MEETING NOTICE AND AGENDA

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

Date and Time of Meeting: Tuesday, November 1, 2016
9:30 a.m.

Place of Meeting: Legislative Building
Room 3137
401 South Carson Street
Carson City, 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 locations:

Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, 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 "Calendar of Meetings – 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, each speaker offering comments during the period for public comment will be limited to not more than 3 minutes. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by e-mail, facsimile, or mail before, during or after the meeting.)

For Possible Action

IV. Approval of the Minutes of the Meetings of the Advisory Commission held on September 12, 2016 and September 27, 2016

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 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, each speaker offering comments during the period for public comment will be limited to not more than 3 minutes. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by e-mail, facsimile, or mail before, during or after the meeting.)

VII. Adjournment

Note: We are pleased to make reasonable accommodations for persons with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Angela Hartzler or the Legal Receptionist of 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 and Las Vegas, Nevada, locations: Blasdel Building, 209 East Musser Street; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; Legislative Counsel Bureau, Las Vegas Office, Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was e-mailed, faxed or hand delivered for posting to the following Carson City and Las Vegas, Nevada, locations: Capitol Press Corps, Basement, Capitol Building, 101 North Carson Street; Clark County Government Center, Administrative Services, 500 South Grand Central Parkway; and Capitol Police, Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's website at www.leg.state.nv.us.

Supporting public material provided to members of the Advisory Commission for this meeting may be requested from Angela Hartzler, Advisory Commission Secretary or the Legal Receptionist, Legal Division of the Legislative Counsel Bureau at (775) 684-6830 and is/will be available at the following locations: Meeting locations and the Nevada Legislature's website at www.leg.state.nv.us.

WORK SESSION DOCUMENT

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

November 1, 2016

The following "Work Session Document" was prepared by staff of the Advisory Commission on the Administration of Justice ("Advisory Commission"). (NRS 176.0123) The document contains recommendations that were presented during hearings or submitted in writing during the course of the 2015-2016 interim. Throughout the interim, the Advisory Commission held eight substantive meetings in order to consider and meet its statutorily prescribed duties.

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

Pursuant to 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 is not specifically allocated bill draft requests pursuant to 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 work session document, the recommendations have been organized chronologically as they were debated and discussed by the Advisory Commission and are not listed in preferential order. It should also be noted that any potential policy recommendations listed may or may not have a fiscal impact. Potential fiscal impacts have not been determined

by staff at this time, and may result in any recommendations for legislation resulting in a fiscal note. Finally, 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 encouraging or supporting a particular recommendation; or (4) include a policy statement of support in the final report.

RECOMMENDATION NO. 1 — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider budgetary funding for criminal justice agencies, including, the Division of Parole and Probation of the Department of Public Safety, the Department of Corrections and the State Board of Parole Commissioners. (Advisory Commission)

Background Information for Recommendation No. 1

Tab A – Letter to Governor and Legislature, dated January 5, 2015

Throughout the interim, the Advisory Commission heard from numerous policy experts and agency officials on the need for increased funding in the area of criminal justice. This has been a consistent theme over the past several Advisory Commission interims, as the State has faced a continued shortfall in difficult economic times since the Great Recession. Certain issues such as staffing levels of the Division of Parole and Probation for the issuance of presentence investigation reports and courtroom staffing levels, resources and staffing issues for the Department of Corrections, Parole Board hearing caseloads, and pay disparity and staff retention raised concern from numerous members of the Advisory Commission. As such, while the Advisory Commission is a policy committee, this recommendation would urge the Governor and the Legislature to consider the pressing need for additional funding for the Division of Parole and Probation, Department of Corrections and State Board of Parole Commissioners. For efficiency purposes, staff has combined all three criminal justice agencies into one recommendation for a single letter. If approved, the draft letter would be similar to the letter which was requested by the 2013-14 Advisory Commission (**Tab A)**.

RECOMMENDATION NO. 2 — Draft legislation to establish a Public Integrity Unit Commission to review wrongful convictions and exonerations. (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 2

Tab B – Proposed Draft Legislation to Establish a Public Integrity Unit Commission

During the Advisory Commission meeting held on February 4, 2016, and at subsequent meetings, Tonja Brown testified that she supported the statutory creation of a new 11 member Public Integrity Unit Commission. The newly established Commission would be charged with evaluating the effectiveness and efficiency of the Office of the Attorney General and investigating claims of innocence, wrongful convictions and exonerations. Proposed draft legislation submitted by Ms. Brown is attached as **Tab B**.

RECOMMENDATION NO. 3 — Draft legislation to authorize parolees and those on lifetime supervision to have access to and view their records within the Division of Parole and Probation. (Wes Goetz, Citizen)

Background Information for Recommendation No. 3

Tab C - NRS 213.1075, Legislative History of NRS 213.1075

During the Advisory Commission meeting held on March 23, 2016, and at subsequent meetings, Wes Goetz testified in support of amending state law to authorize those under the supervision of parole and under a program of lifetime to supervision to have access to and view their personal supervision records held by the Division of Parole and Probation. At the June 14, 2016, Diane Thornton, Senior Research Analyst, Legislative Counsel Bureau, provided a legislative history of the confidentiality provisions contained in NRS 213.1075 (**Tab C**). This recommendation would propose legislation to amend NRS 213.1075 to provide access to such records.

RECOMMENDATION NO. 4 — Draft legislation to amend NRS 453A.700 to authorize access to Medical Marijuana Program records by the Division of Parole and Probation for offenders under supervision. (Commissioner Pierrott and Chad Westom, Chief, Division of Public and Behavioral Health)

Background Information for Recommendation No. 4

Tab D - NRS 453A.700

During the Advisory Commission meeting held on March 23, 2016, testimony indicated that current state law currently prohibits the Division of Public and Behavioral Health of the Department of Health and Human Services from disclosing any information provided by an applicant for a medical marijuana registry identification card, or any person who has applied for or to whom the Division has issued a registry identification card. Commissioner Pierrott testified that the Division of Parole and Probation is concerned with individuals who are under their supervision applying for cards without notifying the Division, the judge or the Parole Board. Steve Gilbert, Program Manager, Medical Marijuana Program, responded that there is currently no requirement in Chapter 453A of NRS or NAC for an applicant to tell the Program if they are on probation or parole. He then added that the Program does run a background check to see if the applicant has any disqualifying convictions which would disqualify the person from the Program. This proposal seeks legislation to amend NRS 453A.700 to allow the Division of Public and Behavioral Health to provide such information to the Division of Parole and Probation when requested for purposes related to the supervision of an offender.

RECOMMENDATION NO. 5 — Draft legislation to amend the Medical Marijuana Program to:

- **A. Clarify the workplace accommodation for Medical Marijuana Program participants (NRS 453A.800);**
- **B. Amend the model drug testing policy for employers; and**
- **C. Clarify the agency responsible for enforcement of NRS 453A.800. (Robert Spretnak, attorney, and Edwin Keller, attorney)**

Background Information for Recommendation No. 5

Tab E – NRS 453A.800

During the Advisory Commission meeting held on March 23, 2016, attorney Edwin Keller testified on the history of NRS 453A.800. Mr. Keller indicated that since April 1, 2014, there has been a statute which requires employers to attempt to accommodate the medical needs of employees using medical marijuana. One thing

that both plaintiff's and defense attorneys seem to agree on is that this statute is extremely vague and unclear in relation to an employer's obligations and an employee's rights. It has been described as "word soup." This accommodation provision does not stem from the medical marijuana constitutional amendment. Article 4 of Section 38 of the Nevada Constitution expressly indicates that it does not require the accommodation of medical use of marijuana in a place of employment. In terms of NRS 453A.800 as it existed before the 2013 Nevada Legislature, it mirrored the language in the Nevada Constitution. As part of a bill passed in the 2013 Session of the Nevada Legislature, there is now this accommodation requirement. The legislative change struck the word "accommodate" and inserted the word "allow." The measure goes on to say the provisions of chapter 453A do not "require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based on the reasonable business purposes of the employer." The chapter does require an employer to attempt to make a reasonable accommodation for the medical needs of an employee who legitimately uses medical marijuana.

At the meeting on March 23, 2016, Mr. Keller indicated that what is also lacking in the Medical Marijuana Program is an indication of when an employer can show there is impairment. Other states, such as Arizona, have amended their model drug testing policy to build in some of that guidance for employers. Mr. Keller stated we have not done that in Nevada.

Lastly, Mr. Keller shared a concern as to which agency is authorized to enforce NRS 453A.800. When Senate Bill No. 374 (2013) was first enacted, his law firm wrote a letter to the Division of Public and Behavioral Health. His law firm received a response from the Office of the Attorney General stating that the Division recognized it had the authority to issue regulations but the Legislature had not given them authority to enforce NRS 453A.800. Mr. Keller indicated that they next reached out to the Nevada Equal Rights Commission and spoke to the Administrator, Kara Jenkins. She indicated they did not have authority to enforce NRS 453A.800 but they would under their authority to investigate disabilities if the condition did equate to a disability or if the employer was attempting to make accommodations and realized it was a gray area.

Mr. Keller relayed that during his October, 2015 presentation to the State Bar, the Director of the Department of Employment, Training and Rehabilitation asked him about NRS 607.160, the catchall provision for the Nevada Labor Commissioner. That statute enables the Labor Commissioner to enforce all State labor laws, the enforcement of which is not specifically or exclusively vested in any other officer, board or commission. To date, the Labor Commissioner has not come forth to address that issue. Mr. Keller concluded that without an administrative mechanism in place to promulgate regulations and flesh out these vague terms, we are left to litigate these issues in the court which raises a whole other host of issues.

RECOMMENDATION NO. 6 — Adopt a recommendation regarding criminal justice information sharing, to:

- **A. Draft a policy statement encouraging all interested criminal justice stakeholders (district attorneys, criminal defense attorneys, judges, court clerks, crime laboratories, law enforcement and the Central Repository) to work together to develop a statewide criminal justice information sharing database;**
- **B. Draft a letter to the Governor and Legislature to seek funding for the establishment of a statewide criminal justice information sharing database;**
- **C. Draft legislation to establish an interim study on the use of information sharing systems including: SCOPE, Tiburon, and similar systems utilized by the Central Repository and local governments. (Advisory Commission)**

Background Information for Recommendation No. 6

Throughout the 2015-16 interim, the Advisory Commission received testimony from a number of interested stakeholders regarding the lack of a statewide computer database to adequately track criminal records. At the September 12, 2016, meeting Carmen Tarrats, Criminal Justice Information Services Manager, Shared Computer Operation for Protection and Enforcement (SCOPE) Administrator, Las Vegas Metropolitan Police Department (Metro), gave an overview of SCOPE, which is a 24-hour online computerized master name index. The system went live in 1968 and includes information from as far back as 1957. At that time, there was no Central Repository for Nevada Records of Criminal History, so Metro became the criminal history repository since they own and maintain SCOPE and set up new agencies and users for access. Since SCOPE is not a criminal justice agency, Metro became the administrator and repository. At the time, it was the only computer system which had all the criminal history data.

Ms. Tarrats indicated that there are 85 agencies with access to SCOPE, most of them concentrated in Southern Nevada—police and sheriff departments, courts, federal agencies and more. Four counties utilize the SCOPE data—Clark County, Carson City, Lyon County and Nye County. The types of information contained in SCOPE include personal descriptors, juvenile writ information, work applications, booking photos, alerts for things such as victims of identity theft, lists of convicted persons and sex offenders; event reports such as missing person notices and misdemeanor warning citations. There is also data on missing persons, protection orders that include stalking and harassment orders, weapon information which basically point to HR 218, the 2004 Law Enforcement Officers Safety Act, and Concealed Carry Weapons (CCW) applications. Finally, there is arrest and conviction information in SCOPE.

Ms. Tarrrats added that they would like to move away from having so many different systems, especially those that do not talk to each other. Part of the reason SCOPE is still around is because there is information in SCOPE that is either not in the Central Repository for Nevada Records of Criminal History or they are not accepted in that system. For example, stalking and harassment orders are only found in SCOPE. In northern Nevada, a different system besides SCOPE is used; Ms. Tarrats believes it is called Tiburon. If someone is remanded back into custody, that is put into SCOPE, but not at the state level. If someone is rebooked on a charge at the jail, it goes onto SCOPE but not at the state level. Criminal citations are also only on SCOPE as are non-fingerprint data such as bench warrants.

Ms. Tarrats explained that the Criminal History Repository has all the arrest and conviction information from the entire State. When a person is arrested, they are fingerprinted and those prints are sent to the State where a record is created for that person. As that person goes through the judicial process, at the time their charges are dispositioned, that information goes into the Criminal History Repository. The SCOPE system is mostly a Southern Nevada system so it is not comprehensive of everything that a person might have within the State. The Department of Public Safety (DPS) will have additional information such as CCW data where SCOPE only has pointers to CCW applications. The DPS also has sex offender information that SCOPE does not have.

Julie Butler, Administrator, General Services Division added that she thought it would be a step backwards if the State scrapped the Central Repository and everyone went to SCOPE. She suggested a comprehensive review of the data elements everybody is collecting. The stakeholders also need to determine where there are gaps, rather than saying we have no confidence in any of the systems. Everybody has invested millions of dollars into these systems and none of them are complete; it depends on what your agency is statutorily mandated to collect, and the fact that you are only as good as the information reported to you.

Chair Hardesty acknowledged a concern he shared, which is that none of the systems have a complete set of information needed by the criminal justice system. He added, "What would it take to have a repository where the system could have confidence that all the information is collected and decisions could be made based on that information? What does it take to get Nevada in a position where we have a system that provides confidence to everyone and supplies all departments with what they need?"

Ms. Butler offered a recommendation for an interim legislative study to review the different information systems and what data is collected by each. The interim study could then analyze the gaps and make recommendations on how to move forward. She also recommended getting some estimate of the necessary funding for the 2019 Session, so that the stakeholders can look at it in a thoughtful and methodical way.

RECOMMENDATION NO. 7 — Include a policy statement in the final report or draft legislation to revise the prison sentence credit structure to make the system less complex and more transparent for all parties. (Advisory Commission)

Background Information for Recommendation No. 7

Tab F – Accounting and Application of Sentencing Credits PowerPoint Presentation

During the Advisory Commission meeting held on March 23, 2016, Garrit Pruyt, Deputy District Attorney, Office of the Carson City District Attorney, appeared and presented on the accounting and application of sentencing credits. Mr. Pruyt explained that there are four types of sentence credits—stat time, flat time, work time and merit. Stat time credits are determined based on the amount of time a person has been incarcerated. Inmates cannot earn good time credits unless they have served the time, according to statute, NRS 209.4465, which states that, "for the period the offender is actually incarcerated pursuant to his or her sentence" the offender will receive a 20-day reduction for each month served. This credit is for good time, or merit credits, where an inmate has not elected to work, program or do anything else. This is what it would take to serve the sentence with just the statutory time limits. For every year served, just adding in good time credits, an inmate will earn a minimum of 605 days toward his or her sentence. Mr. Pruyt added there are some statutory blocks that do not let an inmate only serve a few months and create credits that somehow get rid of their sentence completely.

Work credits are largely dependent on the classification of the inmate, which also determines what kind of work is available to an inmate. Mr. Pruyt found that work is available, which is important. For example, there was an inmate with a job in a maximum custody situation at Ely State Prison. The higher in custody you get, the fewer jobs there are, but this person had a job as a porter and could earn work credits. In the minimum custody camps, the opportunities to work increase as does the credit. Certain jobs have more credits.

Merit credits can be earned for education, which has a big role statutorily for the Department of Corrections (NDOC). The goal is to get people to obtain education. A warden once told Mr. Pruyt that to qualify for certain jobs, inmates had to earn their GEDs before they could move up the ladder. The NDOC has pushed for education so released offenders can have basics for reentry. There are large grants of credits given for earning certain diplomas or degrees while incarcerated as well as for the time spent studying.

Mr. Pruyt surmised that what is important for this Advisory Commission is the effect of a conviction on the sentence. Credits can apply to the front or the back of any given sentence. Credit always apples to the back of a sentence, but when we talk about the credits on the front, it is about the parole eligibility date. Credits only apply for certain offenses; there are exceptions this rule. Credits do not apply to category A or category

B felonies, offenses with certain uses of force or violence, or sexual offenses.

Mr. Pruyt concluded by stating, to simplify the math, there are generally two percentages to review. The first of those is the 42 percent rule that is in subsection 9 of NRS 209.4465, which states inmates must serve a minimum of 42 percent of their sentence regardless of credits. Inmates can earn more credits, which would be good for them in reentry, but will not shorten their time served requirement below 42 percent. On the back end, if you only take into account the good time credits for inmates who opted not to work, they will still serve roughly 66 percent of their sentence. If you want to figure out how long an inmate will serve on their sentence, cut it in half and add 10 percent; that is generally a good rule of thumb.

Throughout the interim, the issue of sentence credits and offender management repeatedly came up. This recommendation would either include a policy statement in the final report as to the Advisory Commission's findings on the complexity of the sentence credit issue or alternatively draft legislation to abolish or revise the current statutory sentence credit system.

RECOMMENDATION NO. 8 — Draft a letter to the Governor and Legislature urging the inclusion of budgetary funding for a faster statewide computerized criminal history record system to implement rapid DNA. (Steve Gresko, Nevada State CODIS Administrator, Kimberly Murga, Director of Laboratory Services, Las Vegas Metro)

Background Information for Recommendation No. 8

During the Advisory Commission meeting held on March 23, 2016, Steve Gresko, Nevada State CODIS Administrator indicated that local government has spent some money to have their Sample, Tracking and Control System (STaCS) integrated with the Central Repository's criminal history records. The primary reason the labs did that was to match up State ID numbers (SID) that come back from the Central Repository with the kit to make sure the labs have the correct SID number for each kit. The State wanted to clean up what was in STaCS so the labs paid for this integration. It is ready to go so now when jail staff live scans someone's fingers in the jail, the results will come back to the officer telling them whether or not they need to collect the kit. One problem with that is it sometimes takes the State 24 hours to turn around that SID number, which can be an issue in an overpopulated jail. Mr. Gresko indicated that the labs have asked the State to be able to turn those SID numbers around to us within an hour or two 24-hours a day, seven days a week. Funding may be a problem for the Central Repository. Mr. Gresko indicated that his biggest wish would be to provide the State the resources they need to turn those numbers around quickly so the labs can implement the new version of STaCS.

Kimberly Murga, Director of Laboratory Services, Las Vegas Metro, added that advancements in technology are coming down the pike is the future technology of rapid DNA. Once there is a federal law change allowing DNA testing to be conducted outside the laboratory, that technology allows for collection of DNA to be moved out of the booking stations. The concept is that once the sample is collected, staff could run the DNA sample on a self-contained apparatus, enter the profile into CODIS and then we would know much quicker if someone is associated with another pending case, which would affect the release of that person prematurely. With that technology on the near horizon, having a quicker turnaround time on the verification of the identification process associated with the Central Repository is critical.

RECOMMENDATION NO. 9 — Draft legislation to authorize convicted persons to pay for DNA testing at their own expense. (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 9

Tab G – Letter from Tonja Brown to the Advisory Commission; NRS 176.0918

During the Advisory Commission meeting held on April 19, 2016, 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 any inmate to pay for such testing at his or her own expense.

RECOMMENDATION NO. 10 — Include a policy statement in the final report recognizing and supporting the work of the Nevada Supreme Court's Commission on Statewide Rules of Criminal Procedure. (Justice Douglas and Justice Cherry)

Background Information for Recommendation No. 10

During the meeting held on April 19, 2016, Justice Michael Douglas presented as Co-Chair of the Nevada Supreme Court's Commission on Statewide Rules of Criminal Procedure. The Commission was established to address a lack of uniformity of criminal procedure rules across the State. The Commission membership is comprised of experienced legal professionals and members of the Nevada judiciary who are focused on examining key, criminal procedure concerns and making recommendations for improvement on a statewide level. Justice Douglas indicated that there are 11 members on the Commission, who are charged with four areas to study in

subcommittees—discovery, jury instructions, life and death practices, and motions practice. Each member of the Commission opted in or out of one of those four subcommittees, incorporating other members to assist in the study of that topic and make recommendations. For instance, Justice Douglas stated that the Commission is looking at criminal procedure rules in the Second Judicial District in Reno, the Eighth Judicial District in Las Vegas and in the rural courts so that they can identify the uniformity of practice for jury instructions, discovery process and motions practice. The Commission is ultimately tasked with ascertaining whether the problems facing the criminal justice system are structural in nature, where the statutes of NRS need to be altered or amended, or if it is something the Court can accomplish within the Supreme Court's Rules. The final report of the Commission has not yet been completed.

RECOMMENDATION NO. 11 — Include a policy statement in the final report supporting the Division of Parole and Probation's 2017 proposed bill draft request, which seeks to remove the statutory requirement of transporting offenders under a program of lifetime supervision to their original jurisdiction for violations of the terms of supervision. (Natalie Wood, Chief, Division of Parole and Probation)

Background Information for Recommendation No. 11

Tab H – Proposed Bill Draft Language Amending NRS 213.1243

At the meeting on April 19, 2016, Natalie Wood, Chief, Division of Parole and Probation requested the Advisory Commission's support of proposed 2017 legislation which would remove the requirement of transporting offenders under a program of lifetime supervision to their original jurisdictions for a violation of the terms of supervision. Chief Wood represented that one of the challenges with lifetime supervision is the filing of new charges. Many times, when an offender on lifetime supervision is in violation, it is usually due to a technical violation, rather than new charges. Depending on the county, some prosecutors may not elect to file a new case based on a technical violation such as alcohol use, moving without permission, or a positive drug test. Currently, the law requires that if a lifetime sex offender violates conditions and new charges are to be filed, the offender has to be returned to the county where originally charged and prosecuted within 24 to 48 hours. Chief Wood indicated that there are challenges for both the Division and the offender with lifetime supervision. An offender can be arrested in Las Vegas and need to be transported to Reno within 24 to 48 hours due to current law. The necessity to transport these individuals presents fiscal and logistical constraints to the Division, including the loss of manpower for daily operations. More importantly, when offenders are transported to the sentencing jurisdiction and released in custody, they may not have the support in that community for transportation or residence. When you take the person out of their

resident county and transport them to another jurisdiction, it can impact the offender's employment, counseling requirements and disrupt family and childcare. Chief Wood concluded by requesting the Advisory Commission's support of the Division's proposed bill draft to amend NRS 213.1243 (**Tab H**).

RECOMMENDATION NO. 12 — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging them to support funding (and to appropriate $4.6 million for the biennium) which would allow a Parole and Probation officer or presentence investigation specialist to be placed in each criminal court throughout the State. (Commissioner Kohn)

Background Information for Recommendation No. 12

Tab I – Expenditure Analysis for Staffing the Courts in Southern Command

At the February 4, 2016, meeting and again at the April 19, 2016, meeting, Commissioner Kohn inquired of the Division of Parole and Probation as to the use of Parole and Probation staff in the criminal court room. Commissioner Kohn stated that in every district court that is handling criminal matters throughout the State, there is a parole and probation officer in court to address questions that come up. That is not true in southern Nevada. It was for many years, and Chief Wood can probably tell the Advisory Commission when that policy changed. You have previously pointed out that one of the problems is how many courtrooms we have and how long the calendars take. Commissioner Kohn indicated that he would like to sit down and figure out if, we could convince the courts to handle parole and probation matters at a certain time, or give the Division a chance to go from courtroom to courtroom. Is there a way to do this in a way that would provide the Eighth Judicial District Court with the same amount of service other jurisdictions are getting?

Chief Wood responded that the Division does not have in-court Parole and Probation officers in Southern Nevada. Throughout the State and in Washoe County, they are specialists; they are the presentence investigation report writers. Now and then we will have the officers show up if they have a personal case going in for revocation, but as to staffing the courts full time, those are not sworn specialists. Chief Wood also indicated that her Division prepared an expenditure analysis for the staffing of the courts in the Division's Southern Command. The Division queried the numbers and it would cost a little more than $4.6 million for the biennium (**Tab I**).

RECOMMENDATION NO. 13 — Include a statement in the final report supporting the proposed Nevada Administrative Code Regulation (R061-16) seeking to authorize the Chief of the Division of Parole and Probation to adopt an objective evidence-based risk assessment tool for purposes of making a recommendation to the court concerning sentencing. (Natalie Wood, Chief, Division of Parole and Probation)

Background Information for Recommendation No. 13

Tab J – Notice of Intent to Act Upon Regulation; Revised Proposed Regulation R061-16

The Division of Parole and Probation appeared and presented on the topic of offender risk assessments at the meeting held on April 19, 2016. Chief Wood commented that the offender classification is guided by statute. The Division is seeking a change in the NAC so they can utilize the Ohio Risk Assessment System (ORAS). Every offender is assessed currently based on their risk to the community. The Division believes there is a better tool out there and after extensive research, ORAS looks to be a viable tool with national recognition. With the change to ORAS, the Division will be using a tool that is predictive and evidence-based, allowing the Division to address offender and gender needs as well as identifying the risk to reoffend. The majority of tools now are oriented to males. Females are playing a bigger role in the criminal justice system in the last decade and the Division needs more effective tools to assess these female offenders. ORAS has been validated using a group of 678 self-report questionnaires providing 200 potential predictors. It has been in use in Ohio since 2010. Additionally, ORAS is designed to function at every level of the criminal justice system.

The proposed regulation provides that the Division will conduct an evaluation of felony offenders using an objective evidence-based assessment tool that incorporates the standards adopted by the Chief Parole and Probation Officer (**Tab J**). According to Chief Wood, the proposed change will allow the requirements to be more general. This would also enable changes to assessment tools in the future without going through legislative changes. Chief Wood indicated that they are proposing the removal of NAC 213.590 which limits the Division to only using the Probation Success Probability form.

RECOMMENDATION NO. 14 — Include a statement in the final report supporting the proposed 2017 bill draft request of the Division of Parole and Probation which seeks to clarify the application of earned compliance credits a probationer or parolee receives while under supervision. (David Helgerman, Captain, Division of Parole and Probation)

Background Information for Recommendation No. 14

Tab K – Proposed Bill Draft Language Amending NRS 176A.500 and 209.4475

At the meeting held on April 19, 2016, David Helgerman, Captain, Division of Parole and Probation testified in support of the Division's proposed draft legislation. According to Mr. Helgerman, one of the first things the Division is attempting to do with the bill draft is to clarify when the offender gets credits. There has been confusion among the courts as to whether or not this is an all-or-nothing situation. The Division's interpretation is that if a probationer is working, they receive 10 days for working. If they are paying their fiscal obligations, they receive 10 days for that. If they are doing one and not the other, it is the Division's interpretation that they receive 10 credits for the one they did and they do not receive 10 credits for the other one. Some courts have interpreted it to be all-or-nothing, meaning if they are working yet not paying their fees, then they receive no credit whatsoever. The bill draft clarifies that breakdown of credits.

According to Mr. Helgerman, the other thing the bill draft does is define the fiscal obligations as supervision fees and restitution only. It removes the court ordered fines and fees from the credit calculation. The reason for that is the Division has no way to determine on a monthly basis whether or not the offender has made some payments to the court for their fines and fees. It does not remove the offender's obligation to make those payments to the court; it just removes it from the credit calculation every month. It is still something the Division will address with the offender throughout supervision, but it is not factored into whether or not they receive credits every month.

Lastly, the proposed bill draft defines the word "current." The way the Division now defines current is to take the total number of months the offender is under supervision and divide that number into how much restitution he or she owes. The problem with that formula is that it does not give an accurate representation of what the offender can actually pay. According to the Division, some offenders are paying less than what they could actually afford to pay, thereby not paying the restitution off soon enough. Or, the offender could end up having some unrealistic amount like if they owed $100,000, and their monthly payment came out to several thousand dollars per month. This change would allow the Division to monthly go through a budget with the offender and determine what they can actually pay.

RECOMMENDATION NO. 15 — Draft legislation to authorize the Central Repository to share mental health adjudications with local law enforcement for purposes of identifying persons prohibited from possessing firearms. (Commissioner Callaway)

Background Information for Recommendation No. 15

Tab L – NRS 179A.165; Assembly Bill No. 46, as enrolled (2009)

At the Advisory Commission's meeting held on April 19, 2016, Commissioner Callaway raised the question of whether law enforcement is authorized to receive mental health adjudications for purposes of identifying persons prohibited from possessing firearms. Commission Callaway queried the ability for an officer out in the field, through local systems like SCOPE or through NCIC, to be able to see immediately when they stop someone at 3 a.m., whether that person is prohibited due to a mental health adjudication. Often, through SCOPE or local systems, officers can see prohibitors for other things—the person is an ex-felon, or has a prior conviction for domestic violence—but officers have not been able to see the mental health adjudication, which can be critical. Commissioner Callaway inquired as to whether officers could get that information, or if it could be pushed down to the local level for officers in the field.

Julie Butler, Administrator, General Services Division, responded that there is a statutory prohibition on that information through Assembly Bill No. 46 of the 75th Legislative Session (NRS 179A.165 - **Tab L**). That measure enacted the National Instant Criminal Background Check System (NICS) Improvement Act in Nevada. That bill referenced sharing the mental health information with the Repository to share information to NICS, but that is the only use for that information. By statute, the Central Repository cannot share that information with law enforcement. Ms. Butler indicated as much as she would like to be able to put the mental health prohibitor as a flag to criminal history so the officer on the street knows it at 3 a.m., she is currently prohibited by statute. Commissioner Callaway responded with a recommendation to amend state law to allow for that information to be shared with local law enforcement.

RECOMMENDATION NO. 16 — Include a policy statement in the final report recognizing and supporting the work of the Nevada Supreme Court's Commission on Statewide Juvenile Justice Reform. (Advisory Commission)

Background Information for Recommendation No. 16

Tab M – Commission on Statewide Juvenile Justice Reform Overview

During the course of the interim, Chair Hardesty referenced the important undertakings and time investment of the Nevada Supreme Court's Statewide Commission on Juvenile Justice Reform. The Commission is co-chaired by Justice Hardesty and Justice Saitta, and is comprised of 37 individuals from all parts of the juvenile justice system across Nevada. NRS 176.0124 establishes the Subcommittee on Juvenile Justice of the Advisory Commission; however, given that the overlapping duties with the Supreme Court's Commission, the Advisory Commission deferred to the recommendations of the Supreme Court's Commission.

At the Advisory Commission meeting held on May 6, 2016, Chair Hardesty provided an overview of the Supreme Court Commission's mission and meetings. Chair Hardesty indicated that with the Legislature's concurrence and the Governor's support, the Commission has made serious changes in regional facilities. Summit View Youth Correctional Center in Las Vegas has reopened after a hiccup. They have also limited who can be incarcerated and committed to State custody on the deep end side. There has been a reduction in juvenile crime rates. During the 2015 Legislative Session, there were five bills from the Commission considered and approved by the Legislature. The most significant of these to Chair Hardesty was the recognition that juveniles with competency issues like adults in the adult criminal system should have those competency questions addressed before they are adjudicated as delinquent.

According to Chair Hardesty, there are several major tasks currently facing the Commission. One is to present to the Legislature a set of regionalized front end programming and funding recommendations for juvenile justice. The total cost of that amount, which was presented to the Governor's Office for the 2015 Legislature, was around $3.7 million, which is pretty small in the overall scheme of things. Every district in the State has developed its own program and the money it needs to address this front end programming for its district. Chair Hardesty concluded by stating that the Juvenile Sex Offender Registration, Senate Bill No. 99 (2015), is currently being reviewed. The measure was vetoed by the Governor last Session. There are some issues with that legislation that can probably be addressed and be brought back to the Legislature.

RECOMMENDATION NO. 17 — Draft legislation to eliminate discretionary parole. (Craig Caples and John Witherow, Nevada CURE)

Background Information for Recommendation No. 17

Tab N – Letters from Nevada CURE dated August 31, May 6, and May 12, 2016

At several meetings during the interim, the Advisory Commission heard from members of Nevada CURE (Nevada Citizens United for Rehabilitation of Errants), who represent current and former Nevada prison inmates. Both Mr. Caples and Mr. Witherow, on numerous occasions, made reference to the current system of discretionary parole in Nevada, which they asserted is not fair and equitable. According to testimony by Mr. Witherow, the elimination of discretionary parole would reduce mass incarceration, save tax dollars, establish actual "truth in sentencing" and make the system fair and just for all parties. This recommendation would draft legislation to eliminate the current parole system.

RECOMMENDATION NO. 18 — Draft legislation to require attorneys to review presentence investigation reports and file objections before sentencing. (Commissioner Jackson)

Background Information for Recommendation No. 18

Tab O – NRS 176.153; Assembly Bill No. 423, as introduced (2013)

During the Advisory Commission meeting held on May 6, 2016, the Advisory Commission discussed the time frames for delivery of presentence investigation reports. Commissioner Jackson noted that this is a topic that has been debated by the Advisory Commission since the 2011-12 interim when a Subcommittee to examine the correction of presentence investigation reports was formed as a result of the Nevada Supreme Court case, *Stockmeier v. State*, 127 Nev. 243 (2011). A Subcommittee was then appointed and Commissioner Kohn served 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 before sentencing.

The Subcommittee originally proposed language for a bill draft (**Tab O**) that would have required a presentence investigation report to be given to the parties at least 21 days before sentencing. Within 7 days after the parties receive 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 investigation 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. However, during the 2013 and 2015 Legislative Sessions, the language of the bill was modified and ultimately enacted as a requirement that presentence investigation reports must be disclosed to certain parties 14 calendar days before the defendant is sentenced. There is currently no statutory requirement that the parties must object to any information contained in the report before sentencing.

At the May 6, 2016, meeting of the Advisory Commission, Commissioner Jackson recommended amending state law (NRS 176.153 - **Tab O**) to require attorneys to review the presentence investigation reports and to file any objections with the court before sentencing.

RECOMMENDATION NO. 19 — Draft legislation related to wrongful convictions to require:

A. Prosecutors to establish internal systems to track informant data;

B. Pre-trial reliability hearings;

C. Recording of custodial interrogations for serious offenses;

D. Jury instructions when in-custody informant testimony is admitted at trial. (Michelle Feldman, State Policy Advocate, Innocence Project, and Marla Kennedy, Executive Director, Rocky Mountain Innocence Project)

Background Information for Recommendation No. 19

Tab P – Letter Regarding the Prevention of Wrongful Convictions, dated September 29, 2016; Background Information on Recording of Interrogations; and Background Information on Jailhouse Informant Regulations

During the Advisory Commission meeting held on June 14, 2016, Michelle Feldman, State Policy Advocate, Innocence Project and Marla Kennedy, Executive Director, Rocky Mountain Innocence Project appeared and presented on the issue of wrongful convictions. During their presentations, four recommendations on the topic were offered for the Advisory Commission's consideration:

A. Enact a Statutory Requirement for Prosecutors to Establish Internal Systems to Track Informant Data

According to Ms. Feldman, in 2008, the criminal defense bar came before this Advisory Commission and talked about informant problems. They also asked for a statute requiring every prosecutor's office in the State to track informant information and disclose it to the defense. At the time, the Clark County District Attorney's Office

said they were already implementing a tracking system and that other prosecutor's offices around the State were also doing that, so there was no need for legislation. It does not seem that voluntary adoptions of these policies and implementation is really happening effectively. The Las Vegas Review-Journal just published an article that found there were only 130 entries into the Clark County D.A.'s database since 2008. There have been roughly 330,000 criminal prosecutions since 2008, so defense attorneys consider the 130 entries a laughably low number. This could be a good opportunity for the Advisory Commission to revisit this issue and think of some regulations to improve the use of in-custody informant testimony. This recommendation proposes a statutory requirement that the prosecutor's offices establish internal systems to track informant data.

B. Enact a Statutory Requirement for Pre-Trial Reliability Hearings

According to Ms. Feldman, right now a defense attorney can request a pre-trial reliability hearing there is no guarantee it will be granted. Additionally, the Innocence Project contends that the Nevada Supreme Court has already recognized the inherent unreliability of jailhouse informant testimony; it ruled that judges must hold reliability hearings before informant testimony can be heard by a jury in specific instances during the penalty phase of a case in *D'Agostino v. State*. This recommendation codifies a pre-trial reliability hearing in statute.

C. Enact a Statutory Requirement for the Electronic Recording of Interrogations

According to documents submitted by the Innocence Project and Rocky Mountain Innocence Center, electronic recording of custodial interrogations in their entirety provides a complete and irrefutable account of what transpired during closed-door sessions, which enhances accuracy and confidence in the criminal justice system. Mandatory electronic recording of interrogations provides a safeguard against wrongful convictions stemming from false confessions, which contributed to three of nine exonerations in Nevada. Additionally, a majority of Nevada law enforcement agencies record interrogations in some form, however, there is currently no uniform statewide practice.

D. Enact a Statutory Requirement or Urge the Nevada Supreme Court to Adopt Rules on the use of Jury Instructions when Informant Testimony is Offered

According to the Innocence Project, the Nevada Supreme Court has held that jurors must be given a cautionary instruction regarding the credibility of informants when testimony is uncorroborated in *Crowe v. State*, 84 Nev. 358 (1968). This recommendation would codify in statute a requirement for such jury instructions. Alternatively, this recommendation could be to draft a letter to the Nevada Supreme Court's Commission on Statewide Rules of Criminal Procedure to review and further study the issue.

RECOMMENDATION NO. 20 — Include a policy statement supporting Senator Parks' BDR No. 83 (2017) governing the aggregation of dissimilar sentences for purposes of parole. (The Advisory Commission unanimously approved this recommendation at the meeting held on August 3, 2016)

Background Information for Recommendation No. 20

Tab Q – Proposed draft legislation to amend NRS 176.035 and 213.1212 relating to the aggregation of sentences for purposes of parole eligibility (BDR No. 83, 2017)

At the August 3, 2016, meeting of the Advisory Commission, Commissioner Bisbee testified that in the 2009 Session of the Legislature, Senator David Parks sponsored a measure on aggregated sentences which allowed inmates to opt in to aggregating their sentences if they had a life to a life sentence. Within a week of that passing, the very first eligible inmate opted in. Commissioner Bisbee indicated that she had the pleasure of calling the victim of that inmate's crime and telling her that he had opted in. She was thrilled and thankful for the law that meant she would not have to face the man who murdered her daughter for another 10 years. Victims were a huge part of that. Nevada is unusual in the fact that we do consecutive sentences and hearings in-between each of them.

In 2011, Senator Parks expanded the legislation to allow aggregation of sentences for any crime, not just life crimes; however, the bill did not pass that session. Senator Parks came back with it in 2013, finding more interest in the issue. It sailed through both houses of the Legislature and was approved unanimously. Unfortunately, the stakeholders realized there was a problem with the bill because it did not make clear that you could also aggregate dissimilar sentences. For example, if the offender had a sentence for burglary and another sentence for something that happened several months later for auto theft, by the clear writing of the law, the fact that the offender had two different case numbers meant that those sentences could not be aggregated. All that could be aggregated were sentences that were consecutive with the same case number.

There has been great interest between NDOC and the Parole Board in working on this language together. If this legislation is passed in 2017, it will allow an inmate to opt in those dissimilar sentences and be able to aggregate all of them. That was originally how NDOC had envisioned the program.

At the August 3, 2016, Advisory Commission meeting, Senator Ford moved to endorse the bill draft recommendation regarding aggregate sentencing (BDR No. 83 (2017)), and Assemblyman Anderson seconded the motion. The motion passed unanimously. The adopted recommendation will include a policy statement in the final report of the Advisory Commission indicating support of the bill draft request.

RECOMMENDATION NO. 21 — Draft legislation to authorize law enforcement to view sealed records for purposes of determining whether the person is a convicted felon who is prohibited from possessing a firearm. (Commissioner Callaway)

Background Information for Recommendation No. 21

Tab R – NRS 179.301

Existing law authorizes a person to seal his or her criminal records after certain periods of time or completion of certain court-ordered programs. Existing law also prohibits persons convicted of a misdemeanor crime of domestic violence or a felony from owning or having in their possession or under their custody or control any firearm, unless they have received a pardon specifically restoring that right. (NRS 202.360) Finally, existing law authorizes certain agencies to access sealed records for certain purposes (**Tab R**).

At the Advisory Commission meeting held on September 12, 2016, Commissioner Callaway asked, "Do you see a potential loophole in the current law where, if I was convicted of a crime which would prohibit me from possessing a firearm and then I went to a local sheriff's office to apply for a concealed carry (CCW) permit, I seal my record, then apply for CCW permit." Mindy McKay, Records Bureau Chief, General Services Division, responded, "If it is sealed in all locations and you cannot see the information, they will not know that it exists. Therefore, you could get a firearm. If someone fails to seal it or it does not get sealed in time and someone does see that, then absolutely, you are prohibited from being in possession of a firearm. That does require a pardon."

Commissioner Callaway stated, the way I understand it is, there is a potential loophole where someone can get a CCW permit although their record has been sealed and they do not have a pardon. This recommendation would propose amending state law to authorize law enforcement to view sealed records for purposes of determining whether the person was prohibited from owning or possessing a firearm.

RECOMMENDATION NO. 22 — Draft legislation to enact a declaration of public policy of this State to effectuate a criminal justice system based on the seven principles of effective state sentencing and corrections policy as outlined in the 2011 Report of the NCSL Sentencing and Corrections Work Group. (Advisory Commission)

Background Information for Recommendation No. 22

Tab S – Proposed Legislation Enacting a Declaration of Public Policy of this State Regarding Criminal Justice

At the meetings held on June 14 and August 3, 2016, the Advisory Commission discussed a publication entitled, *Principles of Effective State Sentencing and Corrections Policy*, a 2011 Report of the NCSL Sentencing and Corrections Work Group. According to the Report, the NCSL Sentencing and Corrections Work Group project was developed under an NCSL partnership with the Public Safety Performance Project of the Pew Center on the States. The bipartisan, 18-member group included officers of NCSL's Law and Criminal Justice Committee and other legislators who are recognized as leaders on these issues. The group had a one-year work plan to discuss and identify overarching principles for effective state sentencing and corrections policy and to identify key issues and approaches that explain and illustrate the recommendations. The group then identified seven principles and points, with the intended purpose "to provide broad, balanced guidance to state lawmakers as they review and enact policies and make budgetary decisions that will affect community safety, management of criminal offenders, and allocation of corrections resources."

At the direction of Chair Hardesty, staff prepared an abbreviated list of the seven principles of criminal justice as a proposal for discussion purposes for the Advisory Commission. This recommendation proposes to amend the Nevada Revised Statutes to make legislative findings and declarations that it is the policy of this State that the seven principles guide criminal justice in this State.

RECOMMENDATION NO. 23 — Draft legislation to re-categorize certain crimes from a category B felony to a category C felony, including:

- **A. Obtaining money, property, rent, or labor by false pretenses, value $650 or more (NRS 205.380)**
- **B. Knowingly selling a motor vehicle whose odometer has been fraudulently altered (NRS 484D.335)**
- **C. Theft, value of $3,500 or more (NRS 205.0835)**
- **D. Grand larceny, value of $3,500 or more (NRS 205.222)**
- **E. Grand larceny of motor vehicle, value proven to be $3,500 or more (NRS 205.228)**
- **F. Maintaining drug house, first offense (NRS 453.316)**
- **G. Taking property not amounting to robbery, value $3,500 or more (NRS 205.270)**
- **H. Receiving or possessing stolen goods, value $3,500 or more (NRS 205.275)**
- **I. Theft from vending machine, value of $3,500 or more (NRS 205.2707)**
- **J. Gaming crimes, first offense (includes certain track and sports wagering and attempts at or conspiracy to commit crimes) (NRS 465.088)**
- **K. Receiving or transporting stolen vehicle, value proven to be $3,500 or more (NRS 205.273)**
- **L. Theft of fire prevention device, value of $650 or more (NRS 475.105—Punished as grand larceny. See NRS 205.222)**
- **M. Unlawful use of scanning device or re-encoder with intent to defraud (NRS 205.605). (Advisory Commission)**

Background Information for Recommendation No. 23

Tab T – NRS 205.380, 484D.335, 205.0835, 205.222, 205.228, 453.316, 205.270, 205.275, 205.2707, 465.088, 205.273, 475.105, and 205.605.

At the meetings held on June 14 and August 3, 2016, the Advisory Commission reviewed and evaluated the current 200 plus category B felonies in the State. At the June 14, 2016, meeting, Chair Hardesty asked the Commissioners to submit approximately 20 category B offenses that they wanted the Commission to look at for examination and potential recategorization. Chair Hardesty then invited Vice-Chair Jackson to identify the crimes he thinks will generate a consensus of Commissioners that we could push from category B to category C. Based on each Member's review of that list, the Advisory Commission then discussed, debated and identified 13 crimes that could potentially be reclassified from a category B felony to a category C felony.

Throughout the interim, the Advisory Commission noted that a major difference between category B and C felonies, is that category C felonies are eligible for so-called AB 510 (2007) sentence credits off the parole eligibility date (front-end) of the

offenders sentence. During the August 3, 2016, meeting there was no formal motion taken; however, the members of the Advisory Commission unanimously consented by voice affirmation to the reclassification of the 13 crimes identified in **Tab T**.

RECOMMENDATION NO. 24 — Draft legislation to further differentiate commercial burglary and residential burglary by making the act of entering a commercial establishment during business hours with the intent to commit petit larceny a category C felony under certain circumstances. (Advisory Commission)

Background Information for Recommendation No. 24

Tab U – NRS 205.060

Under existing law, a person who enters certain structures with the intent to commit grand or petit larceny, assault or battery, any felony or to obtain money by false pretenses is guilty of the crime of burglary (NRS 205.060 - **Tab U**). Existing law also provides that a person commits the crime of petit larceny if the person intentionally steals, takes and carries, leads or drives away certain goods or property. (NRS 205.240) Existing law, pursuant to subsection 5 of NRS 205.060, removes the crime of petit larceny from the underlying offenses which constitute burglary if the petit larceny was intended to be committed in a commercial establishment during business hours and the person has not: (1) twice previously been convicted of petit larceny within the previous 7 years; or (2) previously been convicted of a felony.

At the meeting held on August 3, 2016, Commissioner Jackson recommended proposed legislation to provide that a person who has twice previously been convicted of petit larceny within the previous 7 years or previously been convicted of a felony, is guilty of a category C felony (instead of a category B offense) if he or she commits the crime of burglary. As clarified during the meeting by Chair Hardesty, "even if the individual in a business establishment during business hours with intent to commit petty larceny had two or more prior petty larceny convictions or a felony conviction, it would still not be a category B burglary, it would be a category C." Without a formal vote, the recommendation was verbally assented to, without opposition, by members of the Advisory Commission.

RECOMMENDATION NO. 25 — Draft legislation to revise the penalties for certain crimes related to controlled substances, revise the weight limits for trafficking offenses or alternatively establish an interim study on the criminalization and oversight of controlled substances. (Advisory Commission)

Background Information for Recommendation No. 25

Tab V – NRS 453.3385; 453.321

During the Advisory Commission meeting held on August 3, 2016, the Advisory Commission debated current law as it relates to crimes concerning controlled substances. Commissioner Kohn suggested the Advisory Commission review "Trafficking, schedule I drugs (NRS except marijuana), flunitrazepam, or GHB, 4 to 14 grams, NRS 453.3385." Commissioner Kohn indicated that most of the time the lower trafficking is the result of a plea bargain however the numbers from NDOC might suggest otherwise. Discussion continued on the history of Nevada's drug laws and the war on drugs in the Eighties.

Commissioner Kohn continued that the other crime to consider is, "Import, sell, et cetera, Schedule I or II drugs, first offense," NRS 453.321. Commissioner Kohn stated, "I know Mr. Jackson has mentioned this many times, that very few people go to prison for their first offense and I do not disagree. But I look at 141 active category B sentences per offense in that NDOC column, and for all I know, the 141 number and the 1,161 number are the same people, but I think we need to change our whole perspective on it." Commissioner Kohn surmised that he did not think it should be a category B felony.

According to Commissioner Kohn, looking at other states with trafficking laws, Nevada has some of the strictest trafficking laws in the U.S. At the time our trafficking statutes were first enacted, which was at the height of the war on drugs, probably the sole purpose at that time was the punishment aspect. That is where those particular weights came from. There are other states with a single level of trafficking, starting at more than 28 grams, which is typically the round off for an ounce of these Schedule I controlled substances excluding marijuana. Specifically when we are talking about methamphetamine, cocaine and heroin, that is a significant amount.

Commissioner Jackson stated, "the primary intent of drug trafficking under NRS 453.3385 is looking at those drugs with the high potential for addiction that do not have any known medical use, so they are used solely for their the elicit nature—cocaine, methamphetamine and heroin. Of grave concern now is the date rape drug, although there is no date associated with this drug because this is a drug that facilitates sexual assault, GHB. Those drugs are determined under NAC Chapter 453 and those regulations are done by the State Board of Pharmacy."

At the Advisory Commission meeting on September 27, 2016, the Advisory Commission received testimony from Larry L. Pinson, Executive Secretary, State Board of Pharmacy and representatives of the Las Vegas Metropolitan Police Department High Intensity Drug Trafficking Areas Program. Again, debate centered on the trafficking amount levels and how those weights were established. Discussion also centered on whether a per pill or per unit measurement might be more appropriate for measuring levels of trafficking. Mr. Pinson recommended that perhaps the Legislature should consider an interim study or ongoing commission to specifically review the issue of criminalization of controlled substances.

RECOMMENDATION NO. 26 — Draft legislation to reconstitute the Advisory Commission or separately establish a new Sentencing Commission. The Sentencing Commission could be charged with reviewing sentencing practices, reviewing criminal history scoring and establishing sentencing guidelines. The sentencing guidelines could either be recommendations adopted by the Legislature in statute or enacted similar to the current Nevada Administrative Procedures regulation process. (Advisory Commission)

Background Information for Recommendation No. 26

Tab W – The Role of Sentencing Commissions; The Composition of Sentencing Commissions; Timelines of Sentencing Commissions; Initial Guidelines Experiences in Other States Criminal History Enhancements Sourcebook (Introduction)

Throughout the interim, the Advisory Commission heard from a number of presenters on national practices regarding criminal sentencing structures. Such presenters included: Alison Lawrence, Commission Counsel, Criminal Justice Program, National Conference of State Legislatures; Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Justice, University of Minnesota Law School, President, National Association of Sentencing Commissions; and Richard Frase, Co-Director, Robina Institute of Criminal Law and Criminal Justice, Professor of Criminal Law at the University of Minnesota Law School.

At the June 14, 2016, Advisory Commission meeting, Ms. Lawrence testified that sentencing is a very large topic. Ms. Lawrence gave a broad overview of state sentencing systems speaking from the legislative perspective. Criminal codes define what constitutes a crime, outlining the punishments for that crime. Most states have general offense classifications in order of seriousness. There are fiscal implications for where a crime is punished. States are looking at this issue to examine instances like punishing a crime as a felony, which puts the fiscal responsibility on the state. When a crime is moved down to a misdemeanor, it is often the fiscal responsibility of local governments. Most changes in crime classifications have been for drug and property offenses.

Ms. Lawrence indicated that last year, NCSL took a new look at state sentencing systems, both indeterminate and determinate. At the basic level, sentencing systems guide courts, parole boards and corrections agencies on the amount and kind of punishments that offenders receive for their crimes. General differences are in the amount of discretion provided to the agencies and courts for the sentences. Ms. Lawrence prefaced her remarks by stating there are no universal definitions out there.

At the June 12, 2016, Advisory Commission meeting, Chair Hardesty indicated that what he is urging, as a threshold point of a Commission with a principle responsibility for studying sentencing practices in the State, is that the Advisory Commission recommend to the Legislature a piece of legislation that would provide guidance by which these decisions are made. That way, issues of gender or race inequality, as well as appropriate penological considerations and impacts, both fiscal and prison and the like, can be assessed so those sentencing ranges are based on a vetting of those topics influencing the sentencing ranges on crime types. If that were the case, the Advisory Commission could begin the process of identifying certain areas within category B, calling on prosecutors, defense lawyers and probation experts to all comment on what a reasonable sentencing range for a crime should be from a penological standpoint. Chair Hardesty stated that some states have sentencing commissions that do exactly that; their sentencing ranges and placement within categories are determined by a sentencing commission that operates and is available to the legislature year-round.

Kelly Mitchell, Executive Director, the Robina Institute, appeared and presented at the September 12, 2016, meeting. According to Ms. Mitchell, The Robina Institute has three primary focus areas—sentencing guidelines, probation revocations and parole release practices. Ms. Mitchell indicated that she was asked to talk about sentencing commissions in other states and sentencing guidelines. Commissions can be in any of the three branches of government; the most common is in the executive branch. Most commissions are independent bodies, especially in the executive branch, where they are usually considered separate agencies. Utah is unique in that their sentencing commission exists underneath a broad criminal justice commission. The Sentencing Commission is independent from that broad criminal justice issue, but reports to the other commission and receives its staffing from the broader criminal justice commission.

Sentencing commissions come in all sizes. If the commission has a broader mandate, it tends to be larger and have more representatives from different areas. Smaller commissions tend to have a narrow or sentencing focus, focusing in on judges, prosecutors, defense attorneys, etc. Most commissions try to have representatives from all aspects of the criminal justice system. If it is a narrow focused commission, it usually focuses on the parties directly involved in sentencing or supervision of offenders after sentencing. The broader focused commissions tend to include business interests, mental health officials, etc. In most commissions, the appointment power is shared across various officials. For example, the Governor or Chief Justice of the

state's Supreme Court or the Legislature, can all have a role in making appointments to the commission. Only five states—Arkansas, Massachusetts, Michigan, Oregon and Washington—have their Governor making all the appointments.

A sentencing commission's staff size impacts what the commission is able to accomplish. Ms. Mitchell indicated that Connecticut and Illinois are broad mandate commission states. The others in the graph have more of a focus on sentencing. The two largest staffs on the graph, Connecticut and Pennsylvania, are from states affiliated with universities, which explains why their staff is larger.

Ms. Mitchell explained that typically, sentencing commission roles are often embedded in its enabling statute, which will state the purpose of the commission, identify its duties and responsibilities, and set forth its reporting requirements. Some Commissions are created for the sole purpose of developing guidelines or reducing prison populations, while others are instructed to study sentencing practices and make recommendations for improving sentencing policy, which may or may not include guidelines. According to Ms. Mitchell, whether a commission actually promulgates guidelines or just recommends them depends on the scope of their authority. Since the federal guidelines are unwieldy and difficult, many people do not like the word guidelines. Some states instead refer to them as sentencing standards, structured sentencing, advisory standards, etc., but they are all still a system of recommended sentences.

According to Ms. Mitchell, the primary purposes of sentencing guidelines are to: achieve certainty in sentencing; promote fairness; reduce disparity; secure public safety; and manage correctional capacity. Additionally, it should be noted that some guidelines are mandatory unless there are grounds for departure and some guidelines are only advisory, although judges are required to at least consider them. Lastly, Ms. Mitchell discussed who has the authority to modify sentencing guidelines: (1) independent authority subject to legislative override; (2) changes must be enacted in law; (3) administrative rule making process; or (4) independent authority. At the September 27, 2016, meeting, Ms. Mitchell also noted that some states that have adopted sentencing guidelines have also abolished parole.

Ms. Mitchell added that in terms of developing sentencing guidelines, there are three things that need to be done—rank the offenses to set the severity scale, develop a criminal history score and finally, set ranges within each of the cells on your grid. With regard to ranking offenses, Kansas was guided by three principles of harm—society's interest in protecting individuals from emotional and physical injury, private property interests and integrity of government, institutions, public peace and public morals. They applied those three principles to every offense and that set the general offense severity for them.

Ms. Mitchell submitted a report from the Minnesota Sentencing Guidelines Commission to the Legislature in January 1, 1980, outlining the method they used to establish their sentencing commission. Minnesota literally put every offense on an index card and had members rank them. Collectively, those were assembled into an order that was based on common agreement from the Commission.

At the Advisory Commission meeting held on September 27, 2016, Professor Richard Frase discussed several factors concerning criminal history scoring. The four topics he covered, included: what goes into a criminal history score; how do those components translate into a category on the grid in the columns from left to right; how do the commissions decide what goes into their criminal history scores and finally; and how does criminal history scoring relate to the use of risk assessment tools. How did they decide on the makeup? Professor Frase indicated that Ms. Mitchell talked a bit about the different ways of constructing a score and also the different rationales for the score. Of the two basic rationales—the risk rationale where a person with a higher criminal history score is expected to have a higher risk of recidivism and the just desserts or retributive culpability model which says a person is more blameworthy for their current offense if they have more prior convictions—whichever one you pick would have implications for what components you put into the score and how you weight them.

If the Advisory Commission chooses to adopt this recommendation, the Advisory Commission may wish to consider whether the legislation would: (1) establish a sentencing commission; (2) prescribe the sentencing commission duties and membership; (3) determine whether the sentencing commission will effectuate sentencing guidelines; and (4) consider whether such sentencing guidelines would be recommendations adopted by the Legislature in statute or enacted similar to the current Nevada Administrative Procedures regulation process.

RECOMMENDATION NO. 27 — Include a policy statement in the final report to support the recommendations of the Nevada Supreme Court's Indigent Defense Commission, including the re-introduction of a revised Senate Bill No. 451 (2015) which sought, among other things, to create an Indigent Defense Commission and provide funding for indigent defense. (Justice Cherry and David Carroll, Executive Director, Sixth Amendment Center)

Background Information for Recommendation No. 27

Tab X – Senate Bill No. 451, as introduced (2015)

During the Advisory Commission meeting held on September 12, 2016, Justice Michael Cherry, Nevada Supreme Court, and David Carroll, Executive Director, Sixth Amendment Center, appeared and presented a review of the Nevada Supreme Court's Indigent Defense Commission. According to Justice Cherry, in 2007, then-Chief Justice Maupin appointed him as the Chair of the Indigent Defense Commission. Justice Cherry indicated that over the years, the Commission has implemented performance standards for indigent defense representation, and now they are studying caseload standards. Justice Cherry indicated that the counties have been magnificent to the Commission as far as eliminating flat-fee contracts and getting the judiciary out of appointment of counsel. There are two public defender offices in Reno and two in Las Vegas and Douglas County has one, so does Elko. Meanwhile, the rest of the counties are supported by contract attorneys. Justice Cherry concluded by saying it is time the State stepped forward and authorized an independent Indigent Defense Commission.

David Carroll testified that the Sixth Amendment Center is a nonpartisan, nonprofit organization assisting states to meet their constitutional obligation to provide effective lawyers to indigent individuals accused in criminal proceedings. The Center has worked with the Nevada Supreme Court's Indigent Defense Commission for many years under a grant from the U.S. Department of Justice. Mr. Carroll addressed five topics. First, he gave a brief overview of the Sixth Amendment. Then he transitioned into a discussion of Nevada's unique history and vision with regard to the right to counsel. The main part of the presentation addressed the work of the Nevada Supreme Court's Indigent Defense Commission, focusing on identified systemic deficiencies and accomplished remedies.

Mr. Carroll also discussed a consensus bill draft that the Commission is proposing. It should be noted that during the 2015 Session, Senate Bill No. 451 was introduced. The measure, among other things, would have established an independent Indigent Defense Commission and moved certain duties to provide indigent defense under the newly established Commission. The Administrative Office of the Courts, the Nevada Association of Counties and other interested parties are continuing to work on revised conceptual language to submit to the 2017 Legislature. This recommendation would include a policy statement supporting the work of the Indigent Defense Commission and any resulting proposals for legislation that result therein.

RECOMMENDATION NO. 28 — Draft legislation to require a review of any alleged destruction of child abuse evidence. (Dee Williams, Citizen)

Background Information for Recommendation No. 28

During several Advisory Commission meetings throughout the interim, Dee Williams appeared as a concerned citizen and testified as to alleged destruction of child abuse evidence. Ms. Williams indicated that she represents parents in the Eighth Judicial District in Las Vegas whose child abuse evidence was destroyed before trial. She requested that the Advisory Commission further investigate the alleged activity and recommend legislation to prohibit such conduct, if not already prohibited by current statute.

RECOMMENDATION NO. 29 — Draft legislation to establish an oversight committee on lifetime supervision. (Wes Goetz, Citizen)

Background Information for Recommendation No. 29

During several Advisory Commission meetings throughout the interim, Wes Goetz appeared as a concerned citizen and testified as to the impacts of lifetime supervision on sex offenders. At the meeting on September 27, 2016, Mr. Goetz recommended the drafting of legislation to establish a special committee to oversee lifetime supervision conditions. According to Mr. Goetz, the State needs to stop the over-policing of people on lifetime supervision because it is unreasonable. Mr. Goetz asked, "How many people on lifetime supervision filed a complaint against the Division of Parole and Probation through the Office of Professional Responsibility and all they did was give their complaints back to the Division to investigate themselves?" Mr. Goetz concluded by stating, "there needs to be oversight and the opportunity to file grievances like you can in prison."

RECOMMENDATION NO. 30 — Draft legislation to abolish the death penalty, establish 60 years as a maxim prison term, revise the good time credit system to provide for 50% of the sentence imposed, and abolish mandatory minimum terms of imprisonment. (John Witherow, President, Nevada CURE)

Background Information for Recommendation No. 30

At the meeting held on September 7, 2016, John Witherow, President, Nevada CURE appeared and presented on several criminal justice reforms. Mr. Witherow articulated his position in a letter to the Commission dated August 31, 2016 (**Tab N**). His recommendations would require a complete revision of Nevada's criminal sentencing system, including the elimination of the discretionary parole system, a change in the

good time statutes, the elimination of the death penalty, replacing life sentences with 60-year sentences and more. The 60 year figure comes from the fact that a person is of age, 18 years old, when convicted of a crime and life expectancy is 78 years, so subtracting 18 from 78 gives you 60 years.

Mr. Witherow added that a good time system should be in place where the most serious offenses get 60 years and all consecutive sentences cannot cumulatively exceed 60 years. Offenders would get 50 percent good time at the start of serving their sentence which would ensure they are doing something to improve themselves or stay out of trouble. A person who commits a second serious offense after already serving 30 years will die in prison from the second conviction.

Mr. Witherow also recommended that mandatory minimum terms of imprisonment should be eliminated. There should be mandatory sentencing guidelines that the judge imposes as a sentence. Say it is a burglary that carries 10 years, the judge, by these sentencing guidelines, imposes a sentence of 8 years. Mr. Witherow commented that with the good time system that is in place under his proposal, the offender would do 4 years in prison if he behaved himself. The offender would have the ability to appeal that sentence or the prosecutor would have the ability to appeal that sentence; there is no Parole Board involved deciding when the guy's getting out. Mr. Witherow believes this proposal would reduce mass incarceration, save tax dollars and bring actual truth in sentencing to the criminal justice system.

Mr. Witherow suggested that the proposals Nevada CURE is recommending could save the State an estimated $100 million per year. Right now, the system is keeping inmates in prison that are serving longer sentences for longer periods of time and letting these short-timers go—burglars, car thefts, those in possession of a firearm. Once an inmate reaches 55 years of age, you are starting to pay for his or her medical treatment.

Mr. Witherow asserted that there are many problems with the discretionary use of the Parole Board in Nevada. It is the only agency in the State or country that he knows of where there is unlimited and unchecked discretionary authority to do whatever they please. In Nevada there is no possibility of obtaining judicial review on parole decisions; there is no right to parole, so there is no due process protection. Mr. Witherow concluded by providing information relating to specific examples of offenders incarcerated in the State.

RECOMMENDATION NO. 31 — Draft a letter to the Governor and Legislature or include a policy statement in the final report supporting increased funding and expansion of infrastructure for specialty court programs in Nevada. (Justice Michael Douglas, Chief Judge David Barker, Eighth Judicial District Court, Judge Scott Pearson, Reno Justice Court)

Background Information for Recommendation No. 31

Tab Y – Revenue Trends for the Specialty Courts; Eighth Judicial Specialty Court Funding

At the meeting held on September 27, 2016, Justice Douglas, Chief Judge Barker and Judge Pearson appeared and presented on the topic of specialty courts. According to Justice Douglas, more than 20 years ago, Judge Breen and Judge Lehman, from the north and the south, were pioneers in the drug court business; they were the starters and they are considered rock stars today for what they did. Fourteen years later, the Legislature got involved by allowing the courts to receive funds from administrative assessments to fund specialty courts. The specialty courts have been moving forward since that time. However, there have been shortfalls over the last few years due to administrative funding shortfalls. The specialty courts have taken a hit to the point where the Legislature was not only good enough to give the courts $3 million for the expansion of specialty court programs, but the Legislature was also good enough to recommend that $1.4 million be given to the courts because of the shortfall this economic downturn. Justice Douglas spoke to that because it goes to understanding the difficulty of specialty court, which are difficult for two reasons. One is that the courts need consistency in programming so they can build an infrastructure to rely on. In the old days, it was real simple. The judge sat down, got a weekly report and made a decision. The drug courts and other specialty courts that are evidence based, based on the national trends in programming, are a little bit more complicated, especially the new mental health courts. They require reports from those people involved in counseling and other hands-on programs which relate to those individuals once they leave the courtroom. The judge receives information from the staff, and from the people doing the follow-up. The specialty courts have a problem, which goes back to their initial funding. The specialty courts made a commitment with their original funding that more than 90 percent of funding would go to patient care, not for development of the infrastructure. That was great if someone was on probation, because the Division could supervise that person and give the court reports. The counseling program could give us reports as to whether the individual was showing up and whether they met the requirements. The court itself could give reports as to whether the person appeared on their appearance days. But based on the new evidence-based system, a lot more information comes in and the infrastructure in terms of a coordinator of that particular court, the people doing the check-ups on these individuals, and even the issue of judicial officers supervising has become critical.

Justice Douglas indicated that when the Legislature approved the funding, there was a limitation on its use. It was to be used to expand participation and for direct provider services. So the specialty court funding committee and the courts around the State viewed that limitation as a constraint against their ability to shore up the infrastructure needs that various courts had that would have allowed those courts to expand the infrastructure. One of the issues that will be presented to the Legislature in October, is to see if they will consider recommending the continuation of this funding and to modify the appropriation language that allows for more flexibility for the use of those funds to restore that infrastructure.

This recommendation would either request the drafting of a letter to the Governor and Legislature encouraging increased funding, flexibility and support for the specialty courts or include a policy statement regarding the same in the final report.

RECOMMENDATION NO. 32 — Draft legislation to require a national audit on drug court and other specialty courts in Nevada to determine national best practices. (Commissioner Kohn)

Background Information for Recommendation No. 32

During the Advisory Commission meeting held on September 27, 2016, the Advisory Commission discussed specialty court programs. During that discussion, Commissioner Kohn commented that Metro through the Clark County Detention Center, requested that the Office of Criminal Justice Programs (OCJP) investigate the overcrowded conditions in Southern Nevada. One of the things that was brought up by the OCJP was that people are waiting in jail to get to drug court. That is not the best practice or what is done throughout the rest of the country. Commissioner Kohn indicated that he did not think it is done in Washoe County. Further, Commissioner Kohn commented that what he learned from people at the OCJP, is that we have to have an audit. Someone outside of Clark County has to look at our practices and say what the best practices nationwide and what is the best for Clark County. The officers at the Clark County Public Defender's Office do everything we can to avoid drug court, and we have 60 percent of the cases. The idea that everyone has to be on probation for the longest period of time is wrong. Commissioner Kohn concluded by calling for a national audit and best practices survey of the current use of drug courts in Nevada.

RECOMMENDATION NO. 33 — Include a policy statement encouraging the staffing of Parole and Probation Officers for Specialty Courts in the Eighth Judicial District. (Advisory Commission)

Background Information for Recommendation No. 33

Tab Z – Memorandum from the Division of Parole and Probation Regarding Staffing

During the Advisory Commission meeting held on September 27, 2016, Chief Judge David Barker, Eighth Judicial District, reported that he recently had a meeting with the Division of Parole and Probation who indicated that there may be staffing cutbacks in the Eighth Judicial District. As the presiding judge, Chief Judge Barker indicated that he relies on coordinators, two treatment providers and the Division to actively engage with participants enrolled in drug court. At his recent meeting with the Division, Chief Judge Barker indicated that because of staffing issues, the Division is going to remove probation officers from drug court, mental health court and from felony DUI court because they do not have enough people. According to Chief Judge Barker, the courts are already way over national best practices numbers and they are telling me their reality is they cannot staff these courts.

Chief Judge Barker indicated that he would like to see the Advisory Commission understand how this will not work with this high-need, high-risk population if we do not have Parole and Probation officers in the mix. Chief Judge Barker concluded by stating that it would be nice for us to take the money if necessary, identified appropriately, and used to either supplement that or to at least talk about making sure that the Division could meet their responsibilities. Since the September 27, 2016, meeting, ongoing discussions have ensued between Chair Hardesty, Chief Judge Barker and the Division.

RECOMMENDATION NO. 34 — Draft legislation requiring the Department of Corrections to issue valid, recognizable and useable photo identification for offenders. (Advisory Commission, Senator Ford)

Background Information for Recommendation No. 34

Tab AA – Senate Bill No. 423 (2013) (enrolled)

Existing law, enacted pursuant to Senate Bill No. 423 (2013), requires the Director to provide a photo identification card, including the name, date of birth and a color photograph of the offender, to an offender upon his or her release if the offender requests such identification and is eligible to acquire a driver's license or identification card. (**Tab AA**)

At the September 27, 2016, meeting, David Tristan, Deputy Director of Programs, NDOC, appeared and presented on the current status of compliance with SB 423 and the issuance of offender identification. According to Deputy Director Tristan, SB 423 states in part that the NDOC will provide a photo identification card and will also provide information and reasonable assistance in acquiring a driver's license or identification card from the Department of Motor Vehicles (DMV). Getting a valid driver's license or state identification card is critically important to an offender reintegrating into society and trying to obtain all the services available to him or her. Discussing this with the DMV administration, Deputy Director Tristan learned that it is relatively simple for an inmate to get a duplicate driver's license or identification card when the inmate already had a driver's license or identification card before entering the NDOC system. According to Deputy Director Tristan, the issues arise when the inmate does not have a current driver's license or identification card.

The Advisory Commission may consider making the issuance of valid photo identification mandatory (regardless of whether the inmate so requests), making the issuance a requirement upon inmate intake (rather than on release), and/or requiring the DMV or another agency to issue the identification. In addition to any requirement to get a valid driver's license or state identification card, there were concerns raised as to verifying the identity of the inmate. Senator Ford suggested that perhaps state law should require an inmate to get a birth certificate (or other suitable form of identification) before he or she can be given a state-issued form of identification.

RECOMMENDATION NO. 35 — Draft legislation to require parole release for "low risk" offenders and establish mandatory parole after 25 years. (Florence Jones Crew, Citizen)

Background Information for Recommendation No. 35

Tab BB – Email from Florence Jones dated September 27, 2016.

At the Advisory Commission meetings held on September 12 and 27, 2016, Florence Jones Crew appeared and presented as a concerned citizen. Ms. Jones Crew discussed the current proceedings of the Parole Board and the nature of sentence credits. She also discussed the issue of whether the Parole Board hearings are quasi-judicial. Ms. Jones Crew advocated that offenders should be able to appeal their final parole denial. In conclusion, Ms. Jones Crew submitted written recommendations to require the Parole Board to grant parole to all applicants when their objective risk assessment score is "low risk" and to require mandatory parole after 25 years.

RECOMMENDATION NO. 36 — Draft a letter to the Nevada Highway Patrol encouraging the Highway Patrol to add prosecutors and defense attorneys to the list of persons that may request copies of recorded video evidence from body cameras. (Advisory Commission)

Background Information for Recommendation No. 36

Tab CC – NHP Draft Directive Regarding Body Worn Cameras

At the Advisory Commission meeting held on September 27, 2016, the Advisory Commission received a status update in response to Senate Bill No. 111 (2015). The bill required uniformed peace officers with the Nevada Highway Patrol (NHP) to wear a portable event recording device, or body worn camera, while on duty. Additionally, NHP was required to develop and adopt policy and procedures governing the use of such cameras. The NHP was also required to come before the Advisory Commission and provide a status report on the progress of the camera program.

During the hearing, Chief Dennis Osborn, NHP, appeared and presented an overview of the NHP Draft Directive on Body Worn Cameras. The Directive was developed by researching other policies and best practices. Chief Osborn indicated that the Directive is currently in its 10th revision, and depending on what vendor NHP ends up with, there could be a slight modification to the current version.

At the hearing, several Advisory Commission members raised the issue of whether prosecutors and defense attorneys should be added to the list of persons authorized to view body worn camera recordings under the Directive. Chief Osborn indicated that NHP would communicate with the Attorney General's Office as to the legality of authorizing the viewing and use of any video recording by a prosecutor or defense counsel.