

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY SELECT COMMITTEE ON CORRECTIONS, PAROLE, AND  
PROBATION**

**Seventy-Fourth Session  
April 5, 2007**

The Select Committee on Corrections, Parole, and Probation was called to order by Chair David R. Parks at 3:53 p.m., on Thursday, April 5, 2007, in Room 3161 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. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman David R. Parks, Chair  
Assemblyman Bernie Anderson, Vice Chair  
Assemblyman John C. Carpenter  
Assemblywoman Kathy McClain  
Assemblywoman Valerie E. Weber

**COMMITTEE MEMBERS ABSENT:**

Assemblyman William Horne (Excused)

**STAFF MEMBERS PRESENT:**

Craig Hoffecker, Committee Policy Analyst  
Brenda Erdoes, Legislative Counsel  
Brooke Bishop, Committee Secretary  
Olivia Lloyd, Committee Assistant  
Deanna Duncan, Committee Manager



**OTHERS PRESENT:**

James Hardesty, Associate Justice, Supreme Court  
Howard Skolnik, Director, Department of Corrections  
Patricia Hines, Private Citizen, Yerington, Nevada  
Constance Kosuda, Private Citizen, Las Vegas, Nevada  
Fritz Schlottman, Administrator, Offender Management Division,  
Department of Corrections  
Oran McMichael, Member, American Federation of State, County and  
Municipal Employees (AFSCME)  
Kevin Ranft, Northern President, State of Nevada Employees  
Association/American Federation of State, County and Municipal  
Employees (SNEA/AFSCME)  
Stanley Marshall, Chief, Bureau of Health Protection Services,  
Department of Health and Human Services  
Gary Peck, Executive Director, American Civil Liberties Union (ACLU)  
of Nevada  
Maria Melendez, Private Citizen, Las Vegas, Nevada  
Harbert Rice, Member, Alternatives to Violence Project (AVP)

**Chair Parks:**

[Roll called.] We have two bills on the agenda this afternoon. We will start our meeting with Assembly Bill 508 (A.B. 508).

**Assembly Bill 508: Makes various changes to provisions concerning the Advisory Commission on Sentencing. (BDR 14-1378)**

**James Hardesty, Associate Justice, Supreme Court:**

[Read from prepared testimony ([Exhibit C](#)).]

I would like to urge this Committee to go above and beyond what is currently provided in the wording of the bill. I have had extensive meetings with the District Attorney's Association and the Association of Chiefs and Sheriffs and they all support the revitalization and the utilization of the Advisory Commission on Sentencing to reexamine numerous areas within the criminal justice system and we strongly believe it can become a vehicle for making necessary improvements to the system as well.

With respect to certain goals of this Advisory Commission on Sentencing, A.B. 508 should be amended to specify certain matters that this Commission is expected to report back on at the 2009 Legislative Session: first, review the Division of Parole and Probation (DPP), its Presentence Investigation (PSI) reports, use of its officers for preparing these PSI reports, and the extent to

which judges rely on and follow their recommendations; second, the review of current sentences given for felonies, particularly those involving weapons, mandatory minimums, and drug crimes; third, review the Parole Board guidelines and *Nevada Administrative Code* (NAC) procedures and their effectiveness; and fourth, review the specialty courts and their effectiveness precluding or limiting the prison population and dealing with reentry issue. There have been suggested changes to the reentry statutes and the Commission should be charged with evaluating the recommendations of the DPP and whether those recommendations were effective. With these reviews and required reporting back, the Legislature will be providing this Legislature with some specifics that will assist in its evaluation of the criminal justice system in its entirety. The criminal justice system is a complex and integrated system; changes made to one section can have adverse and unpredictable effects on another section.

Assembly Bill 508 allows those groups within the criminal justice system to come together and share the impacts of their ideas, views, and concerns relative to the entire system as we move forward with consideration of these various matters. The Commission should be provided with staff support and that staff will be essential in order to have meaningful responses. Their consideration also needs to be given to the proposal of allowing district court judges to deviate from mandatory minimums for Category B, C, D, and E felonies. By documenting their findings, should deviations be made, the State can appeal if there is an adverse view, allowing this Commission to examine the effectiveness of such an approach.

Here is a prime example. A young man is offered \$150 to drive a car from Sacramento, California, to Salt Lake City, Utah. He is pulled over in Lovelock, Nevada, for a broken taillight. The trooper asks to search the vehicle and upon searching it finds an amount of drugs considered as trafficking here in Nevada. Under the current sentencing scheme the District Attorney has no choice to negotiate; the defendant cannot offer substantial assistance to qualify for probation, and depending on the actual quantity of drugs, that young man, with no prior convictions, would get sentenced to a term of 10 to 25 years in prison. We then house that individual, often an illegal immigrant, for a minimum of ten years before he can even be considered for parole. That is a waste of taxpayer dollars and I do not think that is what you, the Legislature, intended when those mandatory minimums were considered. This would be a proper case for a court judge, making specific findings of fact, to deviate from the mandatory sentencing guidelines and grant probation, and if that individual is an illegal alien, move him to an Immigration Customs Enforcement (ICE) holding facility for deportation.

These kinds of examples can benefit this State by extending to the judiciary, over the next two years, discretion to consider deviation on specific findings of fact in an individual case. This would also give empirical evidence, instead of speculation, about the extent to which judges follow or do not follow the mandatory sentencing guidelines.

**Assemblyman Anderson:**

I see your recommendations relative to having a retired justice as a member of the Advisory Commission; it might be helpful to have somebody who is not involved but knows the courts and who might be able to bring a certain level of objectivity to both sides. Do you see any value in having a retired justice member?

**James Hardesty:**

It would be perfectly acceptable to provide the option in the language of the bill to allow the Chief Justice to appoint either a sitting or a retired justice member. Since the Supreme Court is directly involved and confronted with all these cases coming in and out of the prison, and also charged with administering the judicial system in the State, we feel it would be more productive to have a sitting justice as a member of the Commission, someone who is more in tune with the current problems the court is facing internally with respect to its caseload.

My concern is the need for this Advisory Commission is of enormous urgency and the sooner we can get it formed and charge it with these responsibilities, the better off the entire legislative and justice systems will be. Often commissions are created and, unless there is a requirement that they start meeting on a certain date, they languish. The Legislature needs to expect accountability from this Commission and they should be charged with an enormous responsibility. The expectation for this Commission should be high and you should set deadlines which begin with the appointment of its members.

**Assemblywoman McClain:**

We have set a precedent with a couple of other commissions and those appointments will happen fairly quickly after July 1, 2007.

**Assemblyman Carpenter:**

You mentioned illegal aliens in your discussion on the judges' findings of actual facts in your example. What progress has been made in regard to the illegal aliens in our prison system?

**James Hardesty:**

Since I last testified on that subject, a lot has happened. The Legislature should be very proud of the hard work which has been done by the Nevada Department

of Corrections (NDOC) and its staff and new director, the chairman of the Parole Board, and the members of the Pardon's Board. The efforts by the Detention Removal Operations (DRO) segment of the ICE also need to be recognized. Currently the NDOC, Parole Board, and ICE have identified 146 inmates who can be considered by the Pardon's Board. They have already received parole, but need an earlier release date from the Pardon's Board. Forty-six of those inmates are in northern Nevada and 100 are in southern Nevada. Forty-seven are amenable to immediate removal not only from our system, but from the country. Another 64 are subject to interviews by the DRO and will be in a position to go before the Pardon's Board for removal. The Pardon's Board has agreed to meet monthly and consider presentations and recommendations from the Parole Board. This would be at a rate of 40 to 50 inmates per month being considered for deportation. The DRO has informed us of a Lawful Permanent Resident Removal Program, in which an administrative law judge will come into the prison and conduct deportation hearings and those arrangements are currently being worked out with the NDOC and the DRO.

We have identified another category of interest in our prison system. There are a number of inmates who are serving both state and federal sentences concurrently. It is our suggestion that the State of Nevada and the Pardon's Board review all these cases and turn them over to the federal prison system. Those statistics are currently being compiled. Often the sentences in the federal system are stiffer than those of the state system. Interestingly, it was necessary for a federal public defender to go to the federal courts to seek qualification of a Nevada prison as appropriate to house a federal defendant who had been sentenced on a federal crime. This is an example of a number of circumstances that are affecting our system that this Commission needs to review and provide some meaningful guidance to the Legislature. In the meantime, the NDOC will present a list of these cases to the Pardon's Board and review why they cannot be housed at federal prisons instead of the Nevada state prison. I would ask that you consider my amendments to A.B. 508 and have these issues be the focal point of this.

**Chair Parks:**

I have a question in looking at Section 1, the composition of the Commission, having 14 members. Do you see this as being a satisfactory number?

**James Hardesty:**

I would add, as another amendment to A.B. 508, one member who would be a representative of the Sheriffs' and Chiefs' Association. They would be greatly impacted by this Commission and its findings.

**Chair Parks:**

Thank you very much; we certainly appreciate your coming to testify, Mr. Hardesty. I would like to open the testimony to those who wish to speak on A.B. 508.

**Howard Skolnik, Director, Department of Corrections:**

The NDOC is neutral on A.B. 508. I do have one concern with regard to the Advisory Commission on Sentencing. The language of the bill needs to take into account the constitutionality of the Prison Board of Commissioners, which is established in the *Nevada Constitution* and governs the NDOC. I believe that if there were any kind of formation of a commission or a non-Executive Branch body, that they could probably not be more than advisory. Other than that, we have no position on this bill.

**Patricia Hines, Private Citizen, Yerington, Nevada:**

[Read from prepared testimony ([Exhibit D](#)).]

**Constance Kosuda, Private Citizen, Las Vegas, Nevada:**

[Read from prepared testimony ([Exhibit E](#)).]

**Chair Parks:**

Thank you. We will close the hearing on A.B. 508 and open the hearing on Assembly Bill 361.

**Assembly Bill 361: Providing for the establishment of certain standards for state correctional institutions and facilities. (BDR 16-1014)**

**Assemblywoman Valerie E. Weber, Assembly District No. 5:**

[Read from prepared testimony ([Exhibit F](#)).]

**Assemblyman Anderson:**

I understand the special needs of certain inmate groups such as pregnant, mentally or physically disabled, or even youthful offenders. But by including women, in general, as a special needs group, would that not extend special rights to them as well?

**Assemblywoman Weber:**

I am referring to the needs of the diverse groups housed within our prison system not being met by the operating policies we currently have in place. There need to be standards established for a female offender versus a male offender.

**Assemblywoman McClain:**

I would like to comment that the special needs that Ms. Weber is referring to are really more budgetary needs.

**Assemblywoman Weber:**

I agree. I just wanted to express that there are different needs that should be addressed when creating standards for prisons when it comes to men versus women.

**Assemblywoman McClain:**

How will the Prison Board of Commissioners work with this Commission on standards?

**Assemblywoman Weber:**

This is an Executive Branch commission and I originally wanted members to include legislators, but Legal advised me that would not be separation of powers. They can come forward with recommendations, as advisory.

**Assemblywoman McClain:**

So this is an expansion of the Prison Board of Commissioners?

**Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau:**

In drafting this we thought that the request was to form this advisory commission to advise both the Nevada Department of Corrections (NDOC) and the Director of the NDOC, and that constitutionally formed board as well. Our perspective was that they would all work together.

**Howard Skolnik, Director, Department of Corrections:**

The NDOC is neutral on A.B. 361, although we do have some amendments regarding its constitutionality. It would appear from the requirements defined in this bill that the membership will probably be mostly employees of the NDOC. This would put them and me in awkward positions in the administration of that commission. Additionally, there is an extensive set of standards that govern Corrections. The American Correctional Association (ACA) has hundreds of pages of standards, some for the administration of adult institutions, some for the areas of medical care, et cetera. Almost every avenue of our business is covered in those standards and they have withstood the examination of the courts. We proposed a few years ago to become accredited under those ACA standards, and the Legislature chose not to provide the funding necessary for us to do that. If we establish standards internally, what are we holding ourselves open to if subsequently there is no funding to comply with our own standards? There needs to be consideration to that and to the fact the ACA standards have been around since 1966.

**Assemblywoman Weber:**

In looking at page 5 of the bill, with the conceptual amendment I proposed, part of the Commission's goal would be to make recommendations through bill draft requests (BDRs), so that those standards can be considered for both policy and budgetary needs. This is meant to be a help and to keep raising the bar by having standards the public can see as well as interface with.

**Howard Skolnik:**

Unfortunately, I have not seen the amendments so I cannot respond, nor were my comments based on those amendments.

**Assemblywoman McClain:**

How old did you say the ACA standards were?

**Howard Skolnik:**

The first draft of the standards was published in 1966, and the last update was published last year, 2006. They are reviewed on a biannual basis and are now performance-based instead of simple statements of standards. Measurement criteria are also included. Compliance and receipt of accreditation of those standards is a three year process and that accreditation then lasts for three years.

**Chair Parks:**

Can you receive accreditation for specific programs or individual institutions within Corrections? Or must it be the entire department?

**Howard Skolnik:**

The Prison Industry program was accredited under the ACA in 2003. It is a very expensive process, and unfortunately we allowed that accreditation to lapse. Yes, you can do single programs or individual institutions. Each requires independent funding and a separate application.

**Fritz Schlottman, Administrator, Offender Management Division,  
Department of Corrections:**

Looking at the amendments, you might run into some equal protection arguments. If you make distinctions based purely on gender, you are going to very quickly have a number of lawsuits from male inmates, saying simply that the distinction between genders is unconstitutional. You will need to be very specific as to a bona fide reason for that separation.

**Oran McMichael, Member, American Federation of State, County and  
Municipal Employees:**

Our Federation is in full support of A.B. 361.



**Kevin Ranft, Northern President, State of Nevada Employees Association/  
American Federation of State, County and Municipal Employees  
(SNEA/AFSCME):**

The SNEA along with the AFSCME fully support A.B. 361. We are willing to work with Director Skolnik on the security concerns, et cetera. This Committee was formed because there were many problems that needed to be addressed within the corrections system. This Advisory Commission can come up with a viable solution and set standards and policies to protect not only ourselves, but the public as well.

**Patricia Hines, Private Citizen, Yerington, Nevada:**

[Read from prepared testimony ([Exhibit G](#)).]

**Howard Skolnik:**

The Prison Board of Commissioners is constitutionally established and possesses the authority to create the policies that govern the NDOC. It was determined that all of our policies needed to be public, but I would feel very uncomfortable posting our escape plan on the website. I feel the procedures that we operate under should have some level of internal discretion. The processes for administrative regulations are drafted and given to the Attorney General to determine whether they comply or not. Then they go to the Prison Board of Commissioners and are reviewed by them. How they do that, or if they are open to public input, is a matter for them to consider and not us.

**Chair Parks:**

Ms. Hines made reference to Administrative Regulation (AR) 719, which deals with visiting procedures. She said that it had been under draft for two and a half years. Are these regulations given to inmates?

**Howard Skolnik:**

The regulations in effect are interim regulations and I will check as to why AR 719 is not available. If it is still under draft then it is not available to the public, but I will check on that.

**Chair Parks:**

I received an email from someone who said her husband was denied for parole because of physical contact in the visiting area?

**Howard Skolnik:**

The Department does not revoke paroles; the Parole Board would do that. If it was something in the visiting area it would probably be something like contraband or something serious, not just kissing for too long.

**Assemblywoman Weber:**

Are the meetings of the Prison Board of Commissioners subject to the open meeting law?

**Howard Skolnik:**

It is a constitutional body, so I am not sure about that.

**Assemblywoman Weber:**

What types of meetings are available for the public to meet with Corrections?

**Howard Skolnik:**

We actually just had a meeting prior to this meeting. I have said that to the degree that time allows, I have an open-door policy. We are looking at having a coffee with the director format, which I believe was your suggestion, Ms. Weber.

**Assemblywoman Weber:**

So there is no way for the public to interface and give their input into the processes of the prisons or the department?

**Howard Skolnik:**

I believe we are going through that process right now.

**Stanley Marshall, Chief, Bureau of Health Protection Services, Department of Health and Human Services:**

The Bureau is ready and willing to participate in and support A.B. 361.

**Gary Peck, Executive Director, American Civil Liberties Union (ACLU) of Nevada:**

The ACLU of Nevada agrees with the provisions of A.B. 361. We also agree with the amendment to the bill, addition of the inmate grievance process. We would also like to see a work session on this bill, if possible.

**Maria Melendez, Private Citizen, Las Vegas, Nevada:**

[Read from prepared testimony ([Exhibit H](#)).]

**Chair Parks:**

Thank you. If there are no more questions or comments, I would like to close the hearing on A.B. 361.

We will continue with a report by Mr. Harbert Rice, from the Alternatives to Violence Project (AVP), regarding the workshops they offer and the productivity of those workshops.

**Harbert Rice, Member, Alternatives to Violence Project (AVP):**

[Read from prepared testimony ([Exhibit I](#)).]

**Chair Parks:**

Thank you for that report. If there are no more questions or comments, we are adjourned [at 5:51 p.m.].

RESPECTFULLY SUBMITTED:

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Brooke Bishop  
Committee Secretary

APPROVED BY:

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Assemblyman David R. Parks, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Select Committee on Corrections, Parole, and Probation

**Date:** April 5, 2007

**Time of Meeting:** 3:53 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Committee Agenda
	B		Attendance Roster
AB 508	C	James Hardesty, Associate Justice, Supreme Court	Proposed amendments.
AB 508	D	Patricia Hines, Private Citizen, Yerington, Nevada	Written testimony of proposed amendments and copy of the second reprint of <u>Senate Bill 286</u> dated March 7, 2001.
AB 508	E	Constance Kosuda, Private Citizen, Las Vegas, Nevada	Email pertaining to the pharmacies role in creating and marketing drugs.
AB 361	F	Assemblywoman Weber, Assembly District No. 5	Conceptual amendments.
AB 361	G	Patricia Hines, Private Citizen, Yerington, Nevada	Proposed amendments.
AB 361	H	Maria Melendez, Private Citizen, Las Vegas, Nevada	Letter on behalf of inmates.
	I	Harbert Rice, Member, Alternatives to Violence Project (AVP)	Review report on AVP workshops.