NV-CURE POSITION ON NV CRIMINAL SENTENCING SYSTEM

NV-CURE
(Citizens United for the Rehabilitation of Errants**)**
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To the Advisory Committee on the Administration of Justice:

NV-CURE believes the entire Nevada criminal sentencing system must be changed, revised and reformed to provide a fair and equitable system of justice and fairness for all. The first step should be the elimination of the discretionary parole system. This would help eliminate the wide disparities in time served for similar offenses. Next, the multiple different good time statutes enacted over years need to be revised and brought into conformity. This would help ease the good time calculations required on a monthly basis. A single standard for good time applications must be implemented and special good time applications for only lower category of offenses abolished. This would eliminate a large volume of the work required to be performed on a monthly basis by NDOC employees involving good time and sentence calculations. Life sentences should be removed as a penalty and 60 years implemented as the highest sentence a person can receive. Death sentences should be removed as a penalty for an offense. These changes, among but a few of the many changes needed, would help bring justice and fairness to all in the Nevada criminal sentencing system and go a long way toward reducing the mass incarceration mania of the last decades.

NV-CURE advocates the **elimination** of the discretionary parole system currently in place in the State of Nevada. This system promotes disparities, unfair treatment, unjustified decisions and allows politics and economics to influence the parole decision-making process. The discretionary parole system must be eliminated to promote justice and fairness for all.

1. The discretionary parole system may be eliminated by two (2) widely different procedures, i.e., the elimination of parole in the sentencing process; or the establishment of a "right" to parole in the sentencing process. The elimination of parole would be the most cost effective method of resolving the problems associated with a parole system and substantially reduce the billions of tax dollars spent for the incarceration of people "denied" release on parole. The establishment of a "right" to parole in the sentencing process may minimally reduce

the costs associated with the discretionary parole process, however, the right to parole would increase the costs of prisoner litigation in all probability.

a. NV-CURE endorses the elimination of parole in the sentencing process and the establishment of a uniform and fair sentencing process applicable to all and capable of being applied to all previously sentenced people without offending the *ex post facto clause* of the Constitution. This system would be similar to The Federal Sentencing Reform Act of 1984 which established determinative sentencing and abolished parole, but would **differ** by drafting the Legislation in such a manner as to make it applicable to all persons currently serving sentences, or pending imposition of sentence, without offending the *ex post facto clause* of the Constitution, and by increasing the amount of good time that may be earned by an offender to 50 percent of the sentence. The increased amount of good time an offender could earn will provide prisoners with an incentive to engage in good behavior and provide prison officials with an effective means of controlling prisoner misbehavior.

(i) The new sentencing provisions may have a minimum and maximum term and the judge should have the discretion to impose any sentence deemed appropriate within the minimum and maximum term. Only one sentence will be imposed – the term the person will be required to serve in prison, less the good time he has earned.

(ii) Good time may be earned by working, attending school, completing programing, or engaging in defined rehabilitative activities. In the event sufficient jobs, education, programing, or rehabilitative activities are not available for all prisoners, prisoners should be granted good time credits while their names are on waiting lists for the various activities; and prisoners medically unassigned or unable to engage in the various good time activities, as specifically identified by a doctor, should be credited with the good time.

(iii) The maximum penalty that may be imposed for any offense(s) shall be 60 years, which shall include aggregated or consecutive terms, and all maximum sentences must be reasonable and based on reality in relation to the offense. The 60 year maximum penalty is based on the life expectancy of a person, which is current 78 years of age, reduced by the number of years a person has lived reaching adulthood.

(b). The discretionary parole system may also be eliminated by changing the “act of grace” language in the parole statute to a “right to parole” in the statute. Making parole a “right” instead of an “act of grace” would provide a prisoner with a right to parole should specific criteria be meet and provide the prisoner with the ability to challenge a decision to deny parole. All prisoners should have a right to parole after serving the minimum term of their sentence imposed by the court – unless the prisoner has engaged in conduct while incarcerated that provides a legitimate reason for denying release on parole.

3. Under the current discretionary parole system, a prisoner is unable to challenge a decision to deny parole in any type of judicial proceeding. There are no due process procedural protections for the prisoner because there is **no right to parole**. The Parole Commission, erroneously, is **exempt** from compliance with Open Meeting Law (NRS Chapter 241) because the Parole Commission allegedly performs an as yet to be defined quasi-judicial function. Further, although the Parole Commission is required to comply with the regulation making requirements of the Administrative Procedures Act (NRS Chapter 233B), the Parole Commission is **exempt** from the "contested case" requirements of the Administrative Procedures Act. There simply is no judicial procedure available to a prisoner to challenge a decision of the Parole Commission to deny him parole. The only potential remedy available to a prisoner to challenge the denial of parole is to write a letter to the Parole Commission asking for reconsideration of their previous decision. In other words, the Parole Commission may do whatever the Parole Commission wants to do without any procedure available to the prisoner to challenge the Parole Commission's decision.

4. Under the current discretionary parole system, a prisoner is not permitted to know, review, or challenge the accuracy of information considered by the Parole Commission in making a decision to deny parole. The Parole Commission may simply say: "Based on confidential information, the source or content of which we are not going to tell you, you are being denied parole". The prisoner is not permitted to know the information being relied upon by the Parole Commission to deny him parole. Without that knowledge, he is unable to challenge the accuracy of the information, the reliability of the source of the information, or the motivations, biases, or prejudices of the source(s) of the information. The prisoner may spend many additional years in prison based simply on a letter or statement from a person with an undisclosed animosity towards him for an inappropriate, biased, or prejudicial reason. This "secrecy" must be condemned and eliminated.

5. Under the current discretionary parole system, the victim of a crime is accorded special privileges and accommodations. The victim of a crime is permitted to provide "confidential" information opposing parole to the Parole Commission outside the presence of the prisoner. The prisoner is not permitted to hear the victim information, to know the information provided, to challenge the accuracy of the information, to rebut the information, or to determine the motive of the person in providing the information. This is an unfair practice and procedure and severely disadvantages a prisoner in the parole application process. The victim had an opportunity to provide information to the Court and prosecutor in the sentencing process and should not be provided with special privileges and accommodations in the parole application process. The prisoner must be permitted to hear and review all information considered by the Parole Commission in the parole application process, including any and all information provided by any victim of a crime.

6. Under the current discretionary parole system, standards have been established to determine the general amount of time an offender should be confined in prison before being released on parole. Those standards use a matrix system consisting of facts pertaining to the person for points, the offense category and a recommended number of months to be served in

prison. Those standards need to be revised from the "tough on crime lock-them-up for long terms" of the past decades to a "smart on crime" reality based system of the present to reduce the mass incarceration of our citizens and return people to our communities. Those standards need to be revised in the following respects:

(i) Less emphasis must be placed on the severity of the offense and personal characteristics and more emphasis placed on conduct of a prisoner during incarceration. Once convicted, a prisoner cannot change his offense severity or his characteristics. The emphasis should be placed on the prisoner's conduct during his incarceration: Conduct, employment, education, programing and rehabilitative activities. Release should not be conditioned on the pre-sentence past, which a person cannot change, but upon post-sentence conduct during incarceration.

(ii) The number of months a person is recommended to serve under the current standards based on offense severity and pre-sentence conduct must be drastically reduced. As indicated above, a person cannot change his offense severity or pre-sentence characteristics and the current number of months recommended to be served has increased substantially since their original inception under the "tough on crime" attitude and political benefits of the prison industrial complex. The number of months a prisoner is required to serve in prison under the current standards must be substantially reduced to alleviate the tax burdens to the State and bring a reduction to mass incarceration.

(iii) The number of offenses identified as Category B felonies in the State are substantial and by far outnumber the offenses identified as other Category felonies. A careful and thoughtful evaluation of all offenses identified as Category B felonies must be conducted and a large reduction of offenses identified as Category B felonies must be made to lower category felonies. The higher the category of a felony, the longer a person is required to be confined, which makes the tax burden higher for each additional day of incarceration and contributes further to the burdens of mass incarceration. Be smart on crime and conduct a realistic evaluation of felony category classifications.

7. Establish a parole system that requires the Parole Commission to inform and permit a prisoner to review, at least 30 days before a parole hearing, each and every piece of information the Parole Commission will consider in deciding whether or not to grant parole; provide the prisoner with an opportunity to challenge the accuracy and source of all information to be considered and to comment or submit a rebuttal of each piece of information at least 14 days before a parole hearing; and advise the prisoner of the findings of the Parole Commission with respect to each piece of information at the parole hearing. Justice and fairness mandates that a prisoner be fully advised of any and all information considered by the Parole Commission in deciding whether to grant or deny a person release from prison on parole and an opportunity to challenge the accuracy of the information and to show the bias, prejudice and motive of the person providing the information. We need transparency, not secrecy.

8. Require each and every person that provides the Parole Commission with any type of information adverse to or opposing release on parole to testify under oath at the parole hearing in the presence of the prisoner regarding that information and permit the prisoner to question the person providing the information regarding the accuracy of the information and the motive for providing the information. Again, justice and fairness mandate these procedures be established in the parole application process. No person in our country should hesitate to stand in front of the person being accused of misconduct and speak the truth regarding events that have transpired; and no person should be condemned based on "secret" behind the scenes information.

9. Require the Parole Commission to advise each prisoner at a parole hearing of the specific reason why parole will not be granted and what action a prisoner may engage in prior to the next parole hearing to facilitate a grant of parole at the next hearing. A person needs an explanation of the reason why release is being denied and an explanation of what, if anything, the person can do to change the results in the future. As long as the Parole Commission is straight with the person, the person will have the incentive to do what needs to be done before the next parole hearing to secure release – if that is what the Parole Commission tells him he needs to do before the next hearing to secure release. Hopefully, the Parole Commission will not tell a person he needs to do "this" to secure release next time unless that will actually happen.

10. Provide a prisoner with a method to challenge an adverse parole decision in a judicial proceeding wherein a judicial officer may evaluate the validity of the decision to deny parole.

Respectfully Submitted,

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