



NEVADA LEGISLATURE 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*])

SUMMARY MINUTES AND ACTION REPORT

The third meeting of the Nevada Legislature's Subcommittee to Study Sentencing and Pardons, Parole and Probation, was held on Tuesday, March 21, 2006, 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. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's Web site at www.leg.state.nv.us/73rd/Interim. In addition, copies of the audio record may be purchased through the Publication Office of the Legislative Counsel Bureau (LCB) (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblyman William Horne, Chair
Senator Mike McGinness
Assemblyman Bernie Anderson

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Valerie Wiener
Senator Dennis Nolan

COMMITTEE MEMBER EXCUSED:

Assemblyman John C. Carpenter

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Nicolas C. Anthony, Principal Research Analyst, Research Division, LCB
Patrick Cadle, Senior Research Analyst, Research Division, LCB
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division, LCB
René Yeckley, Principal Deputy Legislative Counsel, Legal Division, LCB
Kennedy, Principal Research Secretary, Research Division, LCB

WELCOME BY THE CHAIR

- Assemblyman William C. Horne, Chairman of the A.C.R. 17 Subcommittee to Study Sentencing and Pardons, and Parole and Probation, welcomed members, presenters, and staff to the third meeting of the 2005-2006 interim. He introduced Patrick R. Cadle, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB) as the Subcommittee's new policy analyst.
- Assemblyman Anderson expressed appreciation for the contribution of Mr. Anthony's LCB research expertise, especially in judiciary matters, since 1999.

APPROVAL OF MINUTES OF THE JANUARY 31, 2006, MEETING HELD IN LAS VEGAS

- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

SENATOR MCGINNESS MOVED TO APPROVE THE MINUTES OF THE JANUARY 31, 2006, MEETING HELD IN LAS VEGAS. THE MOTION WAS SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

DISCUSSION OF THE CURRENT PRACTICES AND PROCEDURES RELATING TO ISSUING PARDONS

- The Honorable Nancy A. Becker, Associate Justice, Nevada Supreme Court, gave information on the operations of the Pardons Board. She said the Governor can veto a pardon, but without a majority of the members of the Pardons Board, the Governor cannot grant a pardon. She spoke of future policies and procedures for the Board, including recruitment methodologies for Board membership. She concluded with a discussion of difficulties in setting a permanent schedule of meetings for the Pardons Board based interference from the Legislative Session and various state budget cycles. She stated that the Board usually meets once a year in the fall; however, the Board may consider meeting twice a year in the future.
- The Honorable Michael L. Douglas, Associate Justice, Nevada Supreme Court, noted that restoration of civil rights to prisoners is an issue that has come to light. Based on his own opinion, Justice Douglas surmised that pardons may be more of a gubernatorial function rather than a court function.
- There was a discussion regarding the restoration of a former prisoner's civil rights, including the right to bear arms and the ability to vote. Justice Becker commented that the restorations of such rights are a function of the Legislature; not the Pardons Board, and Justice Douglas suggested that a federal agency be responsible for the necessary paperwork involved if such rights were restored.

- Members engaged in another discussion with the Associate Justices regarding different levels of pardons that are granted and some difficulties faced by the Pardons Board. Justice Becker explained the difference between a pardon and a commutation of a sentence and said the Pardons Board frequently receives requests including commuting a life sentence to a specific set of years, commuting a death sentence, and asking for eligibility for early parole.
- Justice Becker stated that the discretion of the Board is broad; however, the Board usually weighs the following factors: (1) the nature of the crime; (2) if the Legislature has changed the crime; (3) associated violence; (4) disciplinary actions in prison; and (5) programming while incarcerated. She concluded by commenting that hundreds of applicants for pardons apply annually, yet only approximately 20 cases come before the Board.
- The Chair asked that Nevada Supreme Court Chief Justice Robert E. Rose's testimony be entered into the record ([Exhibit B](#)).
- Gerald Gardner, Chief Deputy Attorney General, Office of the Attorney General, discussed other issues in granting a pardon and the timing of granting a pardon, including standards of evidence. He pointed out that the Pardons Board has a liberal standard of admittance and documentation of evidence that includes personal testimony from other inmates. Concluding, Mr. Gardner said the position of the Office of the Attorney General is to not impose any new due process standards or procedures because it is unnecessary and would only serve to overburden the courts.
- There was a discussion regarding the Pardons Board's screening process and its ability to remain neutral. Mr. Gardner stated that Nevada's unique membership on its Pardons Board affords a "wide open pardons system" and if the Attorney General was taken off the board then they could actively disagree with each application for pardons.
- Concluding, Mr. Gardner discussed the percentage of pardons or some form of clemency that were granted by the Pardons Board and stated that the Attorney General's Office only prosecuted one out of 80 inmates currently on death row in Nevada prisons.
- Keith Munro, Chief of Staff, Office of the Governor, spoke of difficult cases addressed by Nevada State Governor Kenny C. Guinn during his term, and the Governor's participation on the Pardons Board. He invited Subcommittee members to attend a Pardons Board hearing to experience it firsthand.
- Members asked Mr. Munro to compare the current and previous Governor's administrations in terms of pardons. Mr. Munro said that the truth in sentencing legislation changed the nature of the sentencing process in 1995, but since Governor Guinn's administration, there have been more pardons granted. He said that over the

last seven years, 48 people have received some type of pardon. In all, the numbers for the last 16 years are comparable.

- Dr. Richard Siegel, President, Nevada Chapter, American Civil Liberties Union (ACLU), commented that the Pardons Board is unique and recommended that the current composition be kept as status quo. He also opined that the Parole Board does not appear to honor the real intent of the Pardons Board. A copy of information referenced by Dr. Siegel is available as [Exhibit C](#).

DISCUSSION OF THE CURRENT PRACTICES AND PROCEDURES RELATING TO GRANTING AND REVOKING PAROLE AND PROBATION IN NEVADA, THE FEASIBILITY OF ESTABLISHING MANDATORY PAROLE AFTER AN OFFENDER SERVES A PORTION OF A SENTENCE, PROGRAMS DEVELOPED IN OTHER STATES THAT PROVIDE COMMUNITY-BASED PROGRAMS, AND THE PROCEDURES FOR DETERMINING WHEN TO RELEASE INMATES INTO COMMUNITY SUPERVISION PROGRAMS

- Dorla M. Salling, Chairman, Nevada Board of Parole Commissioners, acknowledged all the members of the Parole Board were in attendance at the meeting. She gave an overview of the Parole Board, including the composition, the over 7,000 decisions made annually, and discretionary and mandatory parole rates over the past decade ([Exhibit D](#)). She referenced a *Reno Gazette Journal* newspaper article (Exhibit D-1) and said that it “. . . was full of inaccuracies,” and did not reflect that the Parole Board is achieving success by only “bringing back the people who need to come back.” Further, she said the Parole Board weighs every case and is mindful that the public does not want some of those inmates released and living next to them. She continued with a discussion of Parole Commission guidelines and referenced earlier testimony by explaining that the Pardons Board had the power to grant parole and the perception that the two boards were not working with the same intent was inaccurate.

There was a discussion regarding public safety being foremost in Parole Board’s decisions, particularly in considering inmates past criminal history before parole could be considered. Ms. Salling said the Parole Board examines the entire history of an inmate as well as his behavior in prison. She said the Legislature created the Parole Board’s guidelines with room to deviate, but there were risk instruments that were used to determine a standard. She continued, “parole is an act of grace. . . they are not mandated to be released.” She said the Parole Board receives mail from inmates and their families charging unfair rulings, but usually an investigation yields misinformation in the letters and revealing a lesser truth about the situation.

There was also a discussion regarding the frequency of split decisions within the board and whether a geographic difference existed between northern and southern Parole Commissioners in terms of denials. Ms. Salling reported that the Parole Board’s southern Nevada office denies more applications, and there are occasionally split decisions; but the board is mindful of their responsibility to do the right thing and minimize effects on

inmates' families. She said that inmates receive credits for good behavior in accordance with legislative guidelines. Further, she said that it is not necessary for all the members to interview a candidate for parole and instituting such a practice encumber the process immeasurably.

The Subcommittee also for clarification on the Parole Board's report ([Exhibit D](#)) and David Smith, Management Analyst, Parole Board, explained the methodology and historical rate of granting paroles. He said that 16 percent to 18 percent of inmates are under consecutive sentencing, which complicates data sets, but do not demonstrate an anomaly.

There were additional discussions regarding political aspects of the Parole Board's actions, the possibility of the Board using their authority to correct original court decisions, and the methodology of paroling inmates to other states.

- Chairman Horne hypothesized that a possible recommendation for the Subcommittee to consider would be to allow the inmate to have one person speak on their behalf at a parole hearing.

Finally, the Subcommittee addressed specific policies and procedures of the Parole Board on hearings, notification to inmates in denial cases, circumstances that could reopen a hearing such as in the discovery of new evidence, and best practices for earned credits.

- John Allen Gonska, Chief, Division of Parole and Probation (P&P), Nevada's Department of Public Safety (NDPS), stated that parole and probation is a complex operation with public safety as his primary goal. He described today's offender in society as typically using a weapon in the commission of a crime, having a history of violence, and using drugs. Further, Mr. Gonska said NDPS is utilizing programs to integrate police back into communities to address this shift in society. Finally, he cautioned that testimony that ". . . points fingers at the Parole Board relieves the offender of personal responsibility."

There was a discussion regarding disagreements between the NDPS and the Parole Board. Mr. Gonska said that improvements could be made in the quality of reports and in documentation efforts.

- Karen Lorenzo, Lieutenant, Adult Parole and Probation (P&P), NDPS, said that her P&P does not process any pre-type investigation for the Parole Board, but does do an investigation for the pre-release issue. Furthermore, she said P&P completes a pre-sentencing report for the Parole Board to use if they want, but it totally within their discretion not to use it. Ms. Lorenzo said P&P is responsible for approximately 20 to 25 pre-sentencing reports, which is coordinated from the Carson City office.
- Ben Graham, Representative, Nevada District Attorneys Association, Las Vegas, described various programs available for inmates to earn credits. He noted that

revocation of parole and probation usually occurs on because of a violation on technical grounds, but the issue of the person committing a re-offense deserves attention. He said the Association is ready to discuss issues addressing the insanity defense and incompetence, and programs that eliminate the need for additional court hearings in revocation cases.

- Lee Rowland, Public Advocate, Nevada Chapter, ACLU, alleged that the parole board has “too much discretion.” She suggested that Nevada take immediate action to lower the costs of incarceration, develop alternatives to prison, and establish more continuity in the objectives of corrections, the Parole Board and community supervision agencies. She continued that this could be accomplished by: (1) performing an objective risk assessment with hard numbers; (2) removing parole discretion for lower felony offenders; (3) making parole mandatory and not subject to the public safety exception; and (4) instituting more intermediate sanctions for parole violators. A complete list of recommendations suggested by the ACLU is available in [Exhibit E](#).

There was a discussion regarding how moving funds away from the Parole Board could offer a solution. Ms. Rowland said “the laws on the books are meaningless” and said that instituting mandatory release one month prior to release would necessitate more funding for P&P’s operations.

Senator Nolan explained the legislative process in terms bill draft requests, funding committees, and the state’s budget in response to Ms. Rowland’s request for “immediate action.”

- Juli Star-Alexander, Executive Director, Redress Inc., Las Vegas, said her organization represented “. . . the trench workers and advocates” of incarcerated populations. A copy of her recommendations is included as [Exhibit F](#). She asked other members of Redress and private citizens to give personal examples of alleged prison abuse, and alleged parole board corruption. The following individuals spoke on this topic:
 1. Sharon O. Samson and her daughter, Andrea Muir, discussed details of an incarcerated relative and spoke on how victims seem to have more rights during parole hearings. ([Exhibit F1](#));
 2. Mike Finch, resident, Las Vegas, discussed details of an incarcerated relative.
 3. Flo Jones, resident, Las Vegas, discussed details of an incarcerated relative and took up the issue of the computation of good time credits.
 4. Nancy Dyas, resident, Las Vegas, discussed details of an incarcerated relative ([Exhibit F2](#)).
 5. Christina Vilderweld, Attorney, Las Vegas, spoke on open meeting laws in relation to the Parole Board. Her recommendations included: (1) amending Chapter 244 of

the *Nevada Revised Statutes* (NRS) to make the Parole Board subject to the open meeting law: (2) allowing both victims and defense to speak at parole hearings; (3) amending NRS 213 to make it mandatory release as opposed to mandatory review; (4) requiring the Parole Board to grant review at the judge set minimum date and not at the Parole Board's discretion; and (5) holding the Parole Board to a standard, as they are not elected and not accountable to anyone. The Chair asked her to provide her recommendations in writing.

6. Supriya Ghatak, resident, Las Vegas, said she was not a member of Redress Inc., but was interested and supportive of the work of the A.C.R. 17 Subcommittee. She relayed the frustration of others, as her incarcerated son was not given a reason for his parole denial.
- Linda Bell, Assistant Federal Public Defender, Ninth Circuit Court, Las Vegas, referred to an article she wrote regarding the Parole Board's formulary on granting and denying parole requests ([Exhibit G](#)). She commented on the transparency of parole proceedings and referenced a worksheet called the "parole success likelihood factors," which is utilized by the Parole Commissioners in their hearings. She stated that the worksheet is very complicated even to a practicing attorney, and that as a result, decisions are not consistent.
7. Irma Dalton, resident, Las Vegas, discussed details of an incarcerated relative and the denial of that relative's request for parole ([Exhibit H](#)).

Chairman Horne reminded Ms. Star-Alexander that the A.C.R. 17 Subcommittee does not have the authority to change the disposition of individual parole conditions or circumstances, but rather will consider policy and procedural changes.

Chairman Horne asked the Parole Commissioners to state their objections in writing regarding Ms. Bell's testimony. Assemblyman Anderson asked that Ms. Bell put her recommendations in writing and submit them to the Subcommittee.

TRAINING, EDUCATIONAL AND REHABILITATION PROGRAMS AVAILABLE FOR OFFENDERS IN NEVADA

(As per Chairman Horne, this item will be heard at a future meeting of the A.C.R. 17 Subcommittee.)

METHODS TO PROMOTE MORE COST-EFFECTIVE PARDONS, PAROLE, AND PROBATION PRACTICES AND OVERVIEW OF OPERATING BUDGETS OF THE DIVISION OF PAROLE, NDPS, AND NDOC

(As per Chairman Horne, this item will be heard at a future meeting of the A.C.R. 17 Subcommittee.)

PUBLIC COMMENT

- Sherrada Fielder, resident, Carson City, spoke about the need for improvements to Nevada's sentencing, pardons, and the parole processes. A copy of her testimony and documents relating to her husband's situation are available as [Exhibit I](#).
- Richard Cropper, resident, Gardnerville, Nevada, spoke of concerns with the conditions of his son's incarceration for embezzlement. He pointed out that inmates found guilty of more serious crimes than embezzling received less of a sentence than what his son is currently serving.
- Onie Cooper, NAACP, Reno, suggested that the Parole Board's practice of examining an applicant's entire criminal history could "cloud the issue" of the applicant's request for parole. Also, he said a diverse membership is also the key to a fair parole board.
- The Chair directed staff to determine the scope of authority of the Parole Board in cases where a mental diagnosis is determined, or when they grant an inmate's release directly into a mental facility.
- William C. Frankel, Th.D., resident, Las Vegas, alleged that some reports used in Parole Board hearings are falsified. He stated that prisoners should never have their right to vote taken away, even during incarceration. Finally, he suggested that mandatory DNA testing be instituted.
- Donald Hinton, Spartacus Project, Las Vegas, alleged discrimination of Nevada's accused and convicted residents. He challenged all Legislators to spend some time in prison. Finally, Mr. Hinton stated that "...the author of the truth in sentencing law should be shot."
- Stephanie R. Paulmeno, resident, Old Greenwich, Connecticut, asked that her testimony be entered into the record. A copy of her testimony and documents relating to her son's case are available as [Exhibit J](#).

ADJOURNMENT

The Chair announced the next meeting of the Subcommittee as April 27, 2006. There being no further business to come before the Subcommittee, the meeting was adjourned at 5:01 p.m.

Respectfully submitted,

Kennedy
Principal Research Secretary

Patrick R. Cadle
Senior Research Analyst

APPROVED BY:

Assemblyman William Horne, Chairman

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Nicolas C. Anthony, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City, Nevada.

[Exhibit B](#) is a seven-page copy of testimony by Robert E. Rose, Chief Justice, Nevada Supreme Court, entered into the record by Assemblyman William C. Horne, A.C.R. 17 Subcommittee Chairman.

[Exhibit C](#) is a five-page memorandum dated March 14, 2006, to the A.C.R. 17 Subcommittee members regarding parole board policies, furnished by Dr. Richard Siegel, President, Nevada Chapter, American Civil Liberties Union (ACLU).

[Exhibit D](#) is a 63-page binder of information dated March 21, 2006, and titled “ACR 17 Parole Board Response to Request for Input,” given by Dorla M. Salling, Chairman, Nevada Board of Parole Commissioners.

[Exhibit D1](#) is a four-page copy of a *Reno Gazette Journal* newspaper article dated March 12, 2006, and titled “Report Discover state leads U.S. in parole denials,” referenced by Dorla M. Salling, Chairman, Nevada Board of Parole Commissioners.

[Exhibit E](#) is a 14-page document dated March 13, 2006, to the A.C.R. 17 Subcommittee members regarding a report on parole, furnished by Lee Rowland, Public Advocate, Nevada Chapter, ACLU.

[Exhibit F](#) is a 27-page document (without attachments) dated March 13, 2006, and titled “Citizen’s Oversight Committee’s Review on Prison, Parole and Related Topics,” prepared by Juli Star-Alexander, Executive Director, Redress Inc., Las Vegas. The attachments to Exhibit F are on file in the Research Division Library.

[Exhibit F1](#) is a two-page copy of a letter dated September 8, 2004, to Sharon O. Samson, from the Nevada Board of Parole Commissioners, provided by Sharon O. Samson.

[Exhibit F2](#) is a 19-page document dated January 31, 2006, from Nancy Dyas, resident, Las Vegas.

[Exhibit G](#) is an eight-page document titled “Doing Time in Nevada,” submitted by Linda Bell, Assistant Federal Public Defender, Ninth Circuit Court, Las Vegas.

[Exhibit H](#) is a ten-page letter to the Nevada Board of Parole Commissioners regarding Nevada inmate #70920 from Irma Dalton, resident, Las Vegas.

[Exhibit I](#) is a six-page copy of testimony and personal information regarding Nevada inmate #32736 furnished by Sherrada Fielder, resident, Carson City.

[Exhibit J](#) is a six-page copy of testimony and personal information regarding Nevada inmate #57610 provided by Stephanie R. Paulmeno, resident, Old Greenwich, Connecticut, and entered into the record by Assemblyman William C. Horne, A.C.R. 17 Subcommittee Chairman.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.