



NEVADA LEGISLATURE 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 first meeting of the Nevada Legislature's Subcommittee to Study Sentencing and Pardons, Parole and Probation, was held on Wednesday, November 9, 2005, in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3137 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 Dennis Nolan
Senator Valerie Wiener
Assemblyman Bernie Anderson

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Mike McGinness
Assemblyman John C. Carpenter

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 Legal 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 first meeting of the Legislative Committee's Subcommittee to Study Sentencing and Pardons, and Parole and Probation. The Chair provided an overview of goals and objectives for the Subcommittee and acknowledged Assemblyman David Parks in the audience. He asked for comments from Assemblyman Parks and Subcommittee members, which included the following:

- Assemblyman David Parks stated that he requested A.C.R. 17 during the 2005 Session and noted that State Government performs three vital functions, which are education, medication (health care), and incarceration. He then discussed the costs to incarcerate and provide parole and probation services this year in Nevada. Finally, he noted that the A.C.R. 17 study represents an opportunity for Nevada lawmakers to examine how to provide services more effectively and at less expense to taxpayers.
- Assemblyman Bernie Anderson said the A.C.R. 17 study can provide answers to critical questions such as how to protect the public interest from those found guilty in a court of law. He further noted that Nevada's prison system does not appear to give the same differentiation to inmates serving three years versus inmates serving lifetime sentences.
- Senator Valerie Wiener described her work with inmates for two and one-half years prior to her position as a state senator and said she is aware of the concerns of families and inmates regarding laws and the administration of those laws. She commented that the A.C.R. 17 study represents an opportunity for legislators to address issues and concerns that demand attention.
- Senator Dennis Nolan conveyed his interest in this issue and the work that the Subcommittee will perform during the 2005-2006 interim.
- Assemblyman John Carpenter expressed his interest in the topic and discussed the importance of crafting legislation that can bring positive results.
- Senator McGinness said the A.C.R. 17 Subcommittee will address difficult topics. He reviewed fiscal issues in the incarceration of violent offenders, but noted that tax payers were willing to pay it, given the alternative.

STAFF OVERVIEW OF A.C.R. 17 ISSUES AND TIMELINE

- Nicolas C. Anthony, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City, gave a historical overview of past interim studies addressing judicial issues and said the A.C.R. 17 study arose out of a concern for the system and its associated costs. He presented a guideline that included an overview of Subcommittee duties and a timeline for future meetings ([Exhibit B](#)). He

stated that the Subcommittee will conduct five meetings before concluding in early June 2006 and can submit five Bill Draft Requests for the 2007 Legislative Session. Additionally, he said the Subcommittee can make other recommendations such as letters for inclusion in the final report published at the end of the 2005-2006 interim.

REVIEW AND UPDATE ON THE INSANITY DEFENSE

- Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division, LCB, Carson City, presented general background on the history of the insanity defense in Nevada and listed policy choices available to the Nevada Legislature.
- Robbin Trowbridge-Benko, Mother of John Trowbridge, recounted details of the 2001 murder of her 23-year-old son and the subsequent trial of the defendant, Mr. Kane, in Clark County, Nevada. Her testimony included information on: (1) the trial of Mr. Kane; (2) the evaluation process of Mr. Kane by Lake's Crossing Center for the Mentally Ill Offender; (3) her personal research of not guilty by reason of insanity (NGRI); (4) her request for the Nevada Legislature be called into a special session; (5) current statutes in Nevada that address NGRIs; and (6) her recommendations to change Nevada law for the NGRI defense, specifically, a new statute that:
 1. Institutes a bifurcated trial to determine guilt or innocence and then to consider competency.
 2. Strengthens the *M'Naghten Rule* (i.e., an insanity test adopted by Nevada in 2001 to demonstrate the defendant did not know right from wrong at the time of the crime) and bars jurors from considering the defendant's *current* state of mind.
 3. Does not allow for any speculation during courtroom proceedings and jury deliberations as to how long a person will spend under the supervision of a mental health facility.
 4. Allows only forensic psychiatrists who have been trained and certified on NGRIs to evaluate, testify, and determine eligibility for the release of an offender.
 5. Treats standards used to determine NGRI more seriously than standards used to determine incompetency.
 6. Changes Nevada's clinical definition of mental illness, which currently refers to ". . . a seriously limited capacity of a person to perform primary aspects of daily living," to ". . . any limits on the ability of a persons ability to function with regard to a specific timeframe and with consideration for medication therapy during that time."
 7. Includes a requirement that mandatory risk assessments be performed on a person found NGRI prior to the release or consideration of release of that person.

8. Imposes a lifetime of court jurisdiction over a violent offender found NGRI, or a lesser time dependent upon the classification of the crime committed.
9. Increases Nevada's preponderance of evidence standard to require that proof of any mental defect be by clear and convincing evidence.
10. Creates a step down program that supervises mentally ill offenders and those found NGRI as they return to community settings. The program acknowledges each "step of improvement" by rewards such as privileges.
11. Changes the name of A.C.R. 17 to reflect the name of John Trowbridge.

A complete copy of Ms. Trowbridge-Benko's testimony and materials she referenced in her presentation is available as [Exhibit C](#).

- Dr. Elizabeth Neighbors, Director, Lake's Crossing Center for the Mentally Disordered Offender, Sparks, Nevada, was on the agenda but did not attend.
- Howard Brooks, Esq., Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, and representative, Nevada Attorneys for Criminal Justice, discussed how the *Nevada Constitution* requires an insanity defense. He commented on how Nevada has a limited insanity defense and only two cases where the NGRI defense has been argued successfully since 2001. Mr. Brooks provided a brief overview of the Michael Kane trial and said his office represented the defendant. Other highlights from his testimony included:
 1. Trial details regarding the issue of Mr. Kane's alleged use of a drug;
 2. The methodology of jury instructions;
 3. The possible inappropriateness of using the Kane case as an example for changing NGRI language;
 4. The need for changing Nevada's law to impose different categories of treatment for offenders who commit serious violent offenses versus offenders who are mentally ill; and
 5. That current statute is appropriate but current procedures may not be.

There was a discussion questioning the adequacy of the NGRI defense in the Kane trial. Mr. Brooks explained how the guilty but mentally ill (GBMI) verdict in Nevada Statutes was ruled to be unconstitutional. He said the current scheme will survive in Nevada courts for many years "because it is so restrictive."

- Scott Coffee, Esq., Clark County Public Defender Office, identified himself as Mr. Kane's legal counsel during the trial. He commented that current Nevada Statutes make it difficult to determine what happens to a defendant after a NGRI verdict is reached. He said the lack of guidelines and the narrow definitions within those statutes are problematic in accurately defining "no longer mentally ill" and also in making the distinction between an NGRI and a civilly committed person.
- The Chair commented that a "risk assessment" is not currently in statute, but should be. Mr. Coffee agreed.
- Kristin Erickson, Chief Deputy District Attorney, Office of the Washoe County District Attorney, and Member, Nevada District Attorneys Association, Reno, Nevada, spoke on the issue of whether current Nevada Statutes, which provide for commitment of those acquitted by NGRI, can find proper balance between a detainee's due process rights and the state's interest in protecting the public from dangerous individuals. She referred to the case of Mr. Kane, who admitted the slaying of Mr. Trowbridge in an NGRI defense, but was scheduled for release after ten months of incarceration because his mental condition improved. She said Nevada's current scheme is procedurally inadequate to protect the public from violent offenders who are acquitted by NGRI and a more rigid system is needed to prevent scenarios where dangerous criminals are released back into society shortly after committing crimes. Additional proposals submitted by Ms. Erickson regarding mentally ill defendants are available as [Exhibit D](#).

Concluding, Ms. Erickson proposed that reinstating GBMI might "bridge the gap between insanity and the *M'Naghten Rule's* definition of insanity" by providing jurors and the court system with another avenue to hold an offender accountable while protecting the community.

There was a further discussion regarding the cost, treatment, and evaluation of mental health incarnation and how the current system addresses non-violent versus violent offenders. The Chair then directed the prosecutor and defense bars to work together on this issue. In response to an inquiry from Assemblyman Anderson, Ms. Erickson stated that she would provide information on two-tiered systems in other states.

REPORT ON AUDIT OF PAROLE AND PROBATION AND REVIEW OF DEPARTMENT OF CORRECTIONS' EARLY RELEASE PROGRAM

- William Chisel, Chief, Division of Internal Audits, Department of Administration, Carson City, gave a review of the performance audit at the Division of Parole and Probation, Nevada Department of Public Safety ([Exhibit E](#)), based on the objectives to examine enhancement of offender supervision and collection of revenues. Mr. Chisel identified six significant high-risk duties of parole and probation officers, and said that in a review of 61 active cases, the audit revealed that 70 percent of high-risk duties were not performed, but the Department was actively incorporating the Division's

recommendations. Additionally a review of supervision fees revealed that the amount collected has not kept pace with the Division's costs and victims' restitution collection.

Mr. Chisel listed the following recommendations from the Division of Audit for the Department of Parole and Probation:

1. Officers and supervisors in the Division of Parole and Probation must focus on performing all high-risk duties and develop a report detailing the results of these case reviews for management.
2. Increase the supervision fees partially based on the offenders' ability to pay to enhance the state's revenue by approximately \$500,000 per year.
3. Enter into an agreement with the State Controllers Office to allow Nevada to collect on unpaid restitution from offenders discharged from supervision to recover approximately \$1.3 million per year for benefit of victims of crimes.

Additionally, he briefly summarized the Division of Internal Audit's review of the Early Release Program, including the early release of 98 inmates between November 2004 and January 2005 by the Department of Corrections ([Exhibit F](#)).

- Amy Wright, Chief, Division of Parole and Probation, Carson City, reported that the Division requires each offender to pay a minimum of \$30 per month for supervisory fees, but after the offender is released from supervision, the fee is no longer collected. She explained that the supervisory fee is determined by the Division, but it is actually a policy question and will be redressed to the Subcommittee before the end of the 2005-2006 interim.

A discussion ensued regarding sex offender registration requirements. Ms. Wright described various types of information collected in Nevada's Criminal History Repository and noted that Nevada has "one of the stiffest penalties for sex offenders" and requires lifetime supervision in some cases. She said it is currently incumbent upon sex offenders to register in Nevada, but legislation passed during the 2005 Session requires a sex offender to register prior to receiving or renewing a driver's license or identification card in this state. Finally, she said recent legislation also increases the availability of information on a public Web site, including street addresses of registered sex offenders.

DISCUSSION ON FACILITIES FOR TRANSITIONAL LIVING FOR RELEASED OFFENDERS

- Jeanne Anspach, R.N., Health Facilities Surveyor III, Bureau of Licensure and Certification (BLC), Health Division, Department of Health and Human Services (DHHS), Carson City, provided an update on activities of the task force to draft regulations for transitional living for released offenders. She noted that Senate Bill 282 (Chapter 476, *Statutes of Nevada 2005*), which makes various changes concerning

convicted persons, lists the following three types of living arrangements for released offenders: (1) housing and living environment; (2) housing, living environment, and supporting services facilities; and (3) housing, living environment, supporting services facilities, and alcohol and drug treatment programs; however, the latter facility must have their programs approved and certified by the Bureau of Alcohol and Drug Abuse (BADA).

Concluding, Ms. Anspach discussed programs that reintroduce offenders back into the community and described the regulation submission process. She noted that Subcommittee members will receive a copy of draft regulations prior to a BLC presentation in 2006. A copy of Ms. Anspach's testimony is available as [Exhibit G](#).

There was a discussion regarding the process for applicants' obtaining licensure to operate transitional living facilities for released offenders. Paul Shubert, Health Facilities Surveyor, BLC, Health Division, DHHS, Las Vegas, explained that applicants for management of halfway houses and transitional living facilities are not required by the BLC to submit to a background investigation check. The Chair suggested the development of guidelines to ensure a standard of applicants who plan to operate transitional living facilities and drug and alcohol treatment facilities.

- Mark Woods, District Administrator, Division of Parole and Probation, Carson City, noted that prior to S.B. 282 the policy ensured that alcohol and drug counselors were BADA certified, but not the facility. He said the Division is working in conjunction with the Health Division to develop regulations for halfway houses and transitional living facilities.

A discussion ensued regarding wait lists for admittance into halfway houses and transitional living facilities. Sergeant Steve Weeds, Pre-Release Program Manager, Division of Parole and Probation, acknowledged there is a great demand for transitional living centers throughout the state. He discussed the variety of requirements for offenders and said entrance for an offender into a program could range from one week to one month.

- Assembly Anderson requested that the Division of Parole and Probation provide a demographic report of candidates who are awaiting placement into transitional living facilities in Nevada.

PUBLIC COMMENT

- Richard Siegel, President, Nevada Chapter of the American Civil Liberties Union, Carson City, expressed concerns on inmate competency issues, specifically the treatment of inmates not on trial for mental illness. He also opined that Nevada should adopt a more balanced test of insanity because the *M'Naghten Rule* makes it difficult for defense counsels to demonstrate the defendant's state of mind at the time of the crime.

- Colleen Barnet, Las Vegas, relayed an account of her relationship with an inmate who was allegedly released early from a Clark County jail on a technicality, after serving only a six-month term for an extremely violent crime. She cautioned that “these people have to be taken more seriously.”
- William C. Frankel, Th.D., resident, Las Vegas, expressed concerns with the Department of Corrections Early Release Program with regard to inconsistencies in tracking earned inmate credits ([Exhibit H](#)). Glenn Whorton, Department of Corrections, Carson City, explained the process to address specific questions, and gave an overview of the Department’s grievance process. Dr. Frankel further opined that transitional facilities “were as necessary as jails” if the prison system were to succeed. He alleged that restrictive licensing of those types of facilities was discriminatory. Finally, he suggested the formation of a citizen advisory committee to further study released inmate housing issues.
- Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada, commented that the grievance system does not work because the inmate is always defeated by the grievance process timeframe and inmates are required to surrender their only copy of a grievance when it is submitted. She suggested the formation of a civil advisory committee to monitor inmate grievance issues. .
- Florence Jones, retired Clark County school teacher, Las Vegas, alleged that the Nevada’s Department of Corrections grievance process for inmates “sounded like a kangaroo court.” She also expressed concerns for Department rationales used to transfer inmates within the Nevada prison system.
- Assemblyman Anderson requested that staff review and respond to inmate constituent mail during the course of the 2005-2006 interim.
- The Chair requested that the written testimony of Nancy C. Dyas, Las Vegas, regarding prisoners’ rights be made a matter of record ([Exhibit I](#)).

ADJOURNMENT

The Chair announced the next meeting of the Subcommittee would be mid-January 2006. There being no further business to come before the Subcommittee, the meeting was adjourned at 2:42 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 two-page document dated November 9, 2005, and titled “Overview and Timeline,” presented by Nicolas C. Anthony, Principal Research Analyst, Research Division, LCB, Carson City.

[Exhibit C](#) is a package of information given by Robbin Trowbridge-Benko, which includes:

- A six-page memorandum to Nevada Legislature’s Subcommittee to Study Sentencing, and Pardons, Parole, and Probation, regarding Nevada’s mental illness statutes from Robbin Trowbridge Benko, Mother of slain victim John Edward Trowbridge;
- A 12-page article titled “A Cognitive, Behaviorally Based Program for Patients With Persistent Mental illness and a History of Aggression, Crime, or Both: Structure and Correlates of Completers of the Program,” written by Kathy Yates, Ph.D., et al, from the Web site of the Journal of the American Academy of Psychiatry and the Law Online;
- A seven-page article titled “Insanity Acquittees and Rearrest: The Past 24 Years,” written by Victoria L. Harris, M.D., M.P.H., from the Journal of the American Academy of Psychiatry and Law, Volume 28, Number 2, 2000;
- A 17-page article titled “The Unconditional Release of Mentally Ill Offenders from Indefinite Commitment: A Study of Missouri Insanity Acquittees,” written by Donald M. Linhorst, PH.D., M.S.W., from the Journal of the American Academy of Psychiatry and Law, Volume 27, Number 4, 1999; and
- A five-page article titled “Commitment Versus Confinement: Therapeutic Passes in the Management of Insanity Acquittees,” written by Stephen A. Young, M.D., et al, from the Journal of the American Academy of Psychiatry and Law, Volume 30, Number 4, 2002.

[Exhibit D](#) is a 14-page memorandum dated October 19, 2005, to Ben Graham, Chief Deputy District Attorney regarding proposed legislation from Brett Keeler, Law Clerk, and submitted by Kristin Erickson, Chief Deputy District Attorney, Reno, Nevada.

[Exhibit E](#) is 17-page audit of the Division of Parole and Probation, Nevada Department of Public Safety, titled “Introduction” prepared by the Division of Internal Audits, Department of Administration (DOA), and submitted by William Chisel, Chief, Division of Internal Audits, DOA, Carson City.

[Exhibit F](#) is a 19-page packet of information titled “Review of the Department of Corrections Early Release Program,” prepared by the Division of Internal Audits, DOA, and submitted by William Chisel, Chief, Division of Internal Audits, DOA, Carson City.

[Exhibit G](#) is a copy of testimony presented by Jeanne Anspach, R.N. Health Facilities Surveyor III, Bureau of Licensure and Certification, Health Division, Department of Health and Human Services, Las Vegas, Nevada.

[Exhibit H](#) is a three-page copy of testimony titled “Parole Board Concerns for November 11, 2005, Committee Hearing,” furnished by William C. Frankell, Th.D., Las Vegas.

[Exhibit I](#) is a two-page document of testimony prepared by Nancy C. Dyas, Las Vegas, that was entered into the record at the request of the Chair.

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.