 Legislative Session. Other items not requiring legislation such as requests for letters may be sent by the chairperson of the Subcommittee.

Parole and Pardon Issues

- 1. Draft legislation to amend NRS 176.415 (Tab A), which sets forth the manner in which the execution of judgment of death may be stayed, to clarify that the Governor has authority under the *Nevada Constitution* to grant a reprieve for a period of 60 days following a conviction.**

(Recommendation proposed by Assemblyman Bernie Anderson. Article 5 sections 13 and 14 of the Nevada Constitution are also at Tab A.)

2. **Draft legislation to amend NRS 213.10885 (Tab B), and any other relevant sections of NRS, to provide that when a person is serving consecutive sentences in prison, a risk assessment is conducted by the Division of Parole and Probation, Nevada's Department of Public Safety (NDPS), only when the person is eligible for release from prison if granted parole. Thus, the assessment will be performed only when the person is eligible for parole for the last sentence being served.**
(Recommendation proposed by Chairman William C. Horne.)
3. **Draft legislation to require the Parole Board to create and use an objective risk assessment instrument to determine whether or not to grant parole. If a prisoner has obtained the requisite points for parole using that objective risk assessment, require the Parole Board to grant parole unless the Parole Board determines that there is a reasonable probability that the prisoner will pose a danger to public safety if released on parole. If parole is denied to a prisoner who has attained the requisite points for parole, require the Parole Board to provide its reasoning in writing. Authorize a prisoner who is denied parole despite attaining the points necessary for parole to appeal the decision to the district court for review to determine whether the Parole Board abused its discretion.**
(Recommendation proposed by Chairman Horne.)
4. **Draft legislation to amend NRS 213.1215 (Tab C) which requires the Parole Board to grant parole to a prisoner 12 months before the end of his maximum term of imprisonment except in certain circumstances, including when the Parole Board determines that the prisoner will be a danger to public safety while on parole. Require the Parole Board to provide its reasons for denying parole in writing when parole is denied because the Parole Board determined that the prisoner will be a danger to public safety while on parole.**
(Recommendation proposed by Chairman Horne.)
5. **Draft legislation to amend relevant provisions of NRS to require a person convicted of a category D or E felony to be placed on parole after serving the minimum sentence of imprisonment.**
(Recommendation proposed by Chairman Horne.)
6. **Include a statement in the final report or draft a letter to the Administrative Office of the Courts encouraging the district courts to create a statewide system of "re-entry courts," similar to the Eighth Judicial District Court's Going Home Prepared program.**
(Recommendation proposed by Lee Rowland, Nevada Chapter, American Civil Liberties Union [ACLU].)

- 7. Include a statement in the final report indicating the support of the Subcommittee for the provision of mental health and substance abuse treatment to prisoners and urging Nevada's Department of Corrections (NDOC) and NDPS to seek adequate funding to provide such treatment. Further, include in the statement encouragement for NDOC and NDPS to seek funding to: (1) assist prisoners to enroll in drug court; (2) employ adequate social workers in the Division of Parole and Probation to assist prisoners upon release from prison to obtain the necessary treatment and assistance to access community resources; and (3) offer assistance to prisoners being released from prison in obtaining housing upon release, including assistance in providing security deposits and rent for the first month.**

(Recommendation proposed by Lee Rowland of the Nevada Chapter, ACLU, at the Subcommittee's March 21, 2006, meeting. A copy of the document provided by the ACLU is attached [Tab D].)
- 8. Draft legislation to require that all hearings of the Parole Board be subject to the open meeting law.**

(Recommendation proposed by Christina Wilderveld, Esq., Las Vegas, at the Subcommittee's March 21, 2006, meeting.)
- 9. Draft legislation to amend Chapter 213 of NRS (Tab E) to require the Parole Board to provide notice of a parole hearing to the prisoner who is the subject of the hearing and his victims at least 3 business days before the parole hearing.**

(Recommendation proposed by Assemblyman Anderson.)
- 10. Draft legislation to amend Chapter 213 of NRS (Tab E) to allow a prisoner who is eligible for parole or his representative to speak during a hearing to consider the parole of the prisoner in addition to the victims.**

(Recommendation proposed by Christina Wilderveld, Esq., Las Vegas, at the Subcommittee's March 21, 2006, meeting.)
- 11. Draft a letter or include a statement in the final report encouraging the Parole Board to ensure the timely review of eligibility for parole when a prisoner has served the minimum term of imprisonment.**

(Recommendation proposed by Christina Wilderveld, Esq., Las Vegas, at the Subcommittee's March 21, 2006, meeting.)
- 12. Draft a letter to the Governor encouraging the Governor to consider the diversity of Nevada when appointing members to the Parole Board to ensure that the Parole Board represents that diverse population.**

(Recommendation proposed by Onie Cooper, NAACP.)

Mandatory Minimum and Enhanced Sentencing Issues

13. Draft legislation to repeal mandatory minimum sentences and provide advisory sentencing guidelines. Authorize a judge to deviate from the guidelines if the judge determines that there is good cause for the deviation.

(Recommendation proposed by The Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court, at the January 31, 2006, meeting of the Subcommittee [Tab F].)

14. Draft legislation to revise the provisions governing enhanced penalties for committing a crime with a deadly weapon by:

- A. Repealing the additional penalty for committing a crime with a deadly weapon set forth in NRS 193.165 (Tab G);

OR

- B. Amending NRS 193.165 (Tab G) to delete paragraph (b) of subsection 5 of NRS 193.165 which provides what is commonly known as the “functional test” for determining whether a weapon constitutes a deadly weapon. Pursuant to the functional test, a weapon, device, instrument, material or substance may constitute a deadly weapon if “under the circumstances in which it is used, attempted to be used or threatened to be used, [it] is readily capable of causing substantial bodily harm or death.”

(Recommendation Proposed by Chief Justice Rose.)

Not Guilty by Reason of Insanity Issues

15. In determining whether to release from a forensic facility a person who has been found not guilty by reason of insanity, allow only forensic psychiatrists who have been specially trained and certified concerning issues related to persons who have been found not guilty by reason of insanity to evaluate the person, determine the person’s eligibility for release, and testify concerning whether to release the person.

Possible Action by the Subcommittee:

- A. Draft legislation, which: (1) requires the appropriate state agency or board to certify such psychiatrists; and (2) provides that only psychiatrists who have received such certification may evaluate a person who has been found not guilty by reason of insanity, determine the person’s eligibility for release, and testify concerning whether to release the person.
- B. Include a statement in the final report encouraging mental health facilities in this state which provide treatment to persons who have been found not guilty by reason of insanity to provide special training to employees concerning issues related to persons who have been found not guilty by reason of insanity.

(Recommendation proposed by Robbin Trowbridge-Benko at the Subcommittee’s November 9, 2005, meeting.)

- 16. Draft legislation to amend NRS 174.035 (Tab H) to change the standard of proof by which a defendant must prove insanity at trial from proof by a preponderance of evidence to proof by clear and convincing evidence.**
(Recommendation proposed by Robbin Trowbridge-Benko at the Subcommittee's November 9, 2005, meeting.)
- 17. Draft legislation to amend the NRS to create an additional plea of "Guilty But Mentally Ill."**
(Recommendation proposed by Ben Graham, District Attorneys Association. Mr. Graham's proposed draft is included as Tab I.)
- 18. Revise procedures for commitment, treatment, and release of a person found not guilty by reason of insanity.**
(Recommendation proposed by Ben Graham, District Attorney's Association. Language in Mr. Graham's proposed draft would amend NRS 175.521 and add several new sections in locations within the NRS to be determined. This language would create a procedure whereby a person found not guilty by reason of insanity could be committed and treated. There are provisions also for release from custody under certain circumstances. See also Tab I.)

Issues Concerning Nevada's Department of Corrections

- 19. Draft a letter or include a statement in the final report encouraging NDOC to create a citizens advisory committee to monitor inmate grievances and to study inmate housing issues. Request NDOC to forward the findings from the feasibility study to the Legislature.**
(Recommendation Proposed by William C. Frankel, citizen, Las Vegas, and Pat Hines, Advocate for Criminal Justice Reform, Yerington, at the Subcommittee's January 31, 2006, meeting.)
- 20. Draft a letter to the Legislative Commission requesting the Commission to direct the Audit Division of the Legislative Counsel Bureau to conduct a performance evaluation of correctional programs. The evaluation should include an assessment of vocational training programs and educational programs. The evaluation should also incorporate a survey of programs which have been successful in other states and address the issue of availability and accessibility to correctional programs by male and female prisoners.**
(Recommendation proposed by Senator Dennis Nolan at the Subcommittee's April 27, 2006, meeting.)