

MEETING NOTICE AND AGENDA

Name of Organization: Advisory Commission on the Administration of Justice (NRS 176.0123)

Date and Time of Meeting: Wednesday, October 10, 2012
9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the Commission may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3137
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen or view it live over the Internet. The address for the Nevada Legislature website is <http://www.leg.state.nv.us>. Click on the link "Live Meetings – Listen or View."

Note: Please provide the secretary with electronic or written copies of testimony and visual presentations if you wish to have complete versions included as exhibits with the minutes.

AGENDA

Note: **Items on this agenda may be taken in a different order than listed. Two or more agenda items may be combined for consideration. An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.**

I. Call to Order.

II. Roll Call.

III. Public Comment.

(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

*For
Possible
Action*

IV. Approval of the Minutes of the Meeting of the Advisory Commission held on August 28, 2012.

*For
Possible
Action*

V. Work Session - Discussion and Action on Recommendations
(See “Work Session Document” for a summary of recommendations.)

The Work Session Document Summary of Recommendations is attached below. The full document with supporting attachments is available on the Commission’s web page, [Advisory Commission on the Administration of Justice](#), or a copy may be obtained by contacting Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau at (775) 684-6830.

VI. Public Comment.

(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

VII. Adjournment.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Legal Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call (775) 684-6830 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was e-mailed or faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature’s Web site at www.leg.state.nv.us.



WORK SESSION DOCUMENT

Advisory Commission on the Administration of Justice
[Nevada Revised Statutes 176.0123]

October 10, 2012

The following “Work Session Document” was prepared by staff of the Advisory Commission on the Administration of Justice (“Advisory Commission”) (*Nevada Revised Statutes* 176.0123). The document contains a compilation of recommendations within the scope of the Advisory Commission that were presented during hearings or submitted in writing during the course of the 2011-2012 interim.

The possible recommendations listed in the document do not necessarily have the support or opposition of the Advisory Commission. Rather, these possible recommendations are compiled and organized to assist the members in considering the recommendations during the work session. The Advisory Commission may adopt, change, reject or further consider any recommendation. The individual sponsor or joint sponsors of each recommendation are referenced in parentheses after each recommendation.

Under NRS 176.0125, the Advisory Commission is charged with examining various aspects of the criminal justice system and, prior to the next regular session of the Legislature, must prepare and submit to the Director of the Legislative Counsel Bureau a comprehensive report including the Advisory Commission’s findings and any recommendations for proposed legislation. The Advisory Commission does not have any bill draft requests allocated by statute; however, individual legislators or the Chair of any standing committee may choose to sponsor any Advisory Commission recommendation for legislation.

For purposes of this document, the recommendations have been organized by topic and are not listed in any preferential order. Additionally, although possible actions may be identified within each recommendation, the Advisory Commission may choose to recommend any of the following actions: (1) draft legislation to amend the Nevada Revised Statutes; (2) draft a resolution; (3) draft a letter; or (4) include a statement of support in the final report. It should also be noted that any potential recommendations listed may or may not have a fiscal impact. Any potential fiscal impacts have not been determined by staff at this time.

RECOMMENDATION NO. 1 — Draft legislation to expand the use of boot camps. (Commissioner Kohn)

Background Information for Recommendation No. 1

Tab A – NRS 176A.780.

During the Advisory Commission meeting held on January 24, 2012, Commissioner Kohn asked Ms. Sheryl Foster, Deputy Director of the Nevada Department of Corrections (NDOC), how many inmates are involved in the boot camp program provided for by Nevada law (**Tab A**). Ms. Foster said that there are approximately 60 to 62 people in the program. There used to be more, but the number was reduced because of less available staffing. Commissioner Kohn commented that boot camp programs are incredibly effective and reduce recidivism, and that members of the district court are concerned with the reduction of the program in Nevada. He also indicated that he hoped the number of people participating in the boot camp can increase, and that the scope of the boot camp can be widened with regard to who may participate.

In furtherance, Ms. Foster gave a presentation on the boot camp program during the Advisory Commission meeting held on March 7, 2012. Ms. Foster indicated that the boot camp was originally designed as a type of diversion program used instead of the imposition of a sentence, and described the program as a type of “shock probation” program. The program is a maximum of 190 days, and involves strenuous physical exercise, hard labor and military-style drills, and sessions of instruction on stress management, building good character, rational behavior thinking, and preparing for and obtaining employment. To participate in the program, a person must be a male who is at least 18 years of age, convicted of a nonviolent felony, eligible for probation, and must never have been in jail or prison as an adult for more than 6 months. Ms. Foster said that there was research that several other states and the Bureau of Prisons discontinued the use of boot camps because there was not enough of a positive effect on recidivism to justify the costs of the program. Ms. Foster noted that one of the biggest negatives of the program is the lack of transitional support available to a person once he completes the program. Therefore, aftercare and transitional housing is needed for success of the program. Upon inquiry by Chairman Horne, Mr. Rex Reed from the NDOC indicated that there is available capacity for recent graduates of boot camp at the Casa Grande Transitional Center.

Commissioner Kohn said that it is time to reevaluate who qualifies to participate in boot camp, and he said that he is concerned with a blanket restriction that prohibits offenders who have committed a violent crime from participation in the program. Commissioner Kohn indicated that some first time offenders who have committed a violent crime are exactly the type of people to be placed in the boot camp program. Chairman Horne commented that while such a blanket provision is problematic, there also should not be wide-open discretion with regard to who may participate. Therefore, a discussion of the definition of a crime of violence is important. Commissioner Hardesty suggested possibly amending the regimental discipline statute (**Tab A**) to expand judicial discretion with some felonies.

RECOMMENDATION NO. 2 — Draft legislation to expand the use of boot camps to youthful offenders. (Commissioner Digesti)

Background Information for Recommendation No. 2

During the Advisory Commission meeting held on January 24, 2012, Commissioner Digesti asked Ms. Foster to explain the distinction between the boot camp program and the youthful offender placement at High Desert Prison. Ms. Foster explained that the boot camp is a diversion program, while the youthful offender placement is for inmates who are convicted and sentenced to prison terms. Ms. Foster indicated that the boot camp is productive and positive for young offenders. However, the problem with the boot camp is the lack of transition support for participants when they are released and go back into the community. Commissioner Digesti suggested that because the boot camp is a positive program, it should work for several groups, including youthful offenders. Ms. Foster explained that the youthful offender program maintains structure for participants because they are involved in education and programming suitable for them. The boot camp works because the program is limited to 190 days, so participants do not spend lengthy periods in prison. However, participants in the youthful offender program who are sentenced to prison do not have the ability to be released after 190 days. Commissioner Digesti commented that the boot camp is more severe than the youthful offender program.

During the Advisory Commission meeting held on March 7, 2012, Ms. Foster noted several issues with the youthful offender program becoming a boot camp style program. First, inmates in the youthful offender program do not meet the criteria for boot camp because most of them are violent offenders and some have served prior prison sentences, so they do not qualify for minimum custody. Second, it would require a large increase in staff and resources.

RECOMMENDATION NO. 3 — Draft legislation to reinstate the 120-day diagnostic NDOC “Safe Keeper Evaluation Program.” (Commissioner Kohn)

Background Information for Recommendation No. 3

Tab B – Background information on Senate Bill No. 74 (1997), which eliminated the NDOC “Safe Keeper Evaluation Program”; Former NRS 176.158.

During the Advisory Commission meeting held on March 7, 2012, Ms. Sheryl Foster gave a presentation on the former 120-day NDOC “Safe Keeper Evaluation Program” (see former NRS 176.158) (**Tab B**), which was originally designed as an evaluation program. Under the Program, an offender would enter the system, go through an intake process and remain in the Program for 120 days, during which time the offender’s prior criminal record, his mental and physical health, and the rehabilitation resources available to him were evaluated. The only people eligible for the Program were those who had been convicted of a felony for which they might be sentenced to imprisonment and who had never been sentenced to imprisonment as an adult for more than 6 months.

The Program was eliminated in 1997 because of budgetary concerns and limited bed space. Ms. Foster testified that the positive aspects of the Program included the fact that an offender only spent 120 days in incarceration, and that the Program emphasized education. The negative aspects of the Program included there never having been an appropriation for staffing or resources. Ms. Foster said that if the Program is reinstated, there needs to be an appropriation for staffing, which would include a caseworker, mental health counselor, re-entry staff and additional custody staff.

Commissioner Kohn stated his belief that the Program was one of the most important programs in the criminal justice system. He said this “scared straight program” gave young offenders who were not able to go to boot camp an idea of how serious prison is. Commissioner Kohn also indicated that he would like the courts to have as much discretion as possible. Chairman Horne requested that Commissioner Barker ask his colleagues of their thoughts of the 120-day diagnostic prison sentence.

RECOMMENDATION NO. 4 — Draft legislation to combine the Division of Parole and Probation of the Department of Public Safety with the Nevada Department of Corrections. (Dr. James Austin)

Background Information for Recommendation No. 4

During the Advisory Commission meeting held on April 17, 2012, Dr. James Austin, President of the JFA Institute, indicated that for many years, the Division of Parole and Probation has been unable to analyze information about parolees on a regular basis due to a lack of resources. Dr. Austin encouraged the Commission to look at the organizational structure of the system and recommended that the Division of Parole and Probation be combined with the NDOC so that there is one system to obtain information on parolees and risk assessments. He also suggested that parole agents should be moved to the NDOC or under the Parole Board. Dr. Austin also indicated that Nevada is out of step with the rest of the country with regard to the organizational alignment of correctional resources. Dr. Austin suggested that by combining the Division of Parole and Probation with the NDOC, bureaucratic delays would be eliminated and there would be a better transition of assessment as people go through the system.

RECOMMENDATION NO. 5 — Draft legislation to enact statutory time frames relating to when presentence investigation reports must be given to counsel before sentencing. (Advisory Commission on the Administration of Justice’s Subcommittee to Review Presentence Investigation Report Process)

Background Information for Recommendation No. 5

Tab C – Proposed conceptual language to amend Chapter 176 of NRS submitted by the Subcommittee to Review Presentence Investigation Report Process (Revised per action taken May 22, 2012); NRS 176.133 to 176.161, inclusive; Letter from David Sonner, Department of Public Safety Captain, regarding timing and delivery of presentence investigation reports.

During the Advisory Commission meeting held on March 7, 2012, Commissioner Hardesty suggested forming a subcommittee to examine the area concerning the correction of presentence investigation reports as a result of a recent Nevada Supreme Court case, *Stockmeier v. State*, 255 P.3d 209 (2011). A subcommittee was appointed and Commissioner Kohn was appointed as Chair.

The Advisory Commission’s Subcommittee to Review Presentence Investigation Report Process held meetings on April 9, 2012, and May 22, 2012, during which the Subcommittee examined the presentence investigation report process in this State and the inherent problems with presentence investigation reports that contain errors or omissions. Commissioner Kohn explained that the Nevada Supreme Court held in *Stockmeier* that any perceived errors or omissions in a presentence investigation report must be addressed prior to sentencing.

Commissioner Kohn indicated during the Advisory Commission meeting held on April 17, 2012, that the Nevada Supreme Court in *Stockmeier* suggested that the federal system could be used as a guideline in Nevada. Under the federal system, probation reports are given to attorneys 35 days before sentencing. Commissioner Kohn noted that this 35 day time limit would be difficult for the Division of Parole and Probation, but he stressed the importance of having the time to make any necessary corrections.

The Subcommittee is proposing language for a bill draft (**Tab C**) that requires a presentence investigation report to be given to the parties at least 21 days before sentencing. Within 7 days of the parties receiving the report, the parties must state any objections to the report. At least 7 days prior to sentencing, the Division must submit to the court the presentence report and an addendum containing any unresolved objections. If a party fails to challenge the accuracy of a presentence investigation report at the time of sentencing, then the matter must be considered to be waived. Alternatively, Captain Sonner from the Division of Parole of Probation has recommended that presentence investigation reports be delivered to all criminal justice partners 7 days prior to sentencing (**Tab C**).

RECOMMENDATION NO. 6 — Draft a letter to the Governor urging him to provide additional funding in the Executive Budget for the Division of Parole and Probation of the Department of Public Safety to be used for personnel positions to assist with the compilation of presentence investigation reports. (Commissioner Kohn)

Background Information for Recommendation No. 6

During the Advisory Commission meeting held on June 6, 2012, Commissioner Kohn suggested that the Division of Parole and Probation should be given more resources. Referring to the proposed changes to the presentence investigation report process being set forth in Recommendation No. 5 by the Subcommittee to Review Presentence Investigation Report Process, Commissioner Kohn recognized that it would cost money for the Division. He would like the Division to have more time to prepare presentence investigation reports for people not in custody, and to receive presentence investigation reports sooner for people who are in custody. Commissioner Kohn indicated that the Division needs enough time to ensure that the reports are looked at accurately.

RECOMMENDATION NO. 7 — Draft a letter to the Governor urging him to include additional funding in the Executive Budget for the Division of Parole and Probation of the Department of Public Safety to be used for additional personnel positions to assist with the compilation of postconviction reports. (Commissioner Siegel)

Background Information for Recommendation No. 7

Tab D – Document from the Division of Parole and Probation concerning postconviction reports.

During the Advisory Commission meeting held on July 17, 2012, Commissioner Bisbee provided the Commission with information concerning postconviction reports. Commissioner Bisbee said that as a result of an increase in waived presentence investigation reports, the Parole Board began asking for postconviction reports. Commissioner Bisbee indicated that the number of postconviction reports requested by the Parole Board has been increasing every month, which has resulted in a backlog. Therefore, many hearings before the Board have had to be continued. Commissioner Bisbee also indicated that at the time, there was only one person working on postconviction reports. She stressed that the Division of Parole and Probation needs additional staff to help with the reports. Mr. Tom Ely, Department of Public Safety Captain, testified that without additional staffing, the Division of Parole and Probation will be unable to keep up with the demand for postconviction reports and there will continue to be a backlog. Mr. Ely also said that the Division would probably only need 2 or 3 additional employees to keep up with the demand for postconviction reports. Commissioner Siegel noted that when a parole is delayed that would have happened otherwise, the delay is contributing to a state expenditure. Additional staffing should therefore be provided to avoid such delays.

RECOMMENDATION NO. 8 — Draft legislation to extend the sunset date and/or expand the pilot diversionary program pursuant to Assembly Bill No. 93 (2011) for offenders who have alcohol or drug dependence or mental illness. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 8

Tab E – Assembly Bill No. 93 (2011), as enrolled; PowerPoint presentation on Nevada’s O.P.E.N. program; Fact sheet on the O.P.E.N. program.

Assembly Bill No. 93 requires the NDOC to establish a pilot diversion program within the facilities maintained by the Department to provide treatment to certain probation violators if a court has reasonable cause to believe that the probation violators are alcoholics or drug addicts or in need of treatment for a mental illness, and if the probation violators are ordered to the custody of the NDOC to receive such treatment. The housing of such probation violators in the program is limited to no more than 50 at one time. The provisions of Assembly Bill No. 93 expire by limitation on July 1, 2015.

During the Advisory Commission meeting held on January 24, 2012, Ms. Sheryl Foster explained that probation violators participating in this pilot diversion program, the Opportunity for Probation with Enforcement in Nevada (known as the O.P.E.N. program), are housed at the Casa Grande Transitional Center.

During the Advisory Commission meeting held on June 6, 2012, a PowerPoint presentation was given on the O.P.E.N. program by Mr. Bradford Glover from the NDOC (**Tab E**). Mr. Glover also provided a fact sheet on the O.P.E.N. program (**Tab E**). Mr. Glover explained that O.P.E.N. is a one-year long, high intensity supervision program that is currently only being used for drug offenders, but that could also be used for non-violent offenders. The program is an extension of a program initially started by Eighth Judicial District Court Judge Jackie Glass. Ms. Kim Madris, Deputy Chief of the Division of Parole and Probation in Southern Nevada, explained that because only individuals in a status of non-compliance with the terms of their probation are referred to the program, a Parole and Probation officer is the only one to refer such an offender to a judge for acceptance into the program. However, she also explained that it would be ideal for officers to be able to refer offenders to the program who they believed were in need of more structured supervision. Ms. Madris stated that there are several obstacles with the program, such as the fact that it is unfunded. Due to funding cuts, the Division of Parole and Probation has only been able to have one officer work with the program. Problems with staffing, lack of involvement by the courts, and available space at Casa Grande make it difficult for the program to continue. Mr. Rex Reed from the NDOC noted that because of the layout of Casa Grande, if the program is expanded, the number of participants needs to be increased in units of 50.

This recommendation may include the extension of the sunset and/or an expansion of the pilot diversion program (O.P.E.N.) to accommodate more than 50 offenders.

RECOMMENDATION NO. 9 — Draft legislation to reintroduce Assembly Bill No. 135 (2011), as enrolled, concerning violations of probation through intermediate sanctions. (Commissioner Siegel)

Background Information for Recommendation No. 9

Tab F – Assembly Bill No. 135 (2011), as enrolled; Governor Sandoval’s veto letter dated June 1, 2011.

Assembly Bill No. 135 provides that a court may not revoke the probation and suspend the sentence of a probationer who has violated a condition of probation and cause the sentence to be executed unless the court makes certain findings and states those findings on the record. Assembly Bill No. 135 also: (1) provides that a court may not revoke the probation and suspend the sentence of such a probationer and cause the sentence imposed to be executed solely based on the probationer’s failure to pay an administrative assessment or certain fees and expenses; and (2) authorizes the court to provide for the forfeiture of certain credits for good behavior of the probationer or extend the period of probation of the probationer if the probationer willfully fails to pay those assessments, fees or expenses. Assembly Bill No. 135 passed the 2011 Legislature, but was vetoed by the Governor.

During the Advisory Commission meeting held on July 17, 2012, Commissioner Siegel requested that the Commission further examine Assembly Bill No. 135, in addition to Assembly Bill No. 93 (O.P.E.N.), and consider making a recommendation on intermediate sanctions.

RECOMMENDATION NO. 10 — Draft legislation authorizing the Director of the Department of Administration to enter into interlocal agreements to use the Fund for Compensation of Victims of Crime to reimburse counties for the fees associated with sexual assault exams. The proposal also seeks to expand the list of potential applicants to the Fund. (Advisory Commission on the Administration of Justice’s Subcommittee on Victims of Crime)

Background Information for Recommendation No. 10

Tab G - Draft bill draft proposal, submitted by the Subcommittee on Victims of Crime, relating to payment of medical expenses and forensic medical examinations for victims of sexual assault.

During the Advisory Commission meeting held on June 6, 2012, Commissioner Masto explained that, by statute, victims of sexual assaults do not pay for sexual assault exams, rather those fees are charged to the county. Fees charged by counties range from \$200 to several thousand dollars. Commissioner Masto further asserted that conditions should not be attached to sexual assault victims seeking exams. This recommendation by the Victims of Crime Subcommittee (**Tab G**) proposes to authorize the Director of the Department of Administration to enter into interlocal agreements with counties to provide for forensic medical examination costs to be submitted and reimbursed from the

Fund for Compensation of Victims of Crime. The bill draft proposal also permits the payment of medical treatment for sexual assaults without requiring the victim to file a police report, and authorizes certain eligible persons to apply for emotional and psychological treatment. The bill draft proposal also extends the time for submitting to a forensic medical examination from three days to seven days after the occurrence. Finally, the proposal permits non-citizens and persons who were not lawfully entitled to reside in the United States at the time of the incident to be awarded compensation from the Fund for Compensation of Victims of Crime, and authorizes a guardian ad litem to make an application to the Fund on behalf of a minor.

RECOMMENDATION NO. 11 — **Draft legislation to establish an independent arm of the prosecutor's office or the Attorney General's Office to conduct coroner's inquests.** (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 11

During the Advisory Commission meeting held on January 24, 2012, Chairman Horne mentioned the possibility of the Attorney General's Office overseeing coroner's inquests. Chairman Horne commented that while the Attorney General's Office works closely with law enforcement, it does not work as closely with law enforcement as the District Attorney's offices.

There was significant testimony heard regarding the issues with coroner's inquests in Clark County during the Advisory Commission meeting held on June 6, 2012. Chairman Horne stated that there cannot be a process that allows police officers and district attorneys to be the sole determiners of whether an officer-involved shooting was justified, and there cannot be a process in which an officer is exposed to an inquisition process. Chairman Horne suggested exploring the possibility of having an independent arm of the prosecutor's office or the Attorney General's office handle coroner's inquests.

RECOMMENDATION NO. 12 — **Include a statement in the final report recognizing the need for the continued study of Nevada's criminal justice system, and for the identification of additional outside funding sources for such study.** (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 12

This recommendation was approved and included as a statement of support for continued study of Nevada's criminal justice system in the Final Report by the 2009-10 Advisory Commission. At that time, Chairman Horne and Commissioner Hardesty were working to schedule a future meeting with Dr. James Austin and the Pew Charitable Trust to examine the possibility of a financial collaboration to further explore Nevada's criminal justice system, including the current sentencing structure.

During the 2011 Legislative Session and resulting months, Dr. Austin was funded by the Pew Charitable Trust to more closely examine certain category B felonies in Nevada.

This recommendation would indicate a statement of support in the final report for the continued ongoing research and study of Nevada's criminal justice system and for the continued pursuit of additional funding sources for such study.

RECOMMENDATION NO. 13 — Draft legislation to reintroduce Assembly Bill No. 136 (2011), as enrolled, relating to credits for certain persons convicted of category B felonies. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 13

Tab H – Assembly Bill No. 136 (2011), as enrolled; Governor Sandoval's veto letter dated June 16, 2011.

Assembly Bill No. 136 was requested on behalf of the 2009-10 Advisory Commission on the Administration of Justice and was passed by the 2011 Legislature. However, the bill was subsequently vetoed by the Governor.

Assembly Bill No. 136 requires the NDOC to apply credits earned by an offender convicted of a category B felony to the offender's eligibility for parole if the offender satisfies the criteria in the bill. The offender must not have been convicted of a felony involving the use of force or violence, a felony sexual offense, or felony driving under the influence. In addition, the offender must not have served three or more separate prison terms for felony convictions in Nevada or five or more terms for felony convictions in any jurisdiction, must not be serving an enhanced sentence for use of a firearm, and must not be serving a sentence for possession of a firearm by a person prohibited from doing so. The bill also prohibits the NDOC from applying credits earned by any offender convicted as a habitual criminal to the offender's eligibility for parole.

Assembly Bill No. 136 also authorizes a person who was arrested for alleged criminal conduct to petition the court to seal the records relating to the arrest if the prosecuting attorney declined to prosecute the charges. If records are sealed under these circumstances, the bill allows the prosecuting attorney to file the charges before the statute of limitations has run out and, if charges are filed, requires the court to order the inspection of the records without the filing of a petition.

RECOMMENDATION NO. 14 — Draft legislation to reintroduce Assembly Bill No. 96 (2011), as introduced, relating to the use of psychological or psychiatric examinations of victims or witnesses to an alleged sexual offense. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 14

Tab I – Assembly Bill No. 96 (2011), as introduced.

Assembly Bill No. 96 was originally recommended by the Subcommittee on Victims of Crime and was subsequently approved for recommendation by the 2009-10 Advisory Commission on the Administration of Justice; however, the measure was not passed by the 2011 Legislature.

Assembly Bill No. 96 prohibits a court from ordering a victim of or a witness to an alleged sexual offense to submit to a psychological or psychiatric examination. Assembly Bill No. 96 also authorizes a court to exclude certain testimony concerning a previous psychological or psychiatric examination of a victim of or a witness to an alleged sexual offense upon a showing of a compelling need for an additional psychological or psychiatric examination and a refusal by the victim or witness to consent to the additional examination.

RECOMMENDATION NO. 15 — Draft legislation to reintroduce Senate Bill No. 123 (2011), as introduced, relating to the Office of State Public Defender. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 15

Tab J – Senate Bill No. 123 (2011), as introduced.

Senate Bill No. 123 was requested on behalf of the 2009-10 Advisory Commission on the Administration of Justice but was not passed by the 2011 Legislature.

Under existing law, the Office of State Public Defender exists within the Department of Health and Human Services to represent indigent persons charged with a public offense. Senate Bill No. 123 moves the Office of State Public Defender from the Department of Health and Human Services to the Office of the Governor.

RECOMMENDATION NO. 16 — Draft legislation to reintroduce Senate Bill No. 265 (2011), first reprint, relating to the aggregation of consecutive sentences. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 16

Tab K– Senate Bill No. 265 (2011), first reprint.

Senate Bill No. 265 was requested on behalf of the 2009-10 Advisory Commission on the Administration of Justice but was not passed by the 2011 Legislature.

Senate Bill No. 265 requires the aggregation of consecutive sentences for offenders whose crimes were committed on or after July 1, 2012, unless any of the sentences includes life without the possibility of parole or death. Inmates already serving consecutive sentences may submit a request to the NDOC to make an irrevocable election to aggregate any remaining sentences for which parole has not previously been considered. The aggregation of sentences does not apply to sentences for offenses entered into at different times.

Senate Bill No. 265 also limits the current aggregation of multiple life sentences so the sentences for any crime committed on or after July 1, 2012 will be aggregated, and revises the manner in which credits are applied toward the minimum term of imprisonment and aggregated sentences.

Additionally, Senate Bill No. 265 revises provisions for inmates who were 16 years of age when the crime was committed and who are sentenced to life in prison with the possibility of parole. First, the measure provides that the Board of Parole Commissioners is not required to release the inmate on parole if he or she is considered a high risk to reoffend or if there is a reasonable probability that the inmate will pose a danger to the public safety. Second, if the inmate is released on parole and then violates the conditions of parole, he or she will not be considered for release on parole pursuant to the original qualification as an inmate under age 16, but must instead be considered pursuant to other provisions of law.

RECOMMENDATION NO. 17 — Draft legislation to reintroduce Senate Joint Resolution No. 1 (2009), as enrolled, relating to the establishment of a Clemency Board. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 17

Tab L – Senate Joint Resolution No. 1 (2009), as enrolled.

Senate Joint Resolution No. 1 was originally requested by the 2007-08 Advisory Commission on the Administration of Justice and was passed by the 2009 Legislature. However, it was not passed in identical form during the 2011 Legislature.

Senate Joint Resolution No. 1 proposes to amend the Nevada Constitution to replace the State Board of Pardons Commissioners with the Clemency Board consisting of nine members appointed by the Governor, the Chief Justice of the Supreme Court and the Attorney General. Senate Joint Resolution No. 1 also requires that: (1) at least five members of the Clemency Board must have experience working in the criminal justice system; (2) the Legislature must provide for the organization and duties of the Clemency Board; and (3) the Clemency Board must meet at least quarterly.

RECOMMENDATION NO. 18 — Draft legislation to authorize an inmate to pay for genetic marker testing at his or her own expense if a court denies a petition for genetic marker testing of the inmate. (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 18

Tab M – Letter from Ms. Brown to the Commission; NRS 176.0918.

During the Advisory Commission meeting held on April 17, 2012, Ms. Tonja Brown, Advocate for the Innocent, requested that the Commission consider recommending legislation that would authorize an inmate to pay for DNA testing at his or her own expense if a court denies state-ordered DNA testing for the inmate. Under current NRS 176.0918, a person under a sentence of imprisonment for a category A or B felony may petition the court for genetic marker analysis. This recommendation would authorize an inmate to pay for such testing at his or her own expense.

RECOMMENDATION NO. 19 — Draft a letter to the Legislative Commission encouraging the Legislative Commission to create a study and/or to hire an independent contractor to investigate the alleged Nevada Department of Corrections “computer glitch.” (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 19

Tab N – News 4 article by Joe Hart dated March 2, 2012; Nevada Appeal article by Geoff Dornan dated March 4, 2012; Copy of Nolan Klein’s Offender Information Summary showing alleged error; Emails from Ms. Brown; Letter from Ms. Brown to the Commission dated June 4, 2012; Affidavit of John Witherow.

During the Advisory Commission meeting held on March 7, 2012, Ms. Tonja Brown testified about a computer glitch from 2007 in the NDOC. Ms. Brown indicated that the NDOC had installed a computer system in 2007 that was unable to handle life sentences, and as a result, additional crimes were erroneously added to inmates’ records. The NDOC lacked the manpower to compare the files of 13,000 inmates with the original criminal history and presentence reports. Ms. Brown referred to one report that alleged that such errors had occurred as many as 1,300 times since 2007 (**Tab N**). Chairman Horne stated that he was interested in how many inmates may have been affected by the

computer glitch, as well as remedies to the problem. He indicated that he was requesting information from Director Cox of the NDOC, Chair Bisbee of the Parole Board and Attorney General Masto on the issue.

Commissioner Hardesty said that the NDOC had suffered many problems in the transition of their computer system, and he wondered if a report or summary had been generated about the various consequences and difficulties encountered in the transition. He was also interested in how the problems were catalogued and corrected. Mr. Rex Reed from the NDOC asserted that while he knew of several errors, they were taken care of quickly. He said that the errors which some people thought had occurred actually did not occur, and he requested that Ms. Brown put her concerns in writing for him. Chairman Horne asked Ms. Brown to do as Mr. Reed requested. Commissioner Hardesty asked Mr. Reed if a report had been generated, but Mr. Reed was unaware of an overall report. The two errors he was aware of were corrected quickly, and they were to the benefit of the inmate. Mr. Reed said that the biggest problem with the errors was not due to the computer system, but to human error.

Chairman Horne asked Ms. Brown at the Advisory Commission meeting held on April 17, 2012 to get the information from the NDOC concerning the alleged excessive convictions on inmates' records and to get the names of the inmates who had convictions on their records that were not supposed to be there. He stated that the Commission would like to look at specific cases of the problem so they could deal with whoever was being harmed now in the NDOC. Ms. Brown addressed this request in a letter to the Commission dated June 4, 2012 (**Tab N**).

During the Advisory Commission meeting held on June 6, 2012, Chairman Horne indicated that as Chairman of the Assembly Committee on Judiciary Committee he was requesting the Audit Division of the LCB to prepare an audit of the NDOC on the computer glitch issue. He said the audit was planned after July 1, 2012, and that the Audit Division would look into the allegations on the charges that may or may not have been placed on inmates' records.

RECOMMENDATION NO. 20 — Draft legislation to reintroduce Senate Bill No. 201 (2011), as introduced, relating to the establishment of an Ombudsman for Offenders within the Office of the Attorney General. (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 20

Tab O – Senate Bill No. 201 (2011), as introduced.

Senate Bill No. 201, as introduced, would have established an Ombudsman for Offenders within the Office of the Attorney General. Senate Bill No. 201, as enrolled, deleted the provisions relating to an Ombudsman for Offenders and instead gives the authority to the Attorney General to establish a program for mediating complaints from an offender concerning: (1) administrative acts which are alleged to be contrary to law or a policy of the NDOC; or (2) significant issues relating to the health or safety of offenders and other matters for which there is no effective administrative remedy.

During the Advisory Commission meeting held on June 6, 2012, Ms. Tonja Brown testified that Senate Bill No. 201 was brought to the Commission in 2010, but that most of the information she wanted to have in the bill was deleted. Ms. Brown requested that the bill be reintroduced as it had been initially written, establishing an Ombudsman for Offenders within the Attorney General's Office. Ms. Brown indicated that having an Ombudsman for Offenders would eliminate future litigation, and she suggested that if there had been an Ombudsman for Offenders, the errors from the computer glitch that occurred in 2007 could have been resolved.

RECOMMENDATION NO. 21 — **Draft legislation to require a best practices review every three to five years with regard to eyewitness identification of criminal suspects.** (Commissioner Siegel)

Background Information for Recommendation No. 21

Tab P – Assembly Bill No. 107 (2011), as enrolled.

During the Advisory Commission meeting held on July 17, 2012, testimony was heard regarding Assembly Bill No. 107 and best practices with regard to eyewitness identification. Assembly Bill No. 107 (**Tab P**) requires each law enforcement agency to adopt policies and procedures governing the use of live lineups, photo lineups and show-ups. Commissioner Callaway commented that in the field of law enforcement, best practices and techniques change. He suggested that specific procedural practices need to be left in policy so that they can be updated as practices rather than having to be changed in law. In response to Commissioner Callaway, Commissioner Siegel acknowledged that best practices change from year to year, and that eyewitness identification requires best practices and reports from everyone. Commissioner Siegel therefore recommended drafting legislation that requires a best practices review every three to five years.