



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 second meeting of the Nevada Legislature's Subcommittee to Study Sentencing and Pardons, Parole and Probation, was held on Tuesday, January 31, 2006, in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, 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 LAS VEGAS:

Assemblyman William Horne, Chair
Senator Valerie Wiener

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Mike McGinness
Assemblyman John C. Carpenter
Assemblyman Bernie Anderson

COMMITTEE MEMBER ABSENT:

Senator Dennis Nolan

OTHER LEGISLATOR PRESENT:

Assemblyman David Parks

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Nicolas C. Anthony, Principal 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

OPENING REMARKS AND INTRODUCTIONS

- Assemblyman William C. Horne, Chair, welcomed members, presenters, and the public to the second meeting of the Legislative Committee's Subcommittee to Study Sentencing and Pardons, and Parole and Probation.

SENTENCING—A NATIONAL PERSPECTIVE AND NEVADA OVERVIEW

(As directed by Chairman Horne, this agenda item was taken out of order.)

- Daniel F. Wilhelm, Director, State Sentencing and Corrections Program, The Vera Institute of Justice, gave a slide presentation ([Exhibit B](#)) on national trends in sentencing. His presentation included the following highlights:
 1. An examination of statistics on rising prison populations and types of populations, both federally and in Nevada;
 2. A review of monetary spending trends nationally;
 3. An overview of inmate profiles federally and in Nevada;
 4. An examination of data clarifying incarcerated populations by race;
 5. A review of other environmental pressures, including: (1) changing public attitudes; (2) low crime rates; and (3) state budget pressures; and
 6. A detailed discussion of responses by states, including: (1) a diversionary program for drug offenders; (2) reducing mandatory minimums for drug offenders; (3) strategies to reduce overcrowding; (4) re-entry and transitional planning; and (5) a return to the formation of sentencing commissions (i.e., interagency planning and analysis).
- Concluding, Mr. Wilhelm said that if Nevada plans to reform its sentencing practices, then participation of all three branches are essential to the process, including the active involvement of judges because they impose sentences. He suggested the revitalization of the sentencing commission and collecting optimal data.

After Mr. Wilhelm's presentation, a discussion ensued regarding a possible shift in public perception of crime from the initial date of the Vera Institute's poll. Senator Wiener pointed out that the seriousness and frequency of identity theft would raise the percentage of public concern, originally listed in the poll at 2 percent in the Institute's poll, to a much higher figure.

Additionally, the Subcommittee expressed interest in therapeutic and outpatient treatment facilities for correctional facilities in Pennsylvania and how established community

resources can assist in these types of programs. The availability of those programs for female offenders will need to grow to meet the increasing number of violent crimes committed by women. Mr. Wilhelm stated that Oklahoma currently has the largest female inmate population in the nation.

THE MANNER OF IMPOSING SENTENCES IN NEVADA, SENTENCING OPTIONS THAT PROVIDE FOR COMBINED PRISON TERMS AND POSTINCARCERATION SUPERVISION, AND GENDER AND ETHNIC PARITY IN SENTENCING

(As directed by Chairman Horne, this agenda item was taken out of order.)

- A. The Honorable Stewart L. Bell, Civil/Criminal Division, Department 7, Eighth Judicial District Court of Nevada, refereed to Mr. Wilhelm's presentation and commented that Nevada is "doing better than the graphs show." He congratulated Nevada for having a successful sentencing system in place and opined that "Nevada is light years ahead of themselves." He stated his opposition to federal sentencing guidelines and said application of those guidelines at the state level is difficult because no two cases are the same. He suggested that more discretion be given to judges so they can tailor sentences more appropriately. Judge Bell commented, in response to earlier an question posed during Mr. Wilhelm's presentation, that 17 percent of persons committing crimes in Nevada were not residents of this state. Finally, he recommended that the Division of Parole and Probation, Department of Public Safety, receive more funds and staff.

APPROVAL OF MINUTES OF THE NOVEMBER 9, 2005, MEETING HELD IN LAS VEGAS

(As directed by Chairman Horne, this agenda item was taken out of order.)

ASSEMBLYMAN ANDERSON MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 9, 2005, MEETING HELD IN LAS VEGAS. THE MOTION WAS SECONDED BY SENATOR WIENER AND CARRIED.

THE MANNER OF IMPOSING SENTENCES IN NEVADA, SENTENCING OPTIONS THAT PROVIDE FOR COMBINED PRISON TERMS AND POSTINCARCERATION SUPERVISION, AND GENDER AND ETHNIC PARITY IN SENTENCING

- B. The Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court, said his testimony and opinions are his alone and do not reflect the opinion of the Supreme Court or any of his colleagues. He said a criminal justice system has two functions: (1) to apprehend those who have committed a crime; and (2) to assess punishment that fits the crime. He said Nevada could make improvements on the later point through legislation and further refine Nevada's deadly weapon enhancement. Chief Justice Rose also discussed the absence of any system to review sentences and issues relating to the Pardon's Board.

Concluding, Chief Justice Rose stated that he is not against long sentences, but is against mandatory minimum sentences that in some cases prevent a district judge from tailoring a sentence to fit the offense and the broadly defined deadly weapon enhancement that doubles an already stiff sentence in most serious crimes. He challenged the Subcommittee to “be smart about crime. . . especially about sentencing in Nevada.” A copy of this testimony is available as [Exhibit C](#).

Chief Justice Rose outlined four potential issues that the Legislature could address, including: (1) mandatory minimums; (2) deadly weapons enhancement; (3) a review of sentences to determine if they are excessive; and (4) an examination of the Pardons Board. Chairman Horne questioned whether allowing judges discretion to make a downward departure from mandatory minimums would be advisable. Chief Justice Rose commented that he would like to see an advisory guideline that a judge could completely depart from them if he had reason to. He said the language of advisory guidelines suggests a more acceptable process and would accomplish giving needed discretion to Nevada’s judges.

The Subcommittee also engaged in a discussion regarding the likelihood of “judge shopping” by attorneys who are aware of sentencing trends among certain benches. Chief Justice Rose responded that the likelihood of that scenario is unlikely in Nevada because of a strict calendaring process.

C. The Honorable Nancy M. Saitta, Civil/Criminal Division, Department 18, Eighth Judicial District Court of Nevada, Las Vegas, said she agreed with the elimination of mandatory minimum sentences and the deadly weapons enhancement because “it is the most onerous parts of the sentencing scheme.” She suggested that changes in the present statutory system of sentencing begin with enhancing resources for the Division of Parole and Probation. Judge Saitta said that discretion is essential to judges because no case is the same and noted that current crime trends are resulting in younger defendants in court and subsequently in the adult prison system. Finally, she said Nevada is practicing these discretionary considerations while the rest of the country is beginning to see the need; however, Nevada’s policy of electing judges and district attorneys should be taken into consideration by the voters when examining sentencing records.

Members of the Subcommittee discussed the viability of a more equitable sentencing system if judges were appointed instead of elected. Judge Saitta pointed out that no system is perfect.

D. The Honorable Jerome M. Polaha, Department 3, Second Judicial District Court of Nevada, Reno, said his comments reflected his own opinion and not that of his court. He said his past experience as a criminal defense lawyer, and later a judge, sparked his interest in the philosophy of punishment. He spoke on the considerations involved when imposing a sentence and the balancing act that sometimes occurs to ensure that better prosecutors or defenders do not unduly influence sentencing. Judge Polaha said he wants to eliminate mandatory minimums in sentencing and the deadly weapon

clause. With respect to earlier questions, he said the concept of “judge shopping” does not exist in Nevada.

There was a discussion regarding the emergence of methamphetamine use and production in society and the differences of sentences imposed in criminal courts verses drug courts. The question arose as to whether diversion programs were effective in cases where drugs were connected to criminal activity.

Subcommittee members also discussed rural area drug courts and the ability of those courts to provide treatment to its offenders. Judge Polaha noted that the senior judge program was just launched where retired judges would take their expertise to other divisions and lower courts could benefit from years worth of experience from the retired judges.

E. Ben Graham, Representative, Nevada District Attorneys Association, stated that district attorneys do not create the offender or criminal, but rather works within the system to protect society and ensure that the violator will see that offending is not worth repeating. He listed methods incorporated by district attorneys to “keep people out of jail,” including: (1) contributing funding to Nevada’s smallest counties to the drug courts to ensure staffing; (2) extending the drug court down to the juvenile court to keep youth from getting involved deeper and deeper in the system; (3) creating mental health court; (4) creating the bad check unit; (5) instituting a re-entry program for newly released inmates that seals records; (6) incorporating a philosophy that a violation of probation for technical reasons is not a reason to put a person back into prison/jail; and (6) standing ready to help as a resource in the Executive Branch and work within the guidelines enacted by the Legislature.

There was a discussion regarding the likelihood of district attorneys supporting more discretion for judges during the sentencing phase of trial. Mr. Graham commented that if judges show discretion in sentencing then they should be required to demonstrate their reason(s) why they have deviated from the recommended sentence.

F. Chip Siegel, President, Nevada Attorneys for Criminal Justice, said he was speaking on behalf of himself and not his organization. He also discussed unintended consequences of mandatory sentencing and also spoke of the need for the Division of Parole and Probation to be allocated more resources. He suggested that any discretion be left with the judicial branch and pointed out that the judicial system “puts a lot of power in the hands of the prosecutors.” Finally, he briefly discussed differences in sentencing between criminal courts and the drug courts.

As for recommendations, Mr. Siegel suggested revisiting the deadly weapons enhancement, adding additional funding for parole and probation, redefining drug trafficking sentences (as the mandatories are too strict), and reviewing Nevada’s methamphetamine laws.

G. Glen Whorton, Director, Nevada's Department of Corrections (NDOC), Carson City, said the NDOC is the recipient of the decisions of the police, the prosecutors, and the judge. He said that the NDOC has seen a steady decline in prison populations as time passes and it is unfair to compare Nevada to other states, as Nevada has been the fastest growing state for over 20 years. Mr. Whorton said Nevada "is in good shape" in terms of its sensitivity to incarceration and wants to reserve its resources for the most offensive offenders in the State. He talked about Nevada's efforts to provide alternatives to traditional incarceration, which accounts for the decline in Nevada's incarceration rates as the general state population grows unchecked.

There was a discussion regarding the new transitional housing program for inmates, which has been initiated at Casa Grande, in Las Vegas. Mr. Whorton explained that the project met its timelines, stayed within its budget and now has 200 inmates residing there who are employed. He said the NDOC supports this program to reintegrate inmates into society while offering them a modicum of success. Concluding, Mr. Whorton discussed the impact of an increasing female prison population on Nevada's prison and said there is a shift of women participating in more serious offenses nationally, and not just in Nevada.

H. John Gonska, Chief, Division of Parole and Probation, Nevada's Department of Public Safety (NDPS), Las Vegas, said the Division has undone a "major metamorphosis" and is examining North Carolina's parole agency model to glean better protocol and supervisory practices. He reported that the Division wrote and implemented a venter sanction program and works together with the NDOC and Parole Board. He reported a successful and positive working relationship between these entities.

I. Charles C. Combs, Acting Captain, Division of Parole and Probation, NDPS, explained how the Division arrived at a recommendation on a sentencing report, saying that judges require such reports in all felonies, and mostly in gross misdemeanors trials. He said the Division is required to prepare more and more sentencing reports each year. Mr. Combs reviewed the statutory requirements of the Division's sentencing guidelines ([Exhibit D](#)), followed by an explanation of the scoring instrument ([Exhibit E](#)). He explained how the Division's sentence recommendation selection scale is used to determine a sentence and ensure statewide uniformity in sentencing recommendations ([Exhibit F](#)). He concluded by saying that supervisors can deviate from the sentencing recommendation in unique cases and probation could be recommended.

Chairman Horne cautioned the Division that their sentencing reports appeared to "pre-empt the job of the judge." Mr. Combs explained that there are many factor's involved in crafting a sentencing report and all of them are considered. Mr. Gonska further explained that the judge has the ultimate decision, but the sentencing report is a document for the public to view and help them understand the recommendation.

There were discussions regarding: (1) the need to upgrade the Division's radio system; (2) the ratio of sworn officers to offenders; and (3) the Division's reliance on highway patrol and citizen assistance in rural areas.

J. Lee Rowland, Public Advocate, Nevada Chapter, American Civil Liberties Union (ACLU), opined that Nevada's incarceration rates are low because of its severe sentencing system and strict gun-control laws. She said the ACLU supported granting more discretion in sentencing; however, "flexibility and authority vested in the hands of a prosecutor. . . won't get the results intended." Ms. Rowland said the ACLU supported creating a stronger sentencing commission and stressed the importance of including public defenders in its composition. She advocated for eliminating the self-pay system of the drug court and suggested that the State pay for these programs instead. Finally, she also recommended mandatory parole 12 months before the expiration of a prison sentence.

Assemblyman Anderson requested that the ACLU produce data on a statement by Ms. Rowland regarding a correlation between a ratio of public defenders to plea bargains.

Chairman Horne pointed out to Ms. Rowland that heavy caseloads on behalf of the public defenders indicate an equally heavy caseload on the prosecutors docket as well. He also noted that cases that are pleaded out are not the result of inappropriate representation, but more of the reality of the way cases are conducted. Finally, he corrected Ms. Rowland's statement that public defenders are responsible for whether or not the defendant takes a deal, and said that decision is ultimately the defendants.

CONTINUED DISCUSSION ON THE INSANITY DEFENSE

A. Dr. Elizabeth Neighbors, Director, Lake's Crossing Center for the Mentally Disordered Offender, Sparks, Nevada, said the Center is the only forensic facility in the state to receive not guilty by reason of insanity (NGRI) clients. She noted that after a ten-year lapse (since the NGRI defense was reinstated), the Center has only admitted two NGRI clients, but pointed out concerns for the intensity and complexity of those cases and the current status of the law and its guidelines for treatment and assessment of those individuals. Specifically, Dr. Neighbors stated that Nevada does not have a provision for conditional release as many other states, and while the examiners at Lake's Crossing advocate neither for release of NGRI clients nor continued hospitalization, they advocate for what is dictated by the NRS, which makes no provision for the care or monitoring of any person who is found not guilty of a violent crime by reason of insanity and who is then later released from commitment after being found no longer mentally ill. The NRS, Dr. Neighbors concluded, has limited flexibility to individualize clients discharge plans and maintain programs that require gradual supervision of NGRI clients back into the community. A copy of her testimony is available as [Exhibit G](#).

There was a discussion of the Michael Kane case, wherein a later assessment by the Lake's Crossing Center determined that Kane was no longer mentally ill, and the current law dictates that once released, such a defendant is simply and unequivocally released from custody. Dr. Neighbors said the releasee may or may not seek subsequent care, counseling, medication, or treatment, but the court has no authority to require anything of the sort.

Subcommittee members discussed the legalities of the criteria of civil commitment versus voluntarily participation of a NGRI person. Dr. Neighbors said there are no programs that supervise gradual reentry of a NGRI person into a community and that the program would have to be created legislatively. She further suggested that the program be created under the supervision of Nevada's criminal justice system with a component of the mental health division.

B. Lee Rowland, previously identified in these minutes, noted that a person acquitted by NGRI should be free because he is not guilty in any criminal sense, and "not guilty is not guilty." She opined that people found NGRI "are truly real, and are not scam artists with good lawyers." Finally, she stated that if someone acquitted by NGRI is later found not to be mentally ill, then they should be returned fully to their life, because Nevada cannot hold or monitor any individual who does not meet the standards for civil commitment. A copy of position statements of the ACLU is included as [Exhibit H](#) and [Exhibit I](#).

Several Subcommittee members expressed concern for balancing of the safety of a community with the civil liberties of a NGRI person. Ms. Rowland stated a system of civil commitment exists for mentally ill people who are dangerous, and she supported the theory that civil commitment standards meet public safety standards. She stated that people found NGRI should retain their civil rights.

PUBLIC COMMENT

- William C. Frankel, resident, Las Vegas, expressed concerns that the Subcommittee examined any statistical reports that did not include Nevada in the demographics. He suggested sentencing reform and changes in the parole and probation system.
- Teresa Roberts, member, Friends and Family of Incarcerated Persons, Las Vegas, said she was impressed by the presentation of the judges. She alleged that the drug court accepted payoffs for clean urine tests and that some public defenders do not do their jobs. She suggested that house-arrest and drug testing programs be paid for by the state.
- Ben Graham, previously identified, commented that for every 75 cases a prosecutor has, a public defender typically has 25 cases. He also cautioned the Subcommittee against finding a "quick fix" to the NGRI issue.

- Flo Jones, resident, Las Vegas, discussed her concerns with sentencing practices in Nevada and decisions made by the Parole Board. She also expressed concerns for people who falsely claim to suffer from a mental illness in order to manipulate the judicial process.
- Pat Hines, not present at the meeting, submitted electronic testimony ([Exhibit J](#)), which was entered into the record at the request of the Chair.
- Donald Hinten, Spartacus Project, Las Vegas, expressed concern for Nevada's prison system and conditions and alleged "pleas are purchased by people and the prosecutors charge a steep price." He further alleged that the public defenders office "does not really represent their clientele." Concluding, Mr. Hinten remarked that "Casa Grande is a poor name for a half-way house," because of its translation as "the big house" and suggested that prison conditions be reviewed at a future meeting of the Subcommittee.
- Assemblyman David Parks thanked the Chair for an informative meeting and asked the Chair to address the budgetary area of the supervision of parolees. He noted the ease at which parolees can abscond and become no-shows.
- John Steinbeck, State Director, Jessica Marie Lunsford Foundation, Las Vegas, said the foundation is committed to keeping sexual predators from being released onto city streets. He opined that judicial discretion fails in terms of sexual predators and he suggested strong sentences for sexual predators.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 3:49 p.m.

Respectfully submitted,

Kennedy
Principal Research Secretary

Nicolas C. Anthony
Principal Research Analyst

APPROVED BY:

Assemblyman William Horne, Chair

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 44-slide Microsoft PowerPoint presentation titled “Recent National Trends in Sentencing & Corrections,” given by Daniel F. Wilhelm, Director, State Sentencing and Corrections Program, The Vera Institute of Justice.

[Exhibit C](#) is a six-page copy of testimony titled “Statement of Robert E. Rose,” furnished by Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court.

[Exhibit D](#) is a one-page document titled “The Probation Success Probability Score and the Sentencing Recommendation Selection Scale,” submitted by John Gonska, Chief, Division of Parole and Probation, Nevada’s Department of Public Safety (NDPS), Las Vegas.

[Exhibit E](#) is a two-page document titled “Probation Success Probability,” offered by Charles C. Combs, Acting Captain, Division of Parole and Probation, NDPS.

[Exhibit F](#) is a one-page document titled “Department of Public Safety Division of Parole and Probation Sentence Recommendation Selection Scale,” prepared by Charles C. Combs, Acting Captain, Division of Parole and Probation, NDPS.

[Exhibit G](#) is a two-page copy of testimony dated January 31, 2006, and titled “Remarks by Elizabeth Neighbors, PH.D., Regarding the Not Guilty By Reason of Insanity Statute, Nevada Revised Statute 175,” provided by Dr. Elizabeth Neighbors, Director, Lake’s Crossing Center for the Mentally Disordered Offender, Sparks, Nevada.

[Exhibit H](#) is a four-page memorandum dated January 3, 2006, to Assemblyman Horne and members of the S.C.R. 26 Subcommittee regarding the insanity defense and “guilty but mentally ill” verdict from Lee Rowland, Public Advocate, Nevada Chapter, American Civil Liberties Union (ACLU)

[Exhibit I](#) is a two-page memorandum dated January 18, 2006, to Assemblyman Horne and members of the S.C.R. 26 Subcommittee regarding civil commitment of individuals found not guilty by reason of insanity, from Lee Rowland, Public Advocate, Nevada Chapter, ACLU.

[Exhibit J](#) is a five-page document of testimony entered into the record at the request of the Chair, titled “Pat Hines, Advocate for Criminal Justice Reform,” prepared by Pat Hines, resident, Las Vegas.

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.